

JOINT CONVENTION

PIONEER LAWMAKERS
(HOUSE CHAMBER — 1:30 p.m.)

In accordance with House Concurrent Resolution 7, duly adopted, the joint convention was called to order, President Branstad presiding.

President Branstad announced a quorum present and the joint convention duly organized.

Senator Hultman of Montgomery moved that a committee of four be appointed to escort the Pioneer Lawmakers into the House chamber.

The motion prevailed and the President appointed as such committee Senator Miller of Marshall, Senator Miller of Des Moines and Representative Stromer of Hancock and Representative Cochran of Webster.

The committee escorted the Pioneer Lawmakers to the well of the House chamber.

President Branstad presented Senator W. R. Bill Hansen, President pro tempore of the Senate, who welcomed the Pioneer Lawmakers on behalf of the Senate as follows:

MR. PRESIDENT, MR. SPEAKER, MEMBERS OF THE HOUSE AND
THE SENATE, PIONEER LAWMAKERS, HONORED GUESTS, LADIES
AND GENTLEMEN

We are in a point of time where it may be a dubious distinction to be a politician, for after all, one week you may be on the cover of Time and the next week serving. But today we have paused for a moment in time to resort to a little history and nostalgia and with particular deference to the new class of Pioneer Lawmakers.

So I thought I might start out by saying one score and 98 days ago, our forefathers brought forth to the state legislature 47 new freshmen, conceived as members of the 58th General Assembly and dedicated to the proposition that 33 Republicans in the Senate and 60 in the House gave that party a majority, though the slimmest since 1937. The gains of the minority party were significant, but the attention really focused on the re-election of Governor Herschel Loveless at that time, who in doubling his 1956 margin, had become the first of his party in 22 years and the second since 1894 to succeed himself in that particular office. The electorate also in that particular year gave him a Lieutenant Governor of his own party, Edward J.

McManus, and he was given to the Governor for companionship. The new Lieutenant Governor soon learned that that was the scope of his office. Senator Jack Schroeder — then at the tender age of 33, was to hold firm rein over the Senate Chambers, and it is interesting to observe that as you come here to join us today, that transfer of powers has once again been accomplished, but this time it has moved from the Majority Leader back to the Lieutenant Governor.

Allow me just in my brief moments here to make some comparisons between the new class of 1959 and the 1979 general assemblies. Each convened with 47 freshmen legislators. The average age of your particular general assembly at that time was 50.8 years of age, and the current legislature is slightly younger, 45.6. One of the interesting contrasts lies with the vocational background differences, for in your 1959 session farmers dominated the membership, followed by lawyers, then businessmen and 4th place by livestock farmers. In the current session, businessmen dominate with 2nd place going to farmers and, alarmingly, in the minds of some people, 3rd place goes to "full-time" legislators and lawyers are for once in 4th position.

While you breezed through your session in 116 days, annual sessions have pushed us close to the 300 day mark this decade. Some of the results have been:

That the number of bills confronting our legislature today has almost doubled the number that you had in your biennial session even though the number of bills that we pass has only increased by 25%.

One of the results of this is that the 1979 Code is 40% larger than the Code of Iowa that you worked with in 1959.

We have increased the cost of the legislature itself by 10 fold, even though we've only increased the cost of the state budget — increased the total state budget by 5 fold since the time that you were here.

All of this has helped to bring about the advent of full-time legislators, and an increase of legislative staff.

So you see, it's a kind of different legislature today that looks to staffers for recommendations, computer runs for comparisons, interim meetings for solutions, adjournment procedures for salvation, no-smoking rules for protection, disclosure rules for sanctification, lobbying rules for purification and it is so busy with edification that it seldom has time to ponder ramifications and frequently resorts to procrastination.

You public servants of the past labored without these innovative "wonders" of the seventies and yet brought forth an end product that served the present without strangling the future. There is much that we can learn from reading your records of achievements while observing your methods which you followed; and your presence here today causes us to focus on your accomplishments and to pay tribute to each of you for your dedicated life in public service. We welcome you back to your legislative home.

President Branstad presented Representative William H. Harbor, Speaker pro tempore of the House of Representatives, who welcomed the Pioneer Lawmakers on behalf of the House as follows:

It is indeed a pleasure and an honor, both as a Representative and as a member of Pioneer Lawmakers, to welcome you, on behalf of the House, to this biennial event.

If one could recapture some of the utterances that still ring in these halls, some of the statements you made about various proposals, draining the coffers of the state, concerns about Iowa's future, they would undoubtedly sound familiar to those members who wrestle with these problems of today, and in this light I would like to deviate for just a moment to speak about two of those problem solvers who were both appropriations chairmen.

The appropriation chairman my first session here, was a man to whom we have dedicated this year's Pioneer Lawmakers Day, the Honorable Gus Keister of Griswold. He is now ninety-seven, very alert, and is a man who was always concerned about appropriations and state spending, calling to our attention that we were scraping the bottom of the barrel. I can well remember in 1955 when he made fervent pleas here on the floor that we were going to break the state by virtue of going to the \$200,000,000 budget figure.

The other gentleman I allude to—to point out to the younger members of the legislature how things are accomplished—is the appropriations chairman the years that I was Speaker, none other than John Camp of Clinton County. I can well remember the last night of our last session in which John was the one who could trade and trade well. As you know, the rules of the Senate called for a coat and tie. John put a blue bill jacket in every pocket he had, enough so that every bill could be seen, marched right down the middle of the Senate chamber and put his arms right up on the desk, which was contrary to the ethics of the Senate chamber. One of the Senators at that time called attention to the fact that there was a man in the chamber who had neither coat nor tie on and should he not be removed? The Lieutenant Governor immediately called attention to the fact that in each pocket was a bill that the Senate needed and that he was trying to tell the Senate something. He did, and we soon adjourned.

One might state that the concerns essentially remain the same, just the characters change. The statement that "one's life, freedom, and property remain in jeopardy while the legislature is in session," first stated in the late 1700's, just proves that all generations have their concerns and apprehensions.

Now, to those of you whose responsibility is to meet the needs of our beloved state, you see here before you the young Turks and mavericks of yesteryear. With them you have much in common, for it was their dream, as it is yours, to make Iowa a still better place to live and to continue our star as the envy of all other states.

So, to you assembled here for this occasion, we extend to you a hand of welcome and God speed to you.

President Branstad presented the Honorable Dave Shaff who responded to the welcome.

Mr. Shaff addressed the joint convention as follows:

MR. PRESIDENT, MR. SPEAKER, MEMBERS OF THE SENATE AND MEMBERS OF THE HOUSE, LADIES AND GENTLEMEN:

On behalf of the Pioneer Lawmakers, may I express appreciation for the welcome which has been extended to us on behalf of the House and the Senate.

Our presence today may serve to remind you that you have been preceded by others who have some understanding of the problems that you face, and as former legislators, we form a cadre of Iowa citizens supporting you in your endeavors.

You know, as do we, that in the ultimate performance of your duties, partisanship must be subordinated to that quality of legislative performance which will provide sound legislation for the problems of today together with an enduring farsightedness for the years that lie ahead.

You are indeed the stewards of the state and not only do you have the responsibility for good management today, but the obligation to make sure that you leave the condition of the state in at least as good a condition as it existed when you assumed your responsibilities.

You also know that from these legislative halls will come much of Iowa's leadership in state and national offices in all branches of government. In the state and the nation's interest, it is imperative that the most able among you should seek and assume those obligations.

As pioneer legislators, we cherish the opportunity to briefly recall the battles that have been won and lost here, the experiences to be remembered for a lifetime, and friendships that will endure always.

Mr. Shaff recognized the Honorable George O'Malley and requested he escort to the well of the House for recognition Mr. Donald J. Reid, Managing Director of the Iowa Press Association, who by a unanimous resolution duly adopted, was awarded honorary membership in the Pioneer Lawmakers Association.

President Branstad then presented the Honorable William C. Stuart, Chief Judge, Southern District of Iowa and former State Senator, who addressed the joint convention as follows:

MR. PRESIDENT, MR. SPEAKER, MEMBERS OF THE SENATE AND MEMBERS OF THE HOUSE, FORMER LEGISLATORS AND OTHER GOVERNMENT OFFICIALS, LADIES AND GENTLEMEN:

Last night, as I began collecting my thoughts for my remarks today, I had difficulty accepting the fact that 18 years have passed since I last stood in the chamber across the rotunda as a matter of right rather than here by invitation. However, upon reflecting on all that has happened in the world, this county, our state and my own life in the interim, it became clear that it was indeed that long ago.

When my wife, Elgin, myself and our three children made Des Moines our home in 1955 during the 56th General Assembly, our oldest son, who has been teaching and coaching for eight years, was in kindergarten. Our youngest child who will graduate from college this spring was two years away from the planning stage. How can all of this happen in that short a period of time and yet all of the people I see out here and myself remain so young and vital. It's amazing.

I do not intend to dwell upon the changes that have occurred over the past 20 to 30 years, we are all aware of them and it would serve no purpose to point out the obvious. Suffice to say, life in general and legislative life in particular, was much simpler then. During my 10 years in the Senate our salaries doubled, from \$1,000 to \$2,000 dollars a session. We met every other year and stopped the clock at the end of the 100th day. The old cliché of the cynics of the time was that the legislature met every two years for 100 days and everyone would be better off if it met every 100 years for two days. I wonder what those who thought there was too many laws in those days would think of the way we are regulated, controlled and restricted by legislation and court made law today.

In those days legislators could go out for a drink and dinner with a legislative representative or lobbyist and listen to his position on pending legislation without feeling, or having it insinuated, that he had sold his soul and his honor for a mess of prime rib. It never even entered our minds that our hosts would feel they could buy our vote by what was taken as little more than common courtesy. We were giving them time to express their point of view and it was a way for them to reciprocate. I don't believe that our constituents thought so little of our integrity that they questioned the propriety of our conduct.

As a lawyer in which adversary positions was a part of my way of life, I felt more comfortable in deciding how to vote after having heard advocates express their differing points of view. I felt the system worked pretty well then.

We were more relaxed. I feel we enjoyed the legislative sessions more than you do now, but that does not mean we did not work hard and conscientiously. I just thumbed through the session laws and picked out some of the important major changes made during my 10 years in the legislature. Most of them seem commonplace now, but most involved hard fought battles. Each one is a story in and of itself but I will go through them hastily. I am sure the mention of these acts will bring to mind many stories to the pioneer lawmakers.

In 1953 the 55th General Assembly legalized the sale of colored oleomargarine, passed initial legislation to eradicate Bangs disease and prohibited the feeding of raw garbage to hogs. We passed the motor vehicle certificate of title act and required school reorganization with a 300 pupil minimum. We abolished the bankrupt public employees' pension system, placed public employees under social security and created a fully funded supplemental system IPERS.

In 1955 the 56th General Assembly created the Legislative Research Bureau, County Extension Districts and the office of Judicial Statistician. We authorized municipal transit systems, toll and controlled access roads. We conformed the Iowa income tax to the federal return and inaugurated full hearings for the Board of Regents on their appropriations.

In 1957 we required all areas of the state to be in a high school district, provided for regulation of water resources, nursing homes and key clubs, and the manufacture and sale of fertilizer. We created the Board of Pharmacy Examiners. We authorized the investment of public funds at interest, passed the enabling act for urban renewal and a comprehensive recodification of motor and special fuel safety laws and tax.

In 1959 the 58th General Assembly passed for the first time the Constitutional Amendment relating to the selection and tenure of judges, passed the Business Corporation Act and recodified Building and Loan laws, created the agricultural marketing divisions and the offices of County Assessor and Medical Examiner. We made major revisions in the Workmen's Compensation Act and authorized the Board of Regents to borrow money for self-liquidating buildings.

In 1961 the 59th General Assembly created new congressional and legislative districts, passed a constitutional amendment to reapportion the legislature, a comprehensive boating registration and regulation act, enacted enabling legislation for low rent housing and made the Oak tree the state tree.

I have used too much time reminiscing because I do have a serious concern that I want to share with you, because of your interest in government and this country. As a former legislator and a judge, I fear that the blurring of the line between legislation and court decisions has started us on a path that could endanger our constitutional system of government. The responsibility for this trend must be shared by the legislative bodies and the courts because of the failure of legislatures to respond to society's need and the willingness of the courts to fill the vacuum.

In 1954 the Supreme Court in *Brown v. Board of Education* overruled the court created doctrine of "separate but equal schools" and held that it was unconstitutional to operate racially segregated schools. This obviously correct decision was well within the constitutional functions of the court as was the negative mandate "don't operate segregated schools" and the affirmative order to make the change "with all deliberate speed". However, as the years passed and the states with segregated school systems either ignored the mandate or used dilatory tactics to evade it, the courts found it necessary to take the initiative and prescribe affirmative plans to give meaning to the Supreme Court's broad pronouncements. Because of the eminent rightness of the cause, presidents, congress and the people generally accepted the courts' assumption of this power.

As other branches of federal, state and local governments failed to respond responsibly to needs of the citizens as perceived by society and the courts, the courts began making policy decisions on political and social issues basing the authority on the principle that various constitutional rights were being violated. As the areas that were opened up in this manner were without statutory guidance, broad pronouncements by the courts were not enough. The opinions began to include guidelines which could give some direction to the litigants as to the path they must follow under the court decision.

In one-man one-vote cases, courts have required state and local governments to reconstitute their various representative legislative bodies. In many cases courts have spelled out specific affirmative relief. For example, the courts in some states, including Iowa, used a computer to formulate their own redistricting plans.

Under decisions based on the Equal Protection Clause of the Constitution, governments and institutions have been required to revamp programs and reallocate funds. Courts have required the expenditure of large sums of money for the education of the handicapped and construction of various facilities. The busing decisions have not only dictated policy within a school district but in some instances have mandated the crossing of district lines.

In holding that certain conditions of confinement constitute cruel and unusual punishment, the courts have placed strict limitations on the authority of prison officials and specified affirmative changes that have required state and local governments to spend substantial sums.

Under the due process clause, the courts have set hearing requirements for the disciplining of students or prisoners and the disciplining and discharge of teachers, and employees.

It is my feeling that the courts have had a tendency to intrude into the administrative details in the operation of hospitals, schools, prisons and governmental agencies.

These comments should not be taken to mean that I think the results were bad. Quite the contrary. Most of these cases have brought about changes that were long overdue. As Archibald Cox said in his book "The Role of the Supreme Court in American Government", and I quote:

"I would support nearly all these (rules) as important reforms if proposed in a legislative chamber or a constitutional convention. In appraising them as judicial rulings, however, I find it necessary to ask whether an excessive price was paid by enlarging the sphere and changing the nature of constitutional adjudication."

Chief Justice Warren Burger has expressed concern about the dangers of using the courts to bring about social change stating:

"Young people who decide to go into the law primarily on the theory that they can change the world by litigation in the courts, I think, may be in for some disappointments—that is not the route by which basic changes in a country like ours should be made. That is a legislative and policy process, part of the political process. And there is a very limited role for the courts in this respect."

The point is that under our system of government it is not the prerogative of the court to make major policy decisions. Of course, the courts must, as Justice Holmes said "legislate interstitially" or between the tissues of legislation enacted by legislative bodies or the broad general principles of the constitution. Otherwise the Constitution and the law would not be viable and timely as intended.

Judicial improvisation transfers a substantial law-making power to the courts. Judges are ill-suited to law making because judicial authority depends, in part, upon aloofness from the political arena. Judges, who should be beholden to no one for their conscientious conduct, lack the everyday responsibility to the electorate that is the real basis of workable reform. Nor do judges have the background or experience to evaluate the effect of a particular decision on related procedures or problems. Judicial

activism also erodes the legislative process, because it tends to relieve legislators from accountability for social reconstruction and constitutional propriety.

As a fourth generation lawyer, I have lived all my life in an atmosphere of respect for the law and pride in the way our judicial system has functioned and the quality of the justice it has produced. I have viewed the Constitution and its adaptability to changing times with awe, if not reverence. It has been disheartening to me and demeaning to the Constitution to have it used to decide such inconsequential matters as the right to wear long hair, or an arm band in school, the right to have an obscenity displayed on your jacket, or the right to play five rather than six girl's basketball. I know it can be argued that these are important individual rights and they are which the courts should vindicate but I agree with Judge Adams when he said:

"Too frequent invocation of the Constitution tends to debase it. Popular respect for judicial decisions stems, to a considerable extent, from the belief that the decision represent the practical application of neutral principles of adjudication. But frequent recourse to the Constitution may render it a convenient weapon for partisan debate, and may cast judges in the role of interested manipulators of that document. If that is to be the status of the Constitution and the courts, it becomes more difficult to see them as arbiters in time of crisis and guardians of liberty in time of need."

When the courts blur the distinctions between its duties and that of the other branches of government and the states by broad pronouncements of a constitutional right unaccompanied by an examination of the ramifications of that pronouncement on other areas, which examination is part of the legislative process, they damage our philosophy of separation of powers. It may be a compliment to the judiciary that many well-meaning people feel that judges rather than politicians will provide timely solutions to pressing social problems, but it is not in accordance with our democratic principles.

The judicial system of this democracy may succumb to an erosion of confidence from its assumption of legislative power it is not suited to exercise. I do not believe that it is merely coincidental that the drop in public confidence in the courts has accompanied their increased involvement in policy matters. We need more thought and greater sophistication about the kinds of issues that can be profitably referred to formal legal process and the kinds that ought to be left to other processes. If dissatisfaction with the function of the legal system reaches the stage where it and its decision do not command the respect of a substantial portion of the citizenry, it and our democracy are both in danger.

No society can be healthy and effective if all its disputes are drawn into legal processes. The spread of law throughout human relations signals not only a decline of individual freedom but also a withering of community, traditional modes of accommodation and informal authority. A healthy society requires that there be considerable play in human relations, a degree of trust in the good faith of others, confidence that things can be worked out tolerably, a willingness not to insist on every "right" one may think one should ideally possess, and a large amount of self-reliance. The attempt to define all the rights of individuals and enforce them by legal processes signifies the diminution or disappearance of these virtues. The increasing legalization of our culture is a sign of the deterioration of that culture.

Should law in its present form fail us, it will ultimately be replaced by other forms of law. What is at stake then is not law itself, but rather democratically made law allowing for a wide scope of individual freedom. That is worth preserving.

Halvorson of Clayton moved that the joint convention be now dissolved.

The motion prevailed.

The House reconvened, Speaker Millen in the chair.

LEAVE OF ABSENCE

Leave of absence was granted as follows:

Perkins of Greene, for the remainder of the day, on request of Brandt of Black Hawk.

BUSINESS PENDING

The House resumed consideration of Senate File 442, a bill for an act relating to the distribution of earnings of corporations which are cooperative associations.

Howell of Floyd offered the following amendment H—3972 filed by him and moved its adoption:

H—3972

- 1 Amend Senate File 442 as passed by the Senate as
- 2 follows:
- 3 1. Page 1, line 25, by striking the words "of
- 4 deceased members".

A non-record roll call was requested.

The ayes were 25, nays 50.

Amendment H—3972 lost.

Ritsema of Sioux offered the following amendment H—3966 filed by him and moved its adoption:

H—3966

- 1 Amend Senate File 442 as follows: