

SERVICE WITH C. EDWIN MOORE

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I served on the Supreme Court of Iowa with C. Edwin Moore between November 1962 and November 1971. He was a great judge, a competent and progressive administrator, a pioneer in court reforms, a battler for the needs of the Iowa courts, a pragmatic politician, a warm human being, and a very good friend. The dedication of a volume of the *Drake Law Review* to his memory is a fitting tribute to his loyalty to the law school, his devotion to the legal profession, and his service to the citizens of Iowa. No Iowa judge has devoted such a large portion of his active life to public service.

One of the judge's favorite stories explained his decision to enter law school. He worked in a Des Moines packing plant as a young man. While he was lugging half-beeves around the plant, it occurred to him that he didn't want to spend the rest of his life performing that task. He turned to the law because the books were lighter than the carcasses. It is fortunate for the state of Iowa and those of us who were his associates that brains prevailed over brawn.

Judge Moore was not, and did not claim to be, a legal scholar in the academic tradition. However, he possessed a deep reservoir of good judgment and common sense, traits that are far more important for a judge dealing with a myriad of human problems on a daily basis. His opinions are clear and concise. The reader has no difficulty in determining what issues were before the Court, how they were decided, and why. He said what he meant and meant what he said without clouding the issues by elaboration.

He was a man of his convictions but he realized that others might have different opinions. Even if his view did not prevail, he never let that result influence his position on other cases or his relationships with the other judges. When he presided at the conference table, each justice was given the opportunity to express himself fully. If the debate got a little warm, a clever, timely, and appropriate remark would alleviate the tensions that were building up. The members of the Court had adopted the practice of dining together the evening following the conference to help smooth ruffled feathers. The wives who were in Des Moines joined us for a social evening. Chief Justice Moore's charm on these occasions helped erase any antagonistic feelings that might have remained after the conference.

As a lifelong resident of Des Moines, he had many friends and acquaintances in the city. His office work was frequently interrupted by those who

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knew him or of him and sought his advice on all sorts of personal problems. He always took time to visit with them.

Judge Moore presided over oral arguments in a relaxed and informal manner, while at the same time making it clear to the lawyers that this was a "no nonsense" proceeding. He put the lawyers at ease so they could concentrate on the substance of their arguments without worrying about protocol. The rules were enforced in a kindly fashion.

A great many important cases have been filed in Polk County because Des Moines is the home of the state government. Judge Moore tried more than his share of landmark cases while he was on the district court bench. He wrote many important decisions during his tenure on the Supreme Court. Perhaps the case that has had the most lasting impact is *Green v. City of Mt. Pleasant*,¹ which upheld the constitutionality of the act authorizing cities to construct and lease industrial buildings financed by revenue bonds.

Several opinions dealt with problems that continue to plague us today, such as police brutality² and child abuse.³ In 1971 the Court had to decide whether a personal representative could maintain an action for damages for the wrongful death of a nonviable unborn child.⁴ Speaking for the court, Judge Moore said:

We express no opinion as to the existence of the fetus as a person in either the philosophical or actual sense. We hold only the legislature in enacting the statutes applicable to this case did not intend to include an unborn fetus when it adopted our survival statute, section 611.20.⁵

The troublesome problems addressed by the Supreme Court of the United States were not reached because: "Administrator's assigned error of violation of 'a person's' federal and state constitutional rights involves an issue not raised in the lower court and therefore is not considered here for the first time."⁶

The importance of an opinion cannot be judged by the volume of public indignation it incites. Although the general public paid little attention to the *Green* case, there was a huge outcry from the public over Judge Moore's opinion in *Katko v. Briney*,⁷ which merely applied existing law. In that case, Katko had broken into a vacant house on the Briney property to take some old bottles and fruit jars when he knew had no right to enter the house. As the house had been broken into several times before, the Brineys had mounted a 20-gauge shotgun wired to shoot the legs of anyone who opened

1. *Green v. City of Mt. Pleasant*, 151 Iowa 303, 131 N.W.2d 5 (1964).

2. *Strong v. Town of Lansing*, 179 N.W.2d 365 (Iowa 1970).

3. *State v. Stamper*, 195 N.W.2d 110 (Iowa 1972).

4. *McKillip v. Zimmerman*, 191 N.W.2d 706 (Iowa 1971).

5. *Id.* at 709.

6. *Id.*

7. *Katko v. Briney*, 183 N.W.2d 657 (Iowa 1971).

the door into a bedroom. The trap gun worked and Katko received serious personal injuries. Judge Moore's opinion approved of the trial court's instructions which, in effect, permitted a trespasser into a building that was not a home to recover for injuries received from a secretly installed "spring gun." A substantial verdict had been returned for Katko. The Brineys were poor people. Their property was to be sold to satisfy the judgment. Their plight engendered a great deal of public sympathy. The fact that the law prohibiting spring guns had been well established since *Hooker v. Miller*⁸ meant nothing to the public. A large percentage of the people believed that they had a right to use this device to protect their property under these circumstances. Judge Moore received a large volume of unfavorable mail. The public furor continued for some time. This is not a pleasant experience even when you know the opinion is right. But Judge Moore accepted the criticism with his usual good humor.

Judge Moore continued to work full-time after he became a senior judge. He served as a condemnation land commissioner for the United States District Court for the Southern District of Iowa for several years. He retained his physical vigor and mental acuity until he underwent surgery. He never fully recovered from that ordeal.

Chief Justice Moore's tenure on the Iowa bench will continue to influence all aspects of the administration of justice for many decades. The court system and the body of Iowa law are much better than they would have been had he kept on lugging half-beeves around the packing plant.

8. *Hooker v. Miller*, 37 Iowa 613 (1873).

