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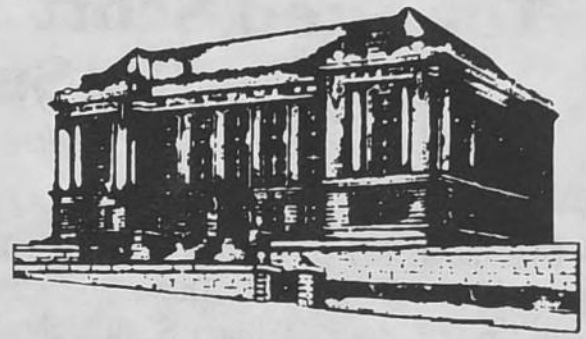
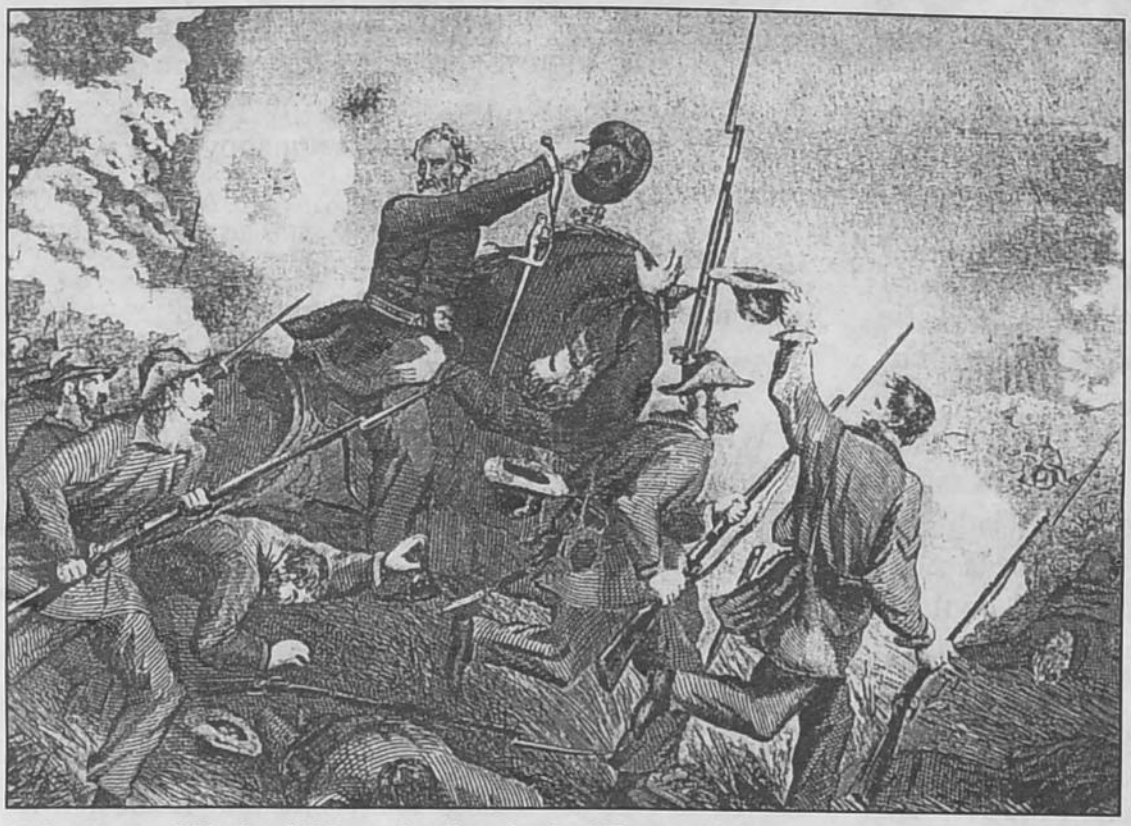


Dispute Resolution: America's Costly Lesson

Changing Battlefields: The Civil War Era in Missouri



Brig. General Nathaniel Lyon leading the 2nd Kansas Volunteer Infantry Regiment into Battle at Wilson's Creek, by an artist who was not an eyewitness. It was during this charge that Lyon was fatally wounded. Richard Scott Price Collection

Perhaps nowhere in the nation were the deep animosities and personal hatreds of the Civil War more violently expressed and longer-lasting than in Missouri. Presaged by the Dred Scott case, detailed in the last issue of the **Journal**, and cultivated in the bloody ante-bellum warfare between Missourians and Kansans, these animosities reached their culmination in the bloody Battle of Wilson's Creek. This was the first major battle of the Civil War fought west of the Mississippi River and the first in which a Union general died.

The deep animosities did not end with Appomattox. They continued in the post-war period, not only in the depredations of ex-Confederate guerillas such as the James boys, but also in less well known, but more minutely chronicled and less bloody battles that took place in the decorum of the courtroom.

Three articles in this issue of the **Journal** deal with both areas and manner of conflict. D.A. Divilbiss, in "The Dred Scott Judges" paints a word-picture of the backgrounds of the three judges who wrote this important Missouri Supreme Court decision. In "Death and Obsequies of General Nathaniel Lyon," John K. Hulston covers an interesting and unusual aspect of the Battle of Wilson's Creek. Judge Charles McAfee, in "Riding the Circuits in Southwest Missouri," published originally in **Bench and Bar of Missouri** in 1897, describes the practice of law in Southwest Missouri in the immediate post-war years.

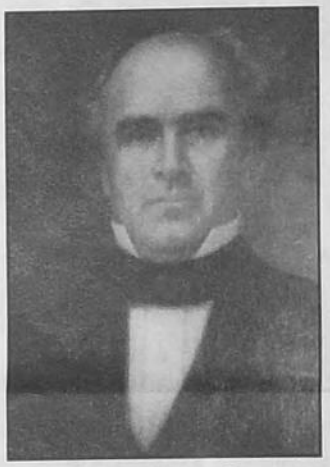
While there may seem to be little relation between such diverse subjects, we can see the animosities so violently expressed in guerilla warfare and in the Wilson's Creek battle of "Bloody Hill" continuing, although differently expressed, in the many war-related cases tried in the courts in the post-war years described by Judge McAfee. Another interesting point connecting the Hulston and McAfee articles is the fact that the Mary Whitney Phelps who, in Mr. Hulston's article, goes to great pains to protect the corpse of General Lyon from desecration, is the wife of the John S. Phelps who was the law partner of Judge McAfee.

EAR

The Dred Scott Judges: The Conflict in the Supreme Court

By D. A. Divilbiss

In the previous edition of the **Journal** (Vol. 6, #3, December, 1997), the full text of the Dred Scott decision was printed. The three Missouri Supreme Court judges, William Scott, John F. Ryland and Hamilton Rowan Gamble, who heard the case and handed down the opinion, probably didn't realize the full impact their opinion would have on the legal and political scene at the time nor the national consequences that followed years later. Following are biographical sketches of these judges whose lives are forever associated with this case.



Judge William Scott

William Scott, the author of the majority opinion, was appointed to the Missouri Supreme Court in August, 1841, following the resignation of Mathias McGirk. In 1851, he was elected to serve a term of six years. He was re-elected in 1857, but resigned in 1861 before his term expired rather than take the "Test Oath," an ordinance by the state convention requiring all civil officers "to take and subscribe an oath to support the U.S. Constitution and the State of Missouri."

His resignation from the Court can be attributed in part to his southern background. He was born in Warrenton, Fauquier County, Virginia, June 7, 1804. He graduated from Fauquier Academy and read law with Inman Horner, an attorney from Warrenton. At 21 he was admitted to the Virginia Bar. In 1826, he moved to Franklin, Missouri, in Howard County where he practiced law until 1835 when he was appointed judge of the 9th Judicial Circuit and moved to Union, Missouri.

In writing the majority opinion, Scott again demonstrates the influence of his Southern heritage when he says, "Every State has the right of determining how far, in a spirit of comity, it will respect the laws of other States. Those laws have no intrinsic right to be enforced beyond the limits of the State for which they were enacted." He disregards the legal precedents the court had established earlier when he says, "Times are not now as they were when the former decisions on this subject were made. Since then not only individuals but States have been possessed with a dark and fell spirit in relation to slavery, whose gratification is sought in the pursuit of measures, whose inevitable consequences must be the over throw and destruction of our government."

At the end of the opinion, he tries again to justify not only the institution of slavery but his support of it by adding, "As to the consequences of slavery, they are much more hurtful to the master than the slave. There is no comparison between the slave of the United States and the cruel, uncivilized negro in Africa: ...we are almost persuaded that the introduction of slavery amongst us was, in the providences of God, ...a means of placing that unhappy race within the pale of civilized nations."

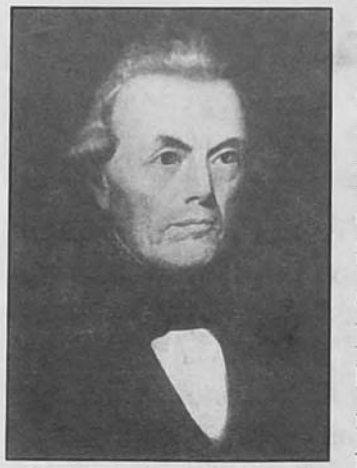
It would take five more years and numerous legal battles before Dred Scott would finally become a free man. It is interesting to note that Dred Scott was freed in May, 1857, the same year that Judge Scott was re-elected to the Supreme Court.

When Judge Scott joined the Court, he purchased a farm six miles from Jefferson City. He lived here until his death in 1862. In 1905, Judge James B. Gantt, then a member of the court, in a speech before the Annual Meeting of the Missouri Bar Association, brought to the attention of the Bar's President the fact that Judge Scott's remains were buried in "an old horse lot."

Judge Gantt asked the president to appoint a committee to find a suitable grave site and requested a proper marker be erected. He also suggested that the Bar Association members donate funds to cover the expenses. It is hard to know if money was collected, but in the 1905 **Laws of Missouri**, $700 was appropriated "for the removal of the remains of Judge William Scott...from its resting place to Woodland Cemetery in Jefferson City...and for the erection of a suitable monument."

John F. Ryland, concurring with Judge Scott's opinion, was first appointed to the court in January, 1849, by Governor A.A. King for a term of 12 years. During his tenure on the court, the law was changed requiring judges be elected to their office, so in 1851 Judge Ryland, like Judge Scott and Judge Gamble, campaigned and won elections for their positions, which then were for only a term of six years .

Judge Ryland also had a Southern background. He was born November 2, 1797, in the County of Queen



Judge John F. Ryland

and King, Virginia. In 1811, his family moved to Essex County, Kentucky, where he received his education at Forest Hill Academy, considered the best classical school in the state. He became an avid Latin scholar reading Latin with ease. He later read law with Judge Hardin and received his license to practice in Kentucky, but did not practice law until he moved to Franklin, Missouri, in 1819. While living here, he met two lawyers, Hamilton R. Gamble and Abiel Leonard, whom he would later join on the Missouri Supreme Court. He would later incorporate two of these names, Leonard and Gamble, in the names of two of his sons.

In 1830, he moved to Lexington, Missouri, when he was appointed judge of the 5th Judicial Circuit, which at that time was composed of the entire western portion of the state. While holding this position, he had the dubious distinction of enforcing the death sentence of the first woman in the state to be hung for conviction of murder. When a new courthouse was needed in Lexington, he drew up the plans for the design of the building that was completed in 1847. This building is still in use today.

As a slave owner, it is not surprising that Judge Ryland concurred with Judge Scott's majority opinion. In 1861, when war broke out, one biographer describes the judge as supporting the Union but also an "advocate of the Crittenden Compromise," a plan proposed by U.S. Senator John J. Crittenden of Kentucky, that would have extended slavery in the new territories along the same dividing line between slave and free states as established in the Missouri Compromise. The plan also promoted the use of federal funds to compensate slave owners whose slaves ran away, and provided that the Constitution never be amended to give Congress power over slavery in any of the states.

Many years later, when presenting a portrait of the judge to the Missouri Supreme Court on November,10, 1988, in a transcription of the proceedings, one of his descendants described the judge as "during the war he remained a steadfast Union man. Though a slave holder, he believed the institution to be a detriment to the South."

When Judge Ryland retired from the court, he returned to Lexington and in 1867 was elected as a member of the Legislature. He served for only one year. He died in Lexington on September 10, 1873. His grave is marked by a stone which reads "Loved and Honored by all who knew him. Only the actions of the just, Smell sweet and blossom in the dust."

Judge Hamilton Rowann Gamble

Hamilton Rowan Gamble, the lone dissenter in the Dred Scott case, was the third judge elected to the Missouri Supreme Court in 1851. His election was almost unanimous and may have been the reason that he was then appointed President of the Court even though he was the junior member. Although the lone dissenter in the Dred Scott case, Judge Gamble is more widely known for other roles he played in Missouri politics from the time he arrived in Missouri in 1818 till his death in January, 1864.

Like Scott and Ryland, Gamble was also from Virginia. Born in Winchester County, November 29, 1798, he received his early education at Hampden Sidney College in Prince Edward County, Virginia. Before he was 21, he had been admitted to the bar in three states. When he came to Missouri, he started his career in St. Louis as a deputy circuit clerk. Shortly thereafter, he moved to Franklin where he became the Prosecuting Attorney for Howard County, at that time, the largest county comprising more then half the entire territory. He held this position until 1824, when Governor Frederick Bates appointed him Secretary of State and he moved to St. Charles. When Governor Bates died, Gamble resigned his office and returned to St. Louis, where he entered into a partnership with Edward Bates, brother of the late governor. In 1844, he served one term in the Missouri Legislature.

Gamble's dissent in the Dred Scott case shows that, unlike Scott and Ryland, he was able to disassociate himself from his southern background. His dissent was a courageous act delivered at a time when it was dangerous to voice anti-slavery views in a slave state. It has been described by one author as "the first significant official judicial voice raised against the institution of slavery." Gamble refutes Scott's justification for denying Dred's freedom when Scott writes, "Times are not now what they were...." by saying "Times may have changed, public feeling may

(See JUDGES, Page 16)

Death and Obsequies of General Nathaniel Lyon

The Conflict Grows Deadly

By John K. Hulston

In his **The Fight for Missouri** (1886), T.L. Snead gives us the story of Brigadier General Nathaniel Lyon who, as a captain, commanded the troops at Camp Jackson, St. Louis, where the Civil War in Missouri began on May 10, 1861, days after Governor Claiborne F. Jackson had ordered the state militia companies in St. Louis City and County to assemble for their annual encampment in Lindell's Grove, near Olive Street and Grand Avenue. Lyon suspected they intended to take the Union arsenal.

Lyon marched his Union troops and home guards to the camp, demanding its surrender within 30 minutes, which surprisingly occurred. Southern sympathizers threw stones at Union men, mostly German. One Southerner was shot and killed, as were 28 civilians, three prisoners, two soldiers, and a few bystanders, when Union soldiers opened fire despite a cease fire order that came too late. Thousands left the city the next day, and rumor of war covered the state.

General Nathaniel Lyon and Missouri in 1861.

Several weeks of peace efforts between the Union and State officials failed, thereupon Lyon (who had been promoted to Brigadier General May 31 and given command of troops in the West) in June took Boonville and Jefferson City. Soon he decided to join outside Clinton with Union troops moving from Fort Leavenworth on their way to Springfield, Missouri, a march that ended in the Battle of Wilson's Creek ten miles southwest of Springfield, where Lyon was killed on August 10,1861. He was the first Union general to die on the field of battle in the Civil War.

Death is of large importance if, at the very moment one's "time has come," he is the chief actor in a matter of great moment, indeed if he alone might have instituted the outcome. Lyon experienced this moment at the Battle of Wilson's Creek. The battle should not have been fought; indeed, it would not have been but for Lyon's clear disregard of a direct order from his superior, General John Fremont, the day before.

The South claimed victory, primarily because of Lyon's death. Time indicates it was an empty win. Lyon's death likely would not have been had he elected not to gamble it in a last ditch effort to avert defeat against mounting odds. He lost. Major Samuel S. Sturgis, who succeeded his dead commander, ordered withdrawal from "Bloody Hill." This withdrawal, according to traditional war rules, gave the Confederates a victory instead of a drawn battle. The withdrawal was without loss.

Thus, Union people in outstate Missouri were not deserted by the Army of the West. Thereafter, the important State of Missouri was never seriously in jeopardy to the Union. Some historians believe that continuous Union control of the Trans-Mississippi significantly determined the outcome at Appomattox. Lyon's death is a significant event in Missouri history. His story deserves accounting.

The battle that began at daybreak was winding down near 10:00 a.m. that torrid Saturday morning. The battle lines surged back and forth in scrubby underbrush and pin oaks on the crest of "Bloody Hill." Often less than 50 yards separated them. Lyon had just heard that Union Colonel Franz Sigel was routed. Now he faced an enemy three times his number. Risking his life gave way to the thought of the disgrace of defeat and disobedience of Fremont's order not to fight.

Thus, the young bachelor chose to chance a final charge against heavy odds. Dramatically, the red-bearded West Pointer assumed a captain's role, and shouting, "Come on, brave boys, I'll lead you," he was shot off his horse in front of a line of infantry volunteers from Iowa and Kansas. He fell into the arms of his orderly, Pvt. Albert Lehman, who helped carry the body to the rear. Major John M. Schofield was notified and he, together with a surgeon and the senior officer present, Major Sturgis, viewed the corpse before ordering it carried by ambulance to the field hospital located at a spring near Bloody Hill. Schofield cautioned all present to say nothing of what they had seen. Sturgis in concert with Schofield

immediately ordered a retreat and, in the confusion that followed, the corpse was left behind.

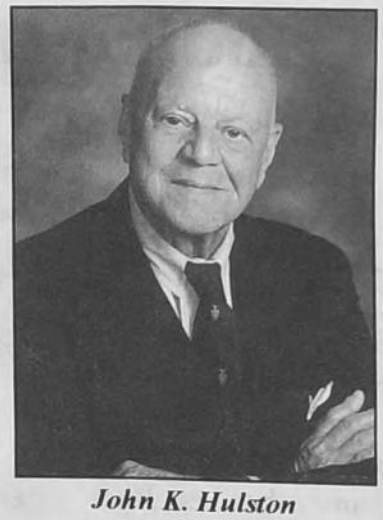
Lyon wore no epaulettes of a general, not even shoulder straps on his blue, single-breasted tunic, explaining perhaps the reason his body was lifted from a wagon to make room for a living wounded man in the withdrawal.

Afterwards, Dr. S.H. Melcher, a Union surgeon who remained at the battlefield, wrote: "I requested that the body be removed to the Ray house." The house was located on the Wire Road on the eastern edge of the battlefield. Here it was placed on a bed in the south front room. Dr. Melcher arranged for a wagon, loaded the body and covered it with a spread furnished by Mrs. Ray. Then Missouri State Guard General James S. Rains wrote out an order and furnished a volunteer escort of five Confederate soldiers. One drove, and the four others, being mounted, rode with the doctor at the rear of the ambulance. It was now about 3:00 p.m.

Meanwhile, Sturgis, headed for Springfield, discovered that the retreating Union column did not contain Lyon's body. He dispatched a cavalry lieutenant with an escort under flag of truce to return to the battlefield and claim the corpse. Dr. Melcher recalls seeing this party at a distance crossing the prairie about half way to Springfield, traveling under a flag of truce headed back toward Wilson's Creek.

Near 6:00 p.m. the escort delivered Lyon's body to Major Schofield at Springfield Union Headquarters on the north side of College Street a few doors west of Main Street. Near midnight the body had been laid out and placed in a newly made black walnut coffin, but a doctor's effort to inject arsenic to preserve the body was unsuccessful because it was too far decomposed due to exposure in the heat. Three loyal Union ladies sat with the body during the night. Soon after midnight word came that General Sterling Price would attack Springfield at dawn. Confusion ensued. The hapless Colonel Sigel and Major Sturgis bickered over who would command the withdrawal to Rolla. Again, the dead general's coffin was overlooked when the Army moved out of Springfield at 3:00 a.m. They were half way to Lebanon before the oversight surfaced.

At daylight, August 11, Mary Whitney Phelps, wife of the district Congressman, John S. Phelps, arrived with a wagon and driver to transport the abandoned casket to her outdoor vegetable cellar and covered it with four feet of straw. The Phelps farm, home of the Ozarks' most distinguished citizen, was a frontier showplace on the outskirts of the town of about fewer than 3000 inhabitants. An eastern tributary of Wilson's Creek flowed through the Phelps' 1500-acre farm.



John K. Hulston

Before nightfall, Mrs. Phelps became apprehensive that soldiers of Confederate General Mosby M. Parson's brigade, bivouacked on the farm, might disturb the body. After darkness she undertook to quietly remove the coffin and bury it in her rose garden.

Since the nearest telegraph was the Atlantic Railroad Western terminus at Rolla, 120 miles east, three days passed before word of Lyon's death flooded the newspapers in St. Louis and east of the Mississippi. It is difficult today to comprehend the gloom that overspread our country. Those were times of sentimental sermons and songs expressing gratitude for sacrifice. A belief that Lyon had been deserted by Fremont was openly talked in Washington and St. Louis.

Lyon's cousin and brother-in-law arrived in St. Louis on August 18 to claim the body. Finding it to be in Springfield, they left immediately for Rolla by rail, thence to Springfield by ambulance pulled by four mules and well-provisioned for the hard trip over rough terrain and several river crossings. Accompanied by Captain Emmet McDonald, a well-known St. Louis Confederate Army officer, they arrived in Springfield three days later. They contacted General Price, who had taken Springfield without incident, and were permitted to go to the Phelps farm. They dug up the body and placed it in a zinc hermetically sealed coffin weighing 300 pounds. Leaving Springfield August 22, they arrived back in Rolla late August 25, transferred to the train to St. Louis, and arrived there on the 26th.

The party went to Fremont's headquarters, and the professional Adams Express took charge of the body at no cost to the Lyon family. It is recorded that the sick president of the company died as a result of the excitement. Leaving St. Louis on the 26th, the official escort included two reporters, eight enlisted men, four officers, one doctor, and the two family members, who were weary from a harrowing week of hard travel on rutted roads with

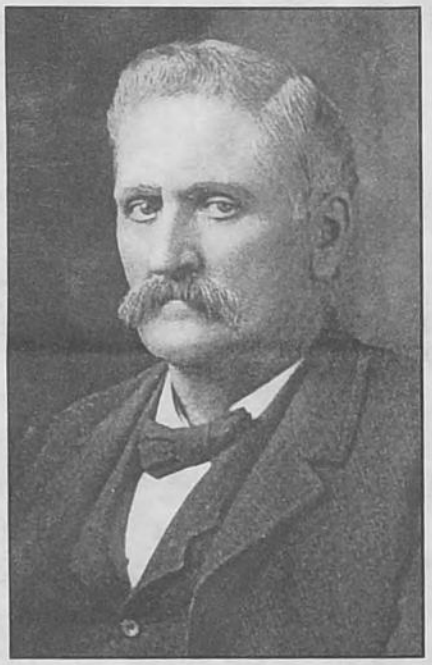
(See LYON, Page 17)

Riding the Circuits in Southwest Missouri

by Charles B. McAfee

Before the war, Southwest Missouri had a number of able lawyers, among whom were John S. Phelps, John S. Waddill, Robert Crawford, John C. Price, William C. Price, Nathan Bray, Littlebury Hendricks, John R. Chenault, R.W. Fyan, James L. Rush, S.H. (Pony) Boyd, D.C. Dade, James F. Hardin, Mordicea Oliver, Burr Emerson, Sherwood & Young, W.F. Geiger, H.H. Show and many other less known perhaps, but not attorneys of inferior ability. Some few of these died during the war; the others survived and were shining lights in the profession for years. William C. Price, D.C. Dade, Mordicea Oliver and Judge Sherwood are still living; the others are all dead.

There were all old time lawyers. They "rode the circuits," had few books then, and took none with them. Legal arguments were worth listening to in those days. He who could make the better logical argument without the "precedents" to refer to, was regarded the better lawyer.



Judge C.B. McAfee -- Bench and Bar of Missouri

In Southwest Missouri, in the years after the war, a lawyer's practice was largely away from home, and often embraced several judicial circuits. The circumstances of those days generally involved an absence from home of from two to eight weeks and the attorney was in court almost every day that he was not on the road. This was before railroads penetrated the country and brought new lawyers into the various counties, supplied them with good legal talent and thereby broke up the "good old circuit practice." We have had less off-hand, sledge-hammer logic ever since. The lawyers use books now, and cite Hough, Norton, Sherwood, Black, Brace, Gantt, Burgess and others, but I have heard some of these same jurists out on the circuit deliver better legal arguments, without books, than I have ever read in the "Reports."

A young attorney starting out on the circuit soon learned whether he could make a lawyer of himself or not, and soon succeeded, or quit and bought a farm, or ran for Justice of the Peace. Circuit practice is gone now, and study of the "horn books" is supplanted by laborious attempts to fathom the "Reports." The railroads bred other calamities besides driving the game out of the country. The best law schools closed when circuit practice ceased. The "sovereigns" don't come to court any more to "hear the lawyers plead."

When the war ended there were few lawyers in Southwest Missouri except in Springfield; few counties had any, but Greene had plenty to spare. They resided in Springfield and rode the circuit, mostly on horseback, over thirty or forty counties, but from 1866 to 1870 the country filled up rapidly, many young lawyers, fresh from college, located in every county. Bright young fellows they were, and others who were experienced attorneys, also came in droves.

This influx gave us a score or so of men who have developed into leaders in their profession. Judge Baker and John P. Ellis anchored in Greene, as did John O'Day, Ben U. Massey, James R. Vaughn, O.H. Travis, J.C. Cravens, R. L. Goode and W. L. Geiger and many others, who although I am not permitted by lack of space to name them, are here now with their shingles out and are the peers of any named. There are likewise a number of excellent young lawyers, born and bred in Southwest Missouri, now permanently located in Springfield, but the good lawyers did not all originate or settle in Springfield, although we claim to be a veritable hot bed in which good lawyers and great men are propagated and developed.

There is W.H. Phelps, who pitched his tent in Jasper. So did Brown, McGregor and other distinguished gentlemen. Morgan stopped in Barton, Stratton in Cedar, Benton and Hubbert in Newton, DeArmond and Graves in Bates, Recho and Upton in Polk, Gibbs and Brumback and Joe Estis in Lawrence.

Very few of these young attorneys who came here after the war, or who have entered the profession since the 'seventies, ever "rode the circuit," yet they have almost supplanted that "jolly old set" who now mourn over the joys of other days, sit about the courts and "listen" to these young fellows "plead" and wonder how they ever learned to be such good

lawyers without "riding the circuits." But I suppose study, industry and hunger will accomplish wonders.

In those long past days when all lawyers rode the circuit, examinations for admission to the bar were not the dry affairs they are now. Lawyers were in demand and we "created" them. A knowledge of Blackstone, Greenleaf and Chitty helped a candidate along materially, but committees (who practically admitted candidates then) were not very particular — if the courts could stand it the committee could. If the applicant had read the statute, and Kenny's "Questions and Answers" and presented good "credentials," he was admitted to the bar and we all went along.

During an idle afternoon out on the circuit, an old Justice of the Peace lawyer applied for license. There was no local attorney in the county, therefore litigation was rather slack. The Court appointed the usual committee to take charge of the victim. We assem-

(See RIDING, Page 8)

Biography: Judge C.B. M'Afee

Judge C.B. M'Afee, soldier, lawyer, jurist and one of the few surviving members of the Missouri Constitutional Convention of 1875, died at his home in Springfield, Missouri, February 28, 1916.

Born in Fayette County, Kentucky, near Lexington, March 28, 1829, he moved with his parents to Shelby county, Missouri, while yet a child. As a youth, he studied law with his uncle, John M'Afee, who was later speaker of the Missouri House of Representatives. Young M'Afee was commissioned a captain in the Third Missouri Cavalry when the Civil War broke out and, at the time of its close, was commander of the Union post at Springfield.

In 1866, he formed a law partnership with John S. Phelps, who was later to become governor of Missouri. During their partnership, the law office of M'Afee and Phelps was the meeting place for Democratic caucuses of the State, both men being recognized party leaders of the period following the war. It was during this period of Missouri history, 1868, that Judge M'Afee made his first race for Congress. So intense was the feeling at the time that, on many occasions while making campaign speeches, he was obliged to lay a revolver upon the table in front of him as a protection for his life. He was defeated for Congress in 1868 and a second time in 1872. In 1875, he was chosen to represent his district in the convention which framed Missouri's present constitution. In later life, Judge M'Afee served four years as judge of the Greene County Criminal Court, from 1896 to 1900.

Although generally unsuccessful as a politician in the matter of being elected to office, throughout his lifetime Judge M'Afee was continually associated with some of the most noted political men of his time in Missouri, including Crittenden, Vest, Cockrell, Phelps, Philips and others. **(Missouri Historical Review. Vol. 10, 1916, p. 314)**

Research Note: Riding the Circuits in Southwest Missouri

Researchers interested in post-civil war cases from the era referred to by Judge McAfee in this article can find many of them in the Missouri Archives Judicial Records Collection. Archives Director, Dr. Kenneth Winn, reports that Southwestern Missouri is well represented in the collection although much organizing, microfilming and indexing remains to be done. He said researchers need to be aware, also, that, in some cases, there are gaps in the records between the inclusive dates listed below and that some series include only a portion of the full series related to a particular case or estate.

The Archives currently has available court records from: Barry County (probate 1867-1923); Barton County (circuit 1866-1886, probate, 1866-1921); Cedar County (circuit 1845-1928, probate 1846-1919); Christian County (circuit 1866-1910); Dade County (circuit 1857-1886, probate 1841-1922); Dallas County (circuit 1867-1884, probate 1871-1922); Douglas County (probate 1884-1978 in process); Greene County (circuit 1833-1868); Jasper County (circuit 1942-1968 in process); Laclede County (probate 1850-1972 in process); Lawrence County (circuit 1845-1887, probate 1845-1951); McDonald County (circuit 1855-1961, probate 1866-1924); Newton County (probate 1839-1936, circuit 1839-1886 in process); Ozark County (circuit 1858-1888, probate 1865-1941); Polk County (probate 1837-1981); Stone County (circuit 1851-1899 in process); and Taney County (wills only 1888-1916).

Information on the status of a particular project can be obtained by calling 573-751-2403.

(RIDING, from Page 7)

bled in the applicant's room, where "Pony" Boyd was at once appointed Master of Ceremonies, Grand Inquisitor and Chairman of the committee. After the usual preliminaries, lasting some two hours, "Pony" called us from refreshment to labor on Blackstone's first volume, and the "inquiry" proceeded along about the following lines.

Question: What books have you read?

Answer: Law books.

Question: Then, sir, what is law?

Answer: (Confidentially) Now, "Pony," I did not expect to be made fun of. If I did not know what law is, would I be wanting a license?

Question: If you know, or have information sufficient to warrant a belief, as to what law is, impart that knowledge, or belief, or both, to this committee.

Answer: (Indignantly) "Pony," you ought to know that any one can answer such easy questions as that. If you are going to examine me, stop this trifling and ask me something hard.

The committee reported favorably, he was admitted and "rode the circuit" for many years.

Early in 1865 Missouri Confederates started their homeward march. Nearly all who survived the cruel conflict returned in 1865-66, but owing to the disqualifying provisions of the Constitution of 1865 (which prohibited Rebels and their sympathizers from practicing law), very few lawyers returned. Many able lawyers entered the Southern army from this section, but they found other States where they could resume the practice of their profession, after they laid down their arms. The people of these other States did not seem to be so much afraid of disarmed Confederates as our own loyal stay-at-home Drakeites. These disqualifying provisions of the Constitution created a great opportunity for many men in every vocation, as many of the best antebellum lawyers, thus kept out of the State, made a rich harvest for us "loyal fellows" who could "Take the Oath," and created a place for those young attorneys who flocked into the State from all directions to supply the demand, and the greatest demand was in Southwest Missouri.

Almost every man who went South (to enter the Confederate army or remain out of it), was sued by someone while gone or soon after he returned, provided he left property here or brought any back with him when he returned. Big damage suits were brought by the hundred in every county through which Shelby, Marmaduke or Price marched. Shelby, Marmaduke and Price were each sued in many counties, and all of their soldiers, suspicioned of having any property, were joined as parties defendant. The soldiers of Shelby's entire brigade, so far as their names could be learned, were indicted for every crime named in the statutes, except for practicing law, teaching school and praying in public. The Sheriffs made hasty visits to every indicted "Reb," and he was placed under bond. They would all have been committed to jail, but fortunately (for them, at least) the jails had all been burned — that was the offense for which many of them were indicted. The courts could not afford to be very particular about bonds in those days; the Sheriff would have had to run a boarding house unless the Court was his friend. Whenever bail was refused or a bail-bond disapproved, it was regarded as a huge joke on the Sheriff.

A majority, perhaps, of those Confederates who returned to their homes when the war was over were indicted for murder, arson, robbery, larceny or conspiracy, and quite a number were indicted during the war for treason against the State. They were almost all admitted to bail, for the reason before stated, and nearly all gave bond, and the greater portion who could not get bondsmen were practically paroled by the Sheriff. I never knew a single one of them to violate his parole. Phelps & McAfee defended very many of them and went bail for all of their clients. I was not worth much, financially, but I was "loyal" and was accepted as bail until I was obligated for about $100,000, and Phelps for very much more, until finally (when jails were improvised), the prosecutors began to make us qualify, which disclosed the fact that we were on bonds of indicted Rebels in aggregate sums of fifty times more than we were worth, and were consequently rejected and had to skirmish among our personal friends for bails for these persecuted clients of ours. None of them were worth much and the most of them were almost penniless, yet not one of them for who we were bail, ever forfeited his bond. Furthermore, I have no recollection of a single one of this vast indicted army that failed to answer "roll-call" in the Criminal Courts, and I am almost sure that none of them ever forfeited their bonds.

No one who went South, whether in the Southern Army or not, was competent (under the constructions then given the Constitution and laws) to sit upon a jury, nor were any of their kin by birth or marriage competent jurors. No sympathizers were permitted to do jury duty. To practice law under such conditions taxed the ingenuity of the best "circuit riders." Under the *ex parte* condition of things it

would not do to go to trial where we had a Rebel or sympathizer for a client.

The attorney who could write a third or fourth application for a continuance and make it go, was confessedly the best lawyer. Strategy was worth much more than "book larning" in those days, and diplomacy was at a premium. My lamented old friend, Judge Waddill, was admitted to be the best lawyer on continuance in all Southwestern Missouri. (He was not surpassed, however, by any in other branches of the law). He was hardly ever "driven to trial" until he wanted to try. The other side often hunted up and brought to court the Judge's own witnesses, but he was always equal to the occasion — he never went to trial. The Judge got into such a habit of securing continuances during these perilous years that he could not quit it after the necessity for it had passed. I once knew of him filing an application for a continuance just after he had reported the death of his client. He knew better, of course, but he was such a slave to the habit that having his blank application already filled out, he filed it out of abundant caution. He is gone now, but if he does not worry a continuance out of St. Peter on the "Great Day," none of the rest of us need try. Grand old man! He died "on the circuit" with his harness on. I have always regretted that he did not spare time from his busy life to write a work on "Continuances." However, we were all pretty good on continuances — we had to be.

At an early day in one of the counties out west of Springfield a Deputy Circuit Clerk made application for admission to the bar. He had absorbed more law perhaps by listening to the lawyers and observing their "strategy," and filing their pleadings, than he had acquired by reading Blackstone. However, he wanted a license, and His Honor turned him over to the tender mercies of the usual committee, who put him through the usual catechism on "Old Pike's" table of liquid measure, and there being no objections by any of the committee, as to his attainments on that branch of practice, we proceeded further as follows:

Questions: What is the first pleading on part of the plaintiff?

Answer: A petition sometimes called a complaint or declaration.

Question: What is the first pleading on the part of the defendant?

Answer: An application for a continuance.

He was admitted without a dissenting vote.

When we had exhausted our rights on continuances, we applied for a change of venue on account of the prejudice of the inhabitants of the county. This gave us another stay of perhaps six months (we had only two terms a year then). We could often pick a flaw in the transcript, which we hailed as an interposition of Providence. The pleading then was for a rule on the Clerk for a perfect transcript, and we got another six months. (Judge Waddill always did). If we failed to get one or two continuances and had to come to "taw" (as we called it when seriously threatened with a trial), we obtained a change of venue on account of the prejudice of the Judge. By this time if the Judge was not badly prejudiced, it was not our fault, so the affidavit was strictly true, besides His Honor felt relieved to get a case off his docket even in that way. The office of Judge was no "bed of roses" in those days. Another change of venue was granted, and off it went as far as we could send it, yet some of the plaintiffs hung on and followed their cases; many others quit in disgust. The law was not so strict then about changes of venue and continuances as it now is. If it had been, the most of the ex-Rebels' property would have changed owners. In some cases the party on one side or the other died, and if we did not score another year's delay, we were not in luck.

It may be thought that these cases were by this time ready for disposition, and that some facts about the way we tried them may be interesting. Waddill never tried any of his. A few were tried and the plaintiffs always won. The defendant's attorney sat by during the trial making objections and saving exceptions, giving the plaintiff rope, and making it pleasant for His Honor. Luckily on appeal, the few that were tried were generally reversed and remanded. That was usually the last of them. It was much harder for an ex-Rebel to get a verdict then before a jury than it is now for a railroad company to get a verdict in the lower courts. It would have been an act of *hari kari* to have gone to trial in any of these war damage suits. Why, it was seldom, if ever, that some one of the petty jury empaneled to try a case did not have a similar case of his own pending against some other Rebel. This condition of affairs continued until 1870-71, when the Republican party got up a split over the policy of such laws. The result is a matter of history — disfranchisement ceased. Every one thereafter was a competent juryman, and about ninety per cent of these long-continued suits were dismissed and the most of the others defeated. Nollies against Shelby and his command were entered or the indictments thrown in the waste basket.

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(RIDING, from Page 9)

I make these slight references to politics only because the practice in Southwest Missouri was vitally affected by the then existing laws, but I want to say, that the Republican members of the bar here were generally opposed to these laws, as was a majority perhaps, of the party in this portion of the State, as the election thereafter in 1870 amply proved. In fact the movement to do away with all such obnoxious laws, originated with Republicans in Southwest Missouri and in Greene and Webster Counties. Nearly all of the lawyers who practiced in those eventful years are gone, but their places are well filled with those who had just commenced to divide business with the "Old Set," and who practically put an end to the old circuit practice, and there are hosts of bright young lawyers showing up all over Southwest Missouri ready to take the place of those who supplanted and succeeded the "Old Guard." I regard it as only a deserved compliment when I write it down here that the bar of Southwest Missouri is surpassed by the lawyers of no other section of the State. As a body they are well versed in laws, courteous, honorable and an honor to the profession, but I now think that some of them would have succeeded admirably in the days of "continuances and changes of venue" (I am on the bench now). They worry me no little.

The "circuit habit" became so fixed in the old days, that J.H. Show, of Greene, and Joe Estis, of Lawrence — two invincibles before Justices of the Peace, organized a Justice of the Peace circuit, embracing Greene, Lawrence and portions of adjoining counties. The Justices had regular law days then, and Show and Estis arranged to practice before them something after the plan of circuit riding in Southwest Missouri. They were rivals, always on different sides, they had no books and did not know enough law to embarrass them. They met in the western portion of Greene before Squire Blank (the Squire is still living, but Show and Estis are dead), on a case of unlawful detainer, in which the case seemed to depend more upon law than fact. Neither had any law book or Reports. Show and Joe argued after the old circuit practice fashion for a whole day, and sorely perplexed the learned Justice, who finally appealed to them for sympathy. He protested that he had the utmost confidence in each of them as lawyers, "but what am I to do?" he said. "You attorneys differ so widely about the law and we have not the books that each of you claim settles the case. So how am I to decide it? If we had the books, there would be no trouble, as each of you claim, but what am I to do without these books?" Show, who was always equal to any emergency (especially before a Justice of the Peace), deliberately rose and said:

Your Honor, I fully appreciate the dilemma in which we are placed, but to the legal mind there is an easy way out of it. Mr. Estis will not deny this legal proposition contained in the books cited by me, as well as in his own, to-wit: That in the trial of any case the best evidence must be resorted to. Does the gentleman deny this?" Estis remarked that this was the only sound legal proposition that the gentleman had presented before His Honor since the trial commenced.

Show knew he had him then and rose and said, "You Honor, I congratulate you on the easy way out of all this seeming perplexity. Mr. Estis admits the soundness of the legal proposition I have presented. He could not do otherwise. Now, your Honor, as the books are the best evidence of what they contain, but as the books cannot be produced, we must resort to the next best evidence, that is, proof of what the books contain. Your Honor, I am ready as a lawyer to testify. Swear me!" Joe bolted for the door, mounted his borrowed horse and road him to death trying to catch the southbound stage coach, left the country, quit the practice, and lost his health trying to regulate a district school in Texas. He never recovered from the shock of Show's logic. Show moved to Eureka Springs and raised "Cain" generally down there — Joined the "W.C.T.U.," but the water was too thin for his blood and he got out of the whole dilemma by dying.

I learn that my old friend, Judge Elijah H. Norton, is to write on "early practice in the Platte Purchase." I knew the judge when he was "riding the circuit" as Circuit Judge up in the Platte Purchase. He traveled horseback and his saddle skirts were longer than his stirrups, so Jim Craig used to say. Jim Craig used to tell many jokes on the Judge, one of which I will repeat, for I feel certain Judge Norton's modesty will prevent his referring to it. I wish Craig were alive to tell and embellish it. Up in that part of Missouri some of the streams are quite wide, not deep but a little murky, so that the bottom is not easily seen when the water is not more than a foot deep. The Judge in riding from one court to another in those days, had the usual number of lawyers on the circuit with him. Jim Craig said that the Judge often lagged behind so as to be alone, that "he might think up some variation in his next charge to the Grand Jury." On one occasion when the Judge had fallen some distance behind,

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George F. Gunn, Jr. – a Tribute

By the Honorable Charles B. Blackmar, Retired Judge, Missouri Supreme Court

George F. Gunn, Jr. devoted 25 years – the greater part of his working life – to judicial service. He was appointed to the Missouri Court of Appeals, Eastern District in 1973 and served there until July of 1982.For the next three years he was a member of the Supreme Court of Missouri, and I had the privilege of serving with him for most of that time. He was my respected colleague on the Court and my dear friend. He was then appointed to the United States District Court for the Eastern District of Missouri where he served until his death on May 20, 1998.

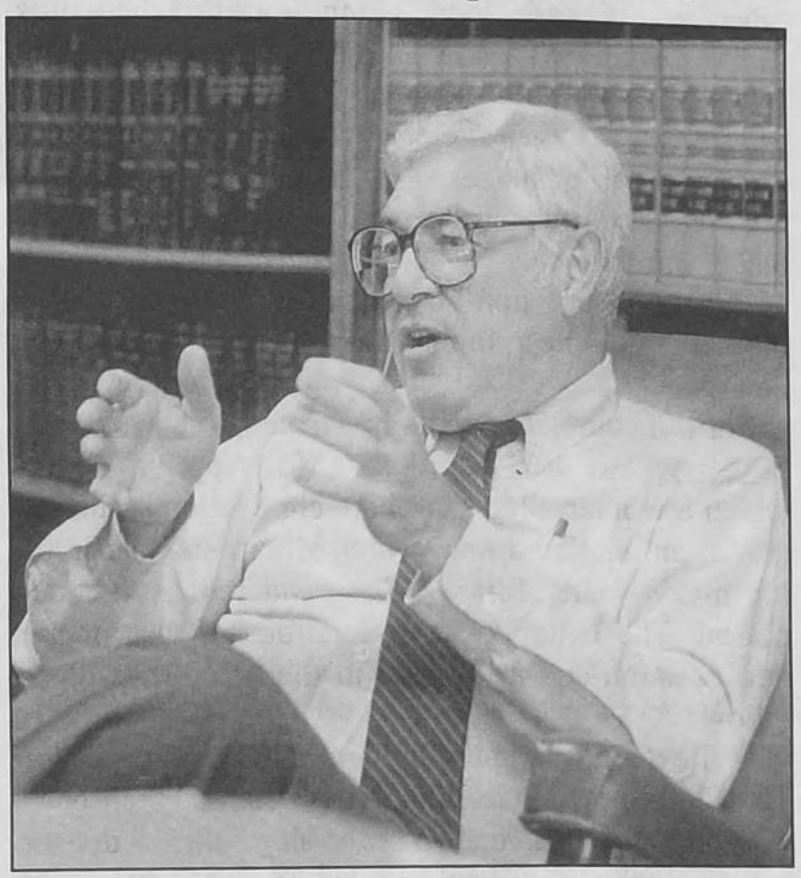
He virtually died with his boots on, continuing to perform the arduous duties of his court through grievous illness until the last few weeks of his life. When he returned to work after surgery he asked the chief judge to put him back in the "wheel" so that he could take cases in regular rotation.

After he went to the federal court we talked regularly on the telephone. Our last conversation came about three weeks before he died. We had our usual pleasant discussion, after which he told me that he had been seriously ill but was recovering and was at work.

He took senior status but never had the luxury of retirement, or even of a reduction in caseload, because of delay in confirming his successor. One of his clerks told me, however, that he liked to work and that he wanted to keep on working as a senior judge, with a full caseload. He intended to continue with the St. Louis school case even after his successor was sworn in. This clerk did not think that he would have been happy with a full retirement.

His colleagues on the Supreme Court greatly regretted his moving from the highest court in Missouri to the federal trial bench, but the prospect of much greater emoluments, together with the opportunity to live in his home community, must have presented overwhelming temptation. Judge Gunn also was extremely impatient with some of the infighting among the judges of the Supreme Court of his day, in which he was sometimes a victim of circumstances to which he did not contribute in the least. He must have thought that a change of scenery would produce a more pleasant atmosphere.

He was a prodigious worker. While he was a member, our Court held three sessions a year. Judges Gunn, Billings and I were appointed within a few months of each other, and when I took my seat there



Judge George F. Gunn

were 40 cases which had been argued but not decided. We agreed that we would have a "hot" court, in which the judges would prepare carefully for oral argument, and that we would have all of our assigned opinions from the last session in circulation before the next session convened. Judge Gunn was never behind in his work. I am sure that he maintained the same standard on other courts on which he served.

For the Court of Appeals, Eastern District, he wrote 387 majority opinions, two concurring opinions and one dissenting opinion. For the Supreme Court he was the author of thirty principal opinions, one concurrence and eight dissents. He wrote 419 reported opinions while on the United States District Court, and eight while sitting specially with the United States Court of Appeals. His name will be known to coming generations in these pieces of judicial writing, numbering more than 850.

A Gunn opinion is a judicial classic, noted for clarity, polish and style. He worked over his sentences to promote better understanding. When appropriate there would be a touch of subtle humor, but he was never the heavy handed judicial humorist who, according to Gilbert and Sullivan, "never, never, never would be missed."An example of his light

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touch is found in a concurring opinion in State v. Swoboda, 658 S.W. 2d. 24 (Mo. banc, 1983), the "dirty words" case. Judge Gunn described the words in issue as follows:

"Defendant's talk included the magic word which results in automatic ejection when spoken by a player, coach or manager in the presence of no less than the hardbitten arbiters of the major league baseball diamond."

For this expression his picture, rather than that of the author of the principal opinion, appeared in the newspaper.

For the court of appeals he wrote Schanzv. Estate of Terry, 504 S.W. 2d. 653 (Mo. App. 1974), in which a woman filed a probate claim against the estate of an unrelated man which whom she had lived for many years, for services rendered to the deceased. The nature of their relationship was drawn into question and a footnote in the opinion reads as follows:

"Witnesses who spent the night on occasion in the Terry farm noted that Ella and Weaver had their beds in separate rooms; that Weaver slept with a dog or two and, when it got cold he would throw on a couple of more dogs! There were some five dog nights in the bitterness of the Danby winters."

He wrote very few dissents. He was usually willing to go along with the court's consensus. When he did write a dissent he did so because of sincere conviction. One of his earliest opinions in his Supreme Court stint was a dissent in State ex rel Sayad v. Zych, 642 S.W. 2d. 907 (Mo. banc 1982), in which the majority concluded that the Hancock Amendment required substantial modifications in the long established method of financing expenditures for the Board of Police Commissioners for the City of St. Louis. He spoke as a true expert on municipal law, with experience gained during his service as City Attorney for Brentwood and as St. Louis County Counselor.

There was another feature of a Gunn opinion. A reader could seldom get all the way through it without a trip to the unabridged dictionary. He was a wordsmith, with a remarkable vocabulary. He admitted that he sometimes used the thesaurus to locate appropriate words which were not a part of his vernacular! Because of the heavy load of the federal court he was not always able to polish his writings for that court as he would have liked. Cases have to be decided in a reasonable time and the case load grew and grew. But the significant opinions bear his unmistakable touch.

Dixie Snook was his secretary for many years. She worked for him when he was on our Supreme Court, and then moved to St. Louis to continue with him. She maintained a list of special "Gunn words" as guidance, before spell checks were the order of the day. Among the words found in the ten page list are amercement, aphoristic, concupiscent, cynosure, diachronic, execrable, facinorous, fugleman, interdigitate, maculate, synchronic, ululate and wafture. Each of these words appeared in at least one of his opinions, and equally exotic expressions were likely to appear in any handdown. In spite of the occasional appearance of an ornamental word, however, his opinions were neither turgid nor pompous. He sought clarity, and his writings were easy to read.

Turning to substantive matters, while he was on the Missouri Court of Appeals he wrote Cryts v. Ford Motor Company, 571 S.W. 2d. 683 (Mo. App. 1978) which presents a lucid analysis of Missouri products liability law. The Supreme Court saw no need to take the case on transfer, and it has been authoritatively cited many times. A leadingSupreme Court opinion is Hoffman v. Hoffman, 676 S. W. 2d. 817 (Mo. banc 1984), adopting the "source of funds"rule rather than the "inception of title" rule in marital dissolution proceedings in which one spouse holds stock in a closely-held corporation and contributes to the increase in value by his own work. His sense of fairness is illustrated by State v. Taylor, 663 S. W. 2d. 235 (Mo. banc 1984), which reversed a conviction because an expert witness testified that the victim demonstrated "rape trauma syndrome."He felt that the expression of this diagnosis was unreasonably prejudicial to a defendant charged with rape. Many other opinions could be cited which contributed substantially to the development of the case law.

On the federal court he spent eight very strenuous months in the trial of the "Moorish Temple" case before a jury. This trial was one of the longest in the history of the federal system, involving nine defendants, each separately represented; charges ranging from drug dealing to multiple murder; and lawyers trying harder to fill their error bags than to present viable defense. I talked to him several times while that case was going on, and could sense the strain he was operating under. One of the Assistant United States Attorneys who participated in that trial told me that the judge never lost his cool in the presence of counsel, despite the trying circumstances. My informant said, "he came close, but maintained his demeanor."Several lawyers were cited for contempt

during the trial but Judge Gunn pronounced no sentences. In one of our telephone conversations he told me that a defense lawyer was absent from the court without notice or calling in, and responded to inquiries with insulting remarks. I can imagine what would have happened if a lawyer had tried that with some other federal judges I have known. The convictions were affirmed, United States v. Darden, 70 F. 3d. 1507 (8th Cir. 1995), with a word of criticism of the trial procedure.

Then he was assigned to the St. Louis school case, the fourth United States District Judge to have that assignment. Although such career cases often find their way to the junior judge on the court, Judge Gunn made himself available for the assignment in order to facilitate the business of the court in organizing its several divisions. He worked diligently on this case and came up with a program which might indicate some hope of resolution. His program is still in progress but others will have to carry it forward. One of his clerks said that he liked having the school case because, after examining the situation, he concluded that there was a real problem and that he could do some good. He regularly visited schools in the city searching out the problems and observing the progress the various expedients attempted.

Some of the judges who had sat in the school case were subjected to vicious attacks in the press, by politicians, and on talk shows. Judge Gunn was reasonably free from such criticism, very probably because of his personal qualities which I will describe. I want to say at this point, however, that I consider the criticisms of other district judges in the handling of the school case to be very unfair and poorly informed. The first district judge to have charge of the case determined that the school authorities had not been guilty of deliberately furthering school segregation. His ruling was unanimously reversed by the Eighth Circuit Court of Appeals, and the Supreme Court of the United States declined to step in. There have been numerous appeals and applications to the Supreme Court since the first ruling, and the actions of the district courts have quite regularly been sustained. If there is fault, as to which I express no opinion, the fault is that of the appellate courts. The district judges are simply trying to comply with the directions from above.

While these two major litigations were in progress Judge Gunn had all of the regular work of a federal district judge, which he moved forward with his usual diligence. There must have been times when he longed for the relative tranquility of the Missouri appellate courts! Several clerks, indeed, suggested that he was more suited to appellate work than trial work because he sought to use reason and did not like contention.

Although he was quite willing to see that criminals suffered the consequences of their misdeeds, one of his clerks told me hat he hated to pronounce sentence on convicted defendants and that the only time he might be testy and ill humored was when a sentencing was scheduled. Yet he applied himself to the sentencing function with his usual diligence, and was unhappy about the restrictions that the federal sentencing guidelines placed on his discretion.

George Gunn had a judge's temperament. He believed in participation in politics, and was politically active in his day, but he never let his political views or affiliations affect his performance of judicial duty. He was respectful of controlling authorities even though he might personally disagree with the holdings. He undoubtedly liked some lawyers better than others, but showed no favoritism on the bench. He respected the views of his colleagues, and dissented only when he was persuaded that there was no alternative. Perhaps most important, he had an excellent sense for the correct result under the law and evidence, which was not necessarily the result he might prefer. I believe that any experienced judge will tell you that legal reasoning and analysis can go only so far in reaching a decision, and that a judge, in the last analysis, simply has to have a special sense of what is right. George Gunn had that sense in the ultimate degree.

George Gunn was, en fin, the consummate gentleman. He was invariably courteous – a quality in which many judges, harassed by lawyers and long dockets, sometimes fall short. Counsel could sense that he was listening to what they had to say. During the two and a half years we served together on the Supreme Court we never exchanged a harsh or discourteous word. This is wholly to his credit, because I have had sharp exchanges with other colleagues when I felt strongly on particular issues. Law clerks, judicial assistants and court employees loved him. One court employee said that "everybody smiled when he walked into the room."He demonstrated that a judge can be a really nice guy.

Robertson Resigns from Missouri Supreme Court

Judge Edward D. Robertson

Edward D. Robertson, in a letter dated July 3, 1998, notified Chief Justice Duane Benton that he would resign from the Missouri Supreme Court effective July 15, 1998.

Robertson was appointed to the court by Governor John Ashcroft in June, 1985. During his 13-year tenure on the court, he authored 180 opinions including the controversial "right-to-die" case brought by the family of Nancy Cruzan requesting that the feeding tube be removed from their comatose daughter. He served as Chief Justice of the court from July l, 1991-June 30, 1993.

Judge Robertson was born in Durham, North Carolina. He later moved to Kansas City. He graduated from Ruskin High School in 1970 and Westminster College in Fulton in 1974. He attended Perkins School of Theology and Southern Methodist University in Dallas, Texas before graduating from the University of Missouri-Kansas City Law School in 1977.

After graduation he joined the office of Attorney General John Ashcroft from 1978-1979. He left to go into private practice in Kansas City from 1979-1981, but rejoined the Attorney General's staff as deputy attorney general from 1981-1985.

After leaving the court, Robertson plans to return to private practice with the Kansas City law firm of Bartimus, Kavanaugh, Frickleton and Presley.

Michael A. Wolff Appointed to Missouri Supreme Court

Judge Michael A. Wolff

On Monday, August 10, 1998, Governor Mel Carnahan appointed Professor Michael A. Wolff to a seat on the Missouri Supreme Court. He is 53. The vacancy on the court was created by the resignation of Judge Edward "Chip" Robertson on July 3, 1998.

Professor Wolff was born in Wisconsin, but was raised in Minnesota. He received his undergraduate degree from Dartmouth College in 1967, and his law degree from the University of Minnesota, where he was honored for achieving the highest grade point average in his graduating class.

During his three years in law school, he worked as a newspaper reporter. He was also active in legal aid organizations representing low-income clients. He moved to St. Louis in 1975, where he joined the law school faculty at St. Louis University. In 1988 and 1992, he made two unsuccessful bids for the office of Missouri Attorney General.

Professor Wolff was active in Governor Carnahan's campaign for governor and later served as Carnahan's chief legal counsel from January 1993 to August, 1994. He resigned that position to return to St. Louis University Law School, where he teaches Civil Procedure and Trial-Advocacy. He is also serving as the governor's special counsel on urban school desegregation, representing the governor in talks that settled the Kansas City school desegregation case.

He is married to Patricia Barrett Wolff, a pediatrician. They have two sons, Andy, 24, and Ben, 21.

Robert E. Seiler: 1912-1998

Judge Robert E. Seiler

Retired Missouri Supreme Court Judge Robert E. Seiler died Monday, April 13, 1998 at St. John's Medical Center in Joplin, Missouri. He was 85. He was appointed to the Missouri Supreme Court by Governor Warren E. Hearnes in November, 1966. He joined the Court on January 3, 1967. He served as Chief Justice from 1975-1977. He was a member of the Court for 16 years retiring in 1983.

Judge Seiler was born December 5, 1912, in Kansas City, Kansas. His early education was in the public schools of Chillicothe, Missouri. He attended the University of Missouri-Columbia, where he received his A.B. degree in 1933 and his law degree in 1935 from the University of Missouri School of Law. He was a member of the Order of the Coif, QEBH and Law Review. He was admitted to the Missouri Bar Association in 1934.

Before going on the Court, Judge Seiler practiced law in Joplin, founding the law firm of Seiler, Blanchard and Van Fleet. During World War II, he served from 1942-1945 in the army infantry, becoming a first Lieutenant-Major. He was Joplin's city attorney from 1950-1954, and served on the Joplin Home Rule Charter Commission. While on the Court, he acquired a private pilot license with an instrument rating.

During his life, the judge was a member of American Bar Association; President of the Jasper County Bar Association, 1965-1966; American Judicature Society; fellow, American College of Trial Lawyers; former trustee of the University of Missouri Law School Foundation; President of the Missouri Law School Alumni Association, 1962-1963; and member of the National Conference of Bar Examiners, 1967-1968.

He married Faye Poore in April, 1942. They had three children. She preceded him in death. He later married Ruth Rogers who survives at the home.

George F. Gunn — 1927-1998

Judge George F. Gunn

Federal District Judge George F. Gunn, Jr. died May 20, 1998, in St. Louis, Mo., following a brief illness. He was 70. Prior to his appointment by President Ronald Reagan in May, 1985, to the Federal Bench, he served on the Missouri Supreme Court, to which he was appointed by Governor Christopher S. Bond on July 16, 1982. He was retained in office in the general election of November, 1984. He resigned from the Supreme Court May 31, 1985 to accept an appointment to serve on the United States District Court for the Eastern District of Missouri

Prior to Judge Gunn's appointment to the Supreme Court, Governor Bond appointed him on April 17, 1973, as a Judge on the Missouri Court of Appeals, St. Louis District, where he served for nine years.

Judge Gunn was born October 29, 1927 in Fort Smith, Arkansas. He earned his undergraduate degree at Westminster College in Fulton, Missouri. He was awarded the Westminster College Alumni Achievement Award in 1983. He received his law degree from Washington University in St. Louis, Missouri, where he was awarded the Order of the Coif. He was admitted to the Missouri Bar in 1955.

Upon graduation, he engaged in the general practice of law. Later, he became an attorney for the Wabash Railroad and the Terminal Railroad Association of St. Louis before becoming the City Attorney for the City of Brentwood in St. Louis County. Before joining the Court of Appeals, he served as Municipal Judge in Rock Hill, Missouri, and later as a St. Louis County counselor.

He is survived by his wife , the former Priscilla B. Johns, and three children.

(JUDGES, from Page 3)

have changed, but principles have not and do not change; and, in my judgment, there can be no safe basis for judicial decisions but in those principles which are immutable."

He points out, "In this State, it has been recognized, from the beginning of the government, as a correct position in law, that a master who takes his slave to reside in a State or territory where slavery is prohibited, thereby emancipates his slave: (He cites 10 cases in support of his statement) These decisions, which came down to the year 1837 seem to have so fully settled the question, that since that time there has been no case bringing it before the court for any reconsideration until the present." He then turns to foreign jurisdictions stating, "But the Supreme Court of Missouri, so far from standing alone on this question, is supported by the decisions of the other slave States, including those in which it may be supposed there was the least disposition to favor emancipation." To support his position, Gamble refers to cases from Louisiana, Mississippi, Virginia and Kentucky.

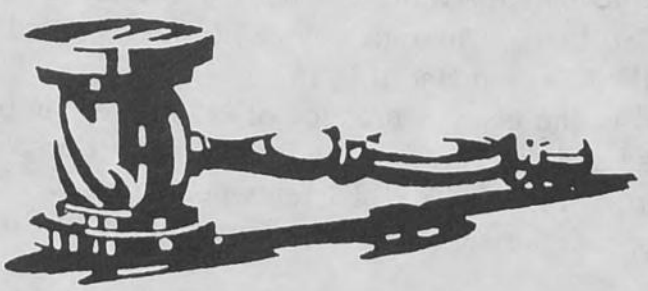
Gamble resigned from the court in 1854 due to poor health and moved to Norristown, Pennsylvania. Here he pursued the study of history, government and constitutional law. When the impending Civil War came to Missouri, his friends appealed to him to return to the state in time to stand for the February 18, 1861 election as a delegate to a convention call by the Legislature.

Gamble subsequently became the Chairman of the Committee on Federal Relations. This committee's charge was to consider the relations between the United States government and the government of the people of Missouri, but not to "change or dissolve" political relations with the United States government without a statewide election on the subject. The report of the committee was filed on March 9, 1861. It stated, "we cannot now give up the Union," and continued with a plea for peace and the restoration of "harmony to the whole nation."

This report triggered a series of events that led to the start of the Civil War in Missouri. Beginning with the capture of Camp Jackson (so aptly described in John Hulston's article "Death and other Obsequies of General Nathaniel Lyon"). With the capture of Camp Jackson, Governor Claiborne Jackson, along with all state officials, deserted Jefferson City and joined the Confederacy, thus leaving the state without any form of government. The convention, called by the Legislature, was still in session and friends urged Judge Gamble to serve as President of the Convention. Eventually, this lead to Gamble becoming the first non-elected governor of Missouri. With the help of the convention members, he organized a provisional government that immediately took charge of the state. It has been said that General Lyon's well planned campaign and stand at Wilson's Creek provided the necessary time for this government to get control of the state and keep it in the Union.

Judge Gamble did not live to see the end of the Civil War. The poor health conditions that prompted his retirement from the Court continued to plague him. Later a railroad accident that occurred while he was on a trip to Washington left him with a physical condition from which he did not recover. He died in St. Louis, on January, 31, 1864. He is buried in the cemetery at Bellefontaine. The entire membership of the St. Louis Bar Association attended his funeral. Business in St. Louis was suspended and most buildings were draped in mourning as a tribute to this great man.

On December 1, 1989, when Judge John C. Holstein took the oath of office as an incoming member of the Missouri Supreme Court, he praised Judge Gamble in his acceptance speech. He said, "Today I take my place on this court sobered by the weight of its responsibility; nevertheless that weight is lightened when I consider Hamilton Gamble, who rose above current popular opinion, slogans, sound bites and demeaning labels. He and ten thousand others like him have lit the lamps for me and the other judges of this court to show the way."



(LYON, from Page 5)

meager accommodations.

St. Louis stores and dwellings were draped in mourning. A military guard stood beside the coffin. In Cincinnati, on the 29th, this was repeated. At Pittsburgh, Harrisburg and Philadelphia Home Guards met the funeral train and, on the 31st, it arrived in New York City and the heavy zinc coffin was transferred to a steamboat that delivered it to the pier at the foot of Courtlandt Street.

Captain J. B. Plummer, a regular of the First Infantry, U.S.A., a West Point classmate of Lyon recovering from a Wilson's Creek wound, who served as the chief aide all the way from St. Louis, now marched to the cadence of muffled drums at the head of the group behind an elaborate horse-drawn hearse. At City Hall the substituted metallic coffin painted to resemble rosewood bore a silver plate: "General Nathaniel Lyon, died August 10, 1861, Aged 42 years." For three days 15,000 people passed the flag-covered bier, on which rested Lyon's chapeau, sword and flowers; A procession then moved up Broadway to Fifth Avenue, turning on Twenty Seventh Street and on to the New Haven Depot for the trip to Hartford where, following a parade, the body lay in the State Capitol until its shipment to Willimantic where the railroad terminated

People had come to the terminus from 30 miles around, being a night's journey for many, to meet the train at 4:00 a.m., and then make the 16-miles procession to Eastford, Connecticut, arriving in time for the mid-morning service in the Congregational Church Sunday, September 5. Here followed over three hours of speeches, poems, and tributes by an ex-governor, a state supreme court judge, two congressmen, the governors of Connecticut and Rhode Island, a state senator, and the mayors of Hartford and Ashford. A basket dinner was served on the church grounds. At mid-afternoon 150 horsemen escorted the body in the cortege which was half the length of the two and one-half miles to Phoenixville for the burial ceremonies conducted by the local Methodist minister. The escort from St. Louis filled the grave, and the band played a dirge. It was 6:00 p.m. when the thousands departed, thankful for the two hours remaining before darkness. Today, Lyon's remains lie beside those of his parents in the 25 foot square plot surrounded by four granite pillars with iron chains fastened to serve as a railing.

The doings leading to final burial, covering 1300 miles and twenty-six days, rank high among tributes to American heroes and seem equal to the final tributes to Presidents Lincoln, Grant and Franklin D. Roosevelt.

On the ensuing Christmas Eve the House and Senate jointly resolved its "Thanks" to Lyon for a Federal victory won under his leadership, being the highest possible Congressional honor.

(RIDING, from Page 10)

Craig and some half dozen other lawyers came to one of those streams and in crossing took their coat and vest off and were in the act of putting them on again when the Judge came in sight. As he rode up to the further bank Jim called to him, saying "Norton, your horse is pretty tall and it may not swim him, but you had better do as we have done, and then you will not get wet; just take off your clothes and hold them up and you will cross over safely. We will ride on." Craig said they went a short distance and watched the Judge. He dismounted and disrobed, got back upon his tall horse, with his clothes in a bundle on the pommel of his saddle, ready to hold them up higher when necessary, and rode carefully across, but the water was not knee deep to his horse. By the time the Judge re-made his toilet, Craig was far enough ahead to insure his safety.

If the Judge is jealous of this trespass on his territory, tell him that I consent that this joke may be tacked onto the tail end of his piece.

Yes, "riding the circuit" has passed away, and few, very few, of these old lawyers remain.

"Still o'er these scenes my memory wakes,
And fondly broods with miser care:
Time but the impression deeper makes,
As streams their channels deeper wear."

Springfield, MO., December, 1897. (***Bench and Bar of Missouri, 1897***)

Of these past presidents, seven served as Missouri Supreme Court Judges. They are: James B. Gantt, Geo B. MacFarlane, Wm. C. Marshall, W. M. Williams, Robert F. Walker, Henry Lamm, and Frank E. Atwood.

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