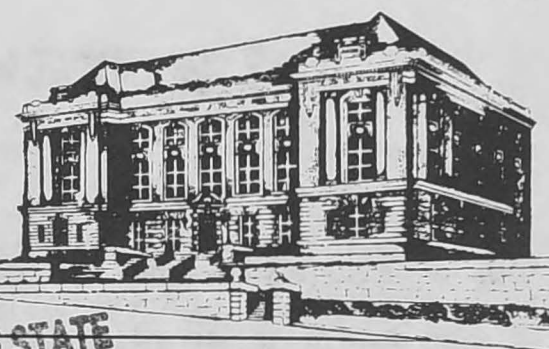


The Missouri Supreme Court Historical Journal

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Historical Society President Dies

*Judge Finch dies
after short illness*

The president of the Missouri Supreme Court Historical Society, Judge James A. Finch, Jr., died April 1, 1988. Judge Finch, a retired justice of the Missouri Supreme Court, was 80 years of age.



Judge Finch, who was born in St. Louis, was a long time resident of Cape Girardeau where he practiced law from 1932 to 1965 at which time he was appointed to the Missouri Supreme Court by Governor John M. Dalton. He served as Chief Justice of the

Court from 1971 to 1973 and retired in 1975.

Always active in public affairs at both the state and local levels, he served as a member of the Board of Curators of the University of Missouri from 1951 to 1965, serving as President of the Board from 1954 to 1964. He also served as a member and President of the Board of Trustees of the UMC Law School Foundation. Judge Finch's service to the university and the school of law was most fitting since he was an alumnus, receiving his AB degree in 1930, a JD degree in 1932 and a LL.D. degree in 1966.

In addition to many other posts of honor and service, Judge Finch was elected to the Missouri Academy of Squires in 1963, received the Phi Delta Kappa Award for Outstanding Contribution to Education in Missouri in 1964, the Distinguished Service Award of UMC in 1965, the Annual Law Day Award of the UMC Law

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Brownlee Named To Head Supreme Court Historical Society

Richard Brownlee III, Jefferson City, was named to succeed Judge James A. Finch, Jr., as president of the Missouri Supreme Court Historical Society at a special meeting of the organization's Board of Trustees held on April 29, 1988. The meeting was called by First Vice-President Virginia Henwood Gottlieb.



The new Society president is a member of the Jefferson City law firm of Hendren and Andrae. A graduate of the University of Missouri-Columbia School of Law, he was admitted to The Missouri Bar in 1972 and served as law clerk to Judge Finch on the Supreme Court. He also served as an Assistant Attorney General under Attorney General John C. Danforth prior to joining the Hendron and Andrae firm.

At the meeting, a resolution in memory of Judge Finch was presented by Judge June P. Morgan and adopted unanimously by the Board with directions that a copy be sent to Mrs. Helen Finch and each of the Finch children and that the resolution be published in the JOURNAL.

Secretary-Treasurer David Brydon reported that the Society is in sound financial condition and that a grant of \$10,000 had recently been received from the Jordan Foundation of St. Louis.

Wade Baker, membership chairman, reported that 52 new members were obtained as a re-

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Resolution

BE IT KNOWN that the Supreme Court of Missouri Historical Society at a duly called meeting on April 29, 1988, in the City of Jefferson did adopt the following Resolution:

WHEREAS, the Society has suffered the loss of its President, and founding leader, by the death of the Honorable James A. Finch, Jr., it is deemed necessary and proper to note the same in the permanent files of this organization, and

WHEREAS, he needs no extended eulogy because his many distinguished achievements and eminent qualities, which were and remain an inspiration to those of the legal community, are recorded in public records and memories of those who knew him, and

WHEREAS, we must note his personal and intellectual integrity which provided a unique innate capacity to sort out and dispose of the irrelevancies as he honed in on the important work to be done for this and other organizations,

NOW THEREFORE, we take pride that this Society was included as an object of his efforts, and hopefully, that it shall always reflect that Jim was a fine human being with a bottomless reservoir of vitality and good humor who believed that life should be lived richly and meaningfully; and that a copy hereof be delivered to his beloved wife, Helen Carrol Finch.

IN TESTIMONY THEREOF:

David Brydon
Secretary

Virginia Henwood Gottlieb
Acting President

Laurance Mastick Hyde

By Henry Andrae

Soon after I began research for this article about Laurance Hyde a statement came to hand made by that distinguished American teacher and longtime dean of the Harvard Law School, the late, great, Roscoe Pound. He said that Judge Hyde was one of the few selected jurists whose opinions he regularly read. What else remains to be said? What higher compliment can be paid? Judge Hyde once said "... the writer (Hyde), although mindful of the proverb 'Fools rush in where angels fear to tread' makes the following suggestions:" (on how to write instructions) *Harke v. Haase* (MoSup 1934), 335 Mo. 1134, 75 SW2d 1001, 1004. In that spirit this writer will attempt to detail some of Judge Hyde's history and accomplishments.

In the beginning, I acknowledge the help received from Judge Hyde's longtime friend and colleague on the Missouri Supreme Court, Judge Norwin Houser. I am also grateful for the use of Western Historical Manuscripts Collection in the Ellis Library at the University of Missouri-Columbia, and for the files of State Historical Society of Missouri. Judge Hyde discarded very little and what he retained is or has been well-classified and is readily accessible.

Laurance Mastick Hyde was born in 1892 in the small county seat town of Princeton in north central Missouri some twenty-five miles from the Iowa line. He attended the local schools, and later enrolled in the University of Missouri where he distinguished himself as a member of Phi Beta Kappa and a miler on the University track team. He received an AB, LL.B and in 1948 an honorary LL.D. In law school, he was distinguished as a member of the Order of the Coif.

Admitted to the Missouri Bar in 1916, Judge Hyde in World War I was an infantry lieutenant and later served in the Judge Advocate General Department before again becoming "a country lawyer" (his words) in Princeton with his father where he labored in the vineyards of the law until his appointment to the Supreme Court as a commissioner in 1931. In the years prior to 1931 he served as City Attorney of Princeton, as a member of the Board of Education and as President of the Farmers State Bank of Princeton. But as Judge Houser said:

"Law was his background; law was his life. He lived and breathed it; delighted in it.

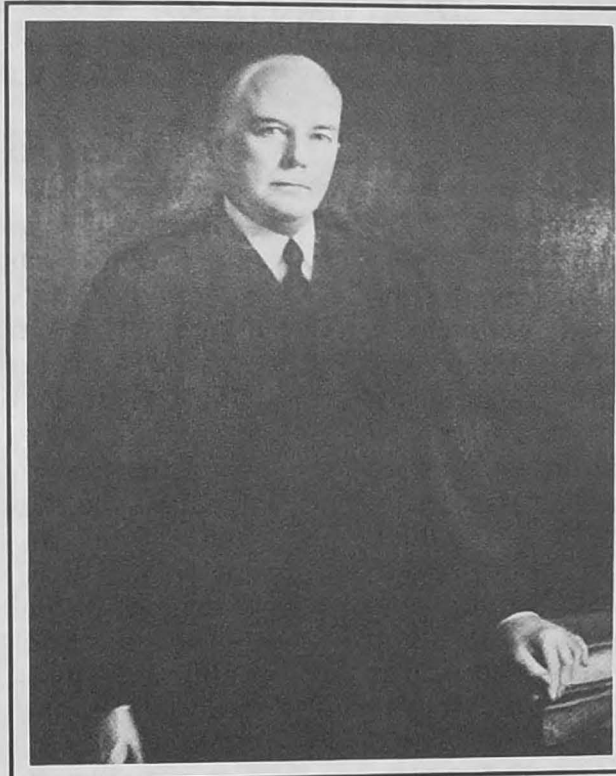
It was the breath of life for him. Ira B. Hyde, (his father) a congressman from Missouri during President Grant's administrations, practiced law in Princeton for 60 years. Judge Hyde's mother, Eliza Mastick

Hyde, was the daughter of a pioneer lawyer in San Francisco. Judge Hyde was the grandson, great-grandson, nephew, grandnephew, great grandnephew, cousin 2nd and brother of lawyers. His wife Florence Fuller was the sister of the Fuller (Hubert) of Hyde, Hyde and Fuller. His brother, Arthur M. Hyde, served as Governor of Missouri 1920-1924, and later sat in the President's cabinet as Secretary of Agriculture."

Both of the Hyde children are lawyers. Laurance, Jr., practiced law in St. Louis, served as a circuit judge in St. Louis, later served as Dean of

the National Judicial College in Reno, Nevada and was Dean of the Nova University School of Law in Florida. He now works part-time as an assistant dean of the National Judicial College. Judge Hyde's daughter Florence is a lawyer who taught law in Kansas City, Missouri, practiced law in Southeast Missouri and married the late Robert Frazier, a lawyer, of Greensboro, N.C.

Judge Hyde was not only a scholar's judge (Pound, *supra*) he was a judge's judge. To explain: The seven judges of the Missouri Supreme Court got so far behind in their docket in 1911 that the Missouri General Assembly was persuaded to enact a statute giving the judges the power to appoint Commissioners to serve as non-voting judges and write opinions and thus reduce the back-log of cases. Judge Hyde was such a Commissioner, chosen in 1931 for his perceived, later confirmed, ability to write many fine opinions. He, like many others, went on to become a judge of the Supreme Court. In fact, he was the first judge appointed (1943) under the Missouri Nonpartisan Court Plan. That Plan might have been enacted without the help of Laurance Hyde but it might not have been. He believed in it, gave it his all to enact it and later to keep it. Although Judge Hyde was a Republican who was active in his party's politics for twenty years and was an unsuccessful candidate of that party for the Supreme Court of Missouri in 1934, nevertheless



he realized that this was not the best way to select judges. In a speech given at the beginning of World War II he foreshadowed the Missouri Court Plan:

"I believe that a system, whereby judges could be selected on a bi-partisan basis and could retain their positions on the basis of their own merits rather than upon the basis of which party had the most popular national issues, would more than anything else that could be done to improve our judicial system, expedite the transaction of judicial business, and what is even more important, would greatly aid in reaching correct results and in bringing about substantial justice in the decision of all cases."

In 1940 when the Plan was adopted as an amendment to the Missouri Constitution, he was very active in his support of it. In 1988 the bitterness with which the Plan was attacked is scarcely remembered. In 1942, in support of repeal, an invitation to join a "Committee of One Thousand Lawyers for Repeal of the Nazi Court Scheme" was circulated bearing the names of some one hundred and sixty Missouri lawyers (most of whom should have known better). On its letterhead appears "The So-Called Non-Partisan Court Scheme is Borrowed from Nazi Germany — It is Facism's Entering Wedge in America". Organized Labor opposed enactment of the Plan and supported its attempted repeal. As evidence of Judge Hyde's support of the Plan see his articles in the December, 1941 American Bar Journal and in the New York University Law Quarterly, Vol. XXII, No. 3, July 1947.

The Executive Director of the American Judicature Society, Glen Winters, upon Judge Hyde's retirement and in noting his devotion to the court reform movement said:

"It is well known to every knowledgeable person that Judge Hyde's stature has been nationwide and worldwide, and that the influence of his forward-looking ideas and leadership have extended to every part of our country and beyond."

In a 1950 speech to recently admitted members of the Missouri Bar, Judge Hyde said:

"There are four qualities of a good lawyer you might well keep in mind. They are: to be an effective advocate, a wise counselor, a leader in the activities of the organized bar, and a leader of public opinion."

and

"The Public expects lawyers not only to practice law but to improve law. The best way to do this is through local, state and national bar organizations."

Time after time Hyde gave the message about the necessity for lawyers to be active in the organized bar and to work for improvements in the administration of justice. He believed in it and he practiced it.

In addition to his regular court work, in 1942 he concluded a study of appellate methods for the ABA's section on Judicial Administration, then

worked for the National Conference of Judicial Council and the MU Alumni Association. He was a state delegate from Missouri in the ABA House of Delegates, and Chairman of the Judicial Administration Section, Chairman of the Judicial Section of the First conference of Inter-American Bar Association at Havana, Cuba, Chairman of its Administration Law Committee, Secretary of the Missouri Judicial Conference, President of the National Conference of Judicial Councils, Director of the American Judicature Society, member of Phi Delta Phi, member of the Council of the American Law Institute, member of the American Political Science Association and member of the American Academy of Political Science.



HENRY ANDRAE received his undergraduate degree and his L.L.B. from the University of Missouri-Columbia, the latter in 1937. He was a founding member of the law firm of Hendren & Andrae and a partner in the firm for 42 years. He served as a member of the Board of Curators of the University of Missouri. Mr. Andrae initiated "The Flag" column in the JOURNAL OF THE MISSOURI BAR and served as its author for many years. "The Flag" has subsequently been authored by two of his sons-in-law, Kelly Pool and Thomas Vetter.

Judge Hyde was also the author of many articles on English and American practice and procedure published in legal periodicals and law reviews. And he bore his share of administrative work of the Court, serving two terms as Chief Justice.

Judge Hyde's work with the American Law Institute deserves special mention. The ALI's Council consists of some fifty to sixty of the leading judges, lawyers and law professors in the country. During the thirty years he sat on that Council, I am advised by the AIA that "Judge Hyde was closely involved not only in the development of the Second Restatement (including Agency, Conflict of Laws, Contracts, Foreign Relations, Property, Torts and Trusts) but in such major Institute projects as the Uniform Commercial Code, the Model Penal Code and the Study of the Division of Jurisdiction between State and Federal Courts."

and that

"He was one of the organizers and the first Chairman of the Conference of Chief Justices. During the 1957 visit of the American Bar Association to London, Judge Hyde was one of two American jurists to serve as Chairman of meetings at the several Inns of Court. In 1964 he was made an honorary member of the Fellows of the American Bar Foundation because of his 'notable contributions to the improvement of the judiciary by advancing the standards for the selection of judges' and the cause of 'non' partisan judicial selection.'"

Harke v. Haase, supra, is one of Judge Hyde's most celebrated opinions. Written while he was a Commissioner in 1934 it has been cited 185 times to date. It explains the doctrine of *res ipsa loquitur* so that "he who runs may read", explains the distinction between the burden of proof (which never shifts) and the burden of going forward with the evidence (which does) and explains how "In matters of general law, former cases are overruled because the ruling therein never was the law and the case in hand is decided the same as if such overruled case had never been written."

His colleague Judge Houser has said:

"Judge Hyde's opinions were marked by their clarity of expression, sound legal reasoning and practical common sense. He was truly a legal scholar of the highest order. His grasp of the intricacies of the law and his ability to analyze a legal situation, quickly pierce through to the heart of the problem, and organize and express his thoughts, was inspiring. He has been a tower of strength on the Supreme Court."

As an example of how clearly Judge Hyde wrote:

"What is a res ipsa loquitur case anyhow? Reduced to simple terms, does it not merely mean that negligence can be proved by circumstantial evidence and that certain circumstances as to the character of an accident, are sufficient to take the case to the jury?" (Harke, supra)

It must be noted that Laurance Hyde was industrious. He wrote well over 1000 published judicial opinions, several as a Special Commissioner of the Court after his retirement. He was also practical. Some people take satisfaction in that they walk to and from work. Not Judge Hyde. He drove. Then in the cool of the morning he would take a fast, and I say fast advisedly, two-mile walk from the Supreme Court Building to the State Penitentiary and return. And in the heat or cold of a later afternoon he drove home.

Judge Hyde was always impeccable and conservative in his dress. He believed that this helped to inspire confidence and that a professional should give the appearance of being one, not of a person about to participate in a pickup softball game. His "uniform" was a dark suite, a white shirt, a four-in-hand tie, and polished dark shoes. In short, his approach to the practice was not casual. It was quite serious. It may be that he thought that a casual habit of dress bespoke a casual habit of thinking.

Larry Hyde was a good host, temperate, kindly, with a sense of humor, helpful, a great listener and a pleasant companion.

Any biography of Judge Hyde, short as this is, would be grossly incomplete if it did not note his support from his longtime (1922) and beloved wife, Florence. In the eyes of Florence Fuller Hyde, Laurance Mastick Hyde could do no wrong. If ever a man had a supportive wife, Florence Hyde can be cited as Exhibit Number One. Florence is a graduate of the University of Illinois, a lecturer and writer and a devoted and understanding mother. As I write she is alive and well, living near her daughter in Greensboro, North Carolina.

And Larry Hyde was duly appreciative. He wrote:

"Such success as I have achieved and the great happiness and well being I have had is due to the intelligent cooperation and loyal support of my wife, Florence Fuller Hyde. She has done everything possible to insure my enjoyment of health, happiness, comfort, leisure and repose. By relieving me of every possible time-consuming responsibility, she has made it possible for me to concentrate upon my legal and judicial work. She has accorded me praise for my achievements, both great and small, sympathy in my misfortunes, even those infinitesimal ones, and she has been a patient audience at all times with helpful suggestions for my benefit. She is the most beautiful, the most exquisite woman I have ever seen and the most understanding person I have ever known. I owe an immeasurable debt for the love, support and sympathy of my wise, beautiful and devoted wife and our great happiness together."

There may be a rare soul who knew Judge Hyde and did not love him. I do not know such a person. I do know many, many people who had the greatest respect and admiration for him. A considerable number of knowledgeable people believe him to be the best judge who ever sat on the Missouri Supreme Court. A North Missouri lawyer with many successful years in trial and appellate practice recently spoke of another judge as follows: "With the possible exception of Judge Hyde, I consider him to be the best writer of clear opinions in at least the last fifty years." (Cf. *Pound, supra*.) There is a general consensus that Judge Hyde was truly an ornament to his profession and the bench.

Laurance Mastick Hyde took mandatory retirement from the Supreme Court at the end of 1967. He died in Jefferson City in 1978, less than three weeks before his 86th birthday. He is buried there in Riverview Cemetery.

An Intimate View of Judge Shepard Barclay

By Lawrence G. Crahan

Shepard Barclay is not a "famous" judge. Lasting fame for a judge is largely determined by the cases that happen to come before the court, and Barclay was not one to seek acclaim in any event. Nevertheless, Shepard Barclay properly may be considered one of Missouri's great judges because he embodied — so many of the qualities to which great judges aspire. Such qualities are perhaps most prominently exhibited in the almost daily correspondence from Judge Barclay to his wife Katie, a portion of which is preserved in the archives of the Missouri Historical Society in St. Louis.

Shepard Barclay, nee Shepard Hill, was born within sight of the Old Courthouse in St. Louis on November 3, 1847, the same day gas light came to St. Louis. His father was Britton Armstrong Hill, a lawyer of some repute. Barclay's mother, Mary Shepard Hill, was the daughter of Elihu Shepard, a prominent citizen of St. Louis who was a co-founder of the Missouri Historical Society. Barclay's parents were divorced by act of the legislature in 1849, and in 1854 his mother married David R. Barclay, also an attorney. Upon obtaining his majority, Shepard Hill had his name changed to Shepard Barclay.

At the age of 15, Barclay entered St. Louis University, graduating in 1867 at the head of his class. That fall, he began two years of study under Professor John B. Miner at the University of Virginia, earning a degree in law and medical jurisprudence. At Barclay's urging, two of his friends and classmates, James B. Gantt of Georgia and William C. Marshall of Mississippi later settled in Missouri. All three eventually served as Chief Justice of the Missouri Supreme Court.

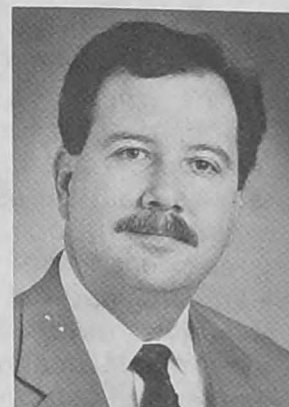
After graduation, Barclay made good use of his fluency in French, German and Italian by traveling to Paris and then to Berlin, where he undertook advanced legal studies. While in Paris, Barclay witnessed the end of the Third Napolianic Empire and sent back dispatches to one of the St. Louis newspapers — reporting on the last Franco-Prussian War.

In 1872, Barclay returned to St. Louis where he engaged briefly in newspaper work. That same year, Barclay married Katie Anderson. The following year, Barclay was enrolled as an attorney.

In 1874, Barclay formed a law partnership with his law school friend and classmate, William Champe Marshall, a third cousin of Chief Justice John Marshall of the United States Supreme Court. By all accounts, the firm was highly successful and Barclay was widely recognized as one of the outstanding members of the St. Louis Bar. He was a charter member of the St. Louis Bar Association.

At the urging of his colleagues, Barclay became

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a successful candidate for Circuit Judge in 1882. While serving as a Circuit Judge, he co-founded the Missouri Judicial Conference and served as its Secretary. Although few records of his service on the circuit bench have been preserved, he was unquestionably a popular jurist; in 1888, a large number of lawyers from both political parties joined in a successful campaign in which Barclay was elected to the Missouri Supreme Court. He assumed the bench in January 1889 at the age of forty-one. Two years later, he was joined on the bench by his lawschool classmate, James B. Gantt.

As could be said of so many who have served on Missouri's highest court, Barclay's willingness to seek the office can only be attributed to his strong sense of public service. Having forsaken a lucrative law practice for the circuit bench, Barclay now faced a substantial disruption of his personal life in the form of long periods of separation from his beloved wife, Katie, along with a significant reduction in pay. At the time, the compensation of a supreme court judge was only \$4,500.00, fully \$1,000 less than Barclay's former salary as a circuit judge.

During his tenure on the court, Barclay rendered 371 written opinions, appearing in fifty volumes of the Missouri Reports. Although he rendered no "landmark" decisions, Barclay was highly regarded for the clarity of his thinking and writing. In his treatise on evidence, Professor James B. Thayer of the Harvard Law School deemed Barclay "One of the soundest and most accurate of American judges."

Barclay's opinions consistently reflect his view that the role of a supreme court judge is properly a limited one which leaves policymaking to elected officials. In his forceful dissent in *Stabe v. Loomis*, 115 Mo. 307, 22 S.W. 350 (1893), perhaps his finest opinion, Barclay firmly rejected the notion that courts could properly strike down what they might consider ill-advised legislation on the basis of what would today be called "substantive due process" grounds. In Barclay's view, judicial exercise of such power posed a grave danger to our republican form of government. Perhaps

anticipating the debate that continues to this day, Barclay wrote:

"To catch the full force of this ruling, it will be well to recall that the guaranty of "due process" is now a part of the fourteenth amendment to the federal constitution, as well as of our own organic law; so that the test of the validity of Missouri legislation is to be whether or not it conforms to the standard of reasonableness indicated by the chief justice, as applied by the federal courts, as well as by our own. It would greatly prolong this opinion to point out the far-reaching consequences of adopting such a standard, and its wide divergence from the principles of republican government through co-ordinate departments, as established by our written constitutions. It is enough now to assert a dissent to those views of the organic law, as well as to the judgment in this case to which they have led."

Barclay's belief in the limited role of the judiciary was evident throughout his opinions. For example, in *State ex. rel. Crow v. Hostetter*, 137 Mo. 636, 39 S.W. 270 (1897), Barclay was faced with the question of whether a successful candidate for the office of county clerk was ineligible because she was a woman. Barclay's opinion upholding the woman's right to the office is refreshingly straightforward. To Barclay, the question was purely one of statutory construction. In contrast to current fashion, not a single line was devoted to equality of the sexes, the injustice of denying women suffrage or other social issues. Barclay firmly believed that his views on such subjects were irrelevant to his judicial role.

Barclay's friend, Judge J. Hugo Grimm, characterized him as simple and unassuming; a man who loved justice. He was a man of widely divergent interests and engaging good humor. He was very much in demand as a speaker. His topics included such diverse topics as education, the Constitution, the engineering work of Robert E. Lee, and Shakespearean puns. He once published a book of humorous verses entitled "Lyrics of the Law."

Greater insight into Barclay's character can be drawn from his daily correspondence to his wife Katie. Throughout his tenure on the court, Barclay maintained a home in St. Louis and lived in

rented rooms near the court in Jefferson City. Although Katie made extended visits to Jefferson City, she apparently spent the majority of her time at the Barclay home in St. Louis, tending to her ailing mother. Katie also was not well much of the time, suffering severely from what would today probably be diagnosed as premenstrual syndrome.

Contemporaries deemed the marriage of Shepard and Katie Barclay an unusually devoted and happy one. This judgment is confirmed by the letters from Shepard to Katie preserved in the archives of the Missouri Historical Society. Katie's replies are not preserved. The letters held by the Society span exactly one year, from January 1891 to January 1892. During this period, Katie made two extended visits for treatments at a New York sanatorium and one extended visit to Shepard in

Jefferson City. Shepard joined her briefly in New York on both occasions and commuted home to St. Louis whenever he could.

The separation necessitated by his duties in Jefferson City was almost more than Barclay could bear. While they were separated, he wrote to Katie at least once and sometimes twice a day, addressing her by such pet appellations as "Sweet Wifey," "Lovely Wifey," "My Blessing," "My Comfort" and "Gentle Doddzie," and invariably signing "Your lover, Muzzy." He often complained of his loneliness for her:

(1/28/91) "... You have my love every

moment and I only wish we might never be apart for an hour."

(2/1/91) "... Your dear letter that came this morning was such a comfort. When I miss a day without one I feel nervous and restless until another arrives to set me right again."

(2/5/91) "... I want you so much and feel your absence more than I can tell. I am anxious to have you near me; your dear influence is such a sweet comfort."

(3/23/91) "... To think of you now and to wonder if you are thinking of me are the sweetest pleasures of these hours when the anticipation of seeing you before long keeps my hopes up and nothing else can. If we will only be patient and bear the necessary ordeal of separation with fortitude, perhaps the kind Lord may at last restore us our long



absent peace and happiness."

(4/14/91) "... I want to do lots of work and hope thus to deserve an early return to the place where I am so unspeakably contented and the only place where happiness can be found for me."

(11/19/91) "... My work gets finished very slowly and seems very hard. When you are around, all seems easier. Please God that we may not be apart long, this time."

Compounding the burden of separation was Barclay's concern over Katie's health. His letters are replete with encouraging endearments; yet they also hint at his frustration that he cannot comfort her in person:

(1/26/91) "... Be brave for your husband's sake. He loves you every minute."

(1/27/91) "... If you imagine strongly enough, you will bring on your period before the time. So dismiss the thought of it until it comes of its own motion... You must be brave for my sake and don't let the 'blue devils' get you into thinking you are worse. Everything will be OK if you will look at things as they are but **you must help**. Push away the blue thoughts by interesting yourself in other subjects."

(1/28/91) "... I am glad to see you taking courage and hope. We must bear patiently sometimes our burdens. It lightens them and when we bear them for the sake of our love, they are made lighter still."

(2/2/91) "... Cheer up for your husband's sake and remember you must live for him. He needs you and loves you so deeply."

(2/12/91) (Written from Rochester, New York after leaving Katie for treatments at Clifton Springs, N.Y.) "... Be brave and patient and I will try to endure our separation, too, and look forward and not backward. Let us pray for courage and strength meanwhile while we are able to bear our burdens gracefully."

(2/15/91) "... I read [your] letters with thankful heart that you were being so brave and setting about the business of being well so nobly... so be calm, patient and brave about your period. Let it not bother you in anticipation. Wait patiently and pray for strength and be hopeful. I will join you daily in that prayer."

(4/12/91) (Aboard the "Southwestern Ltd.," returning to St. Louis from Clifton Springs, N.Y.) "... the trip to you seems very different from of old and we must get accustomed to it. I know you are going to continue to be brave and resolute as you have been and that you will do everything possible toward getting well. But don't do too much each day. Make haste slowly."

In his letters, Barclay also sought occasionally

to deliver the sort of spousal advice that is rarely solicited but often so essential to a good marriage. A delicate task under any circumstances, his efforts illustrate the frustration of carrying on a marriage by correspondence:

(2/15/91) "... Be discreet about talking too intimately at a place like the san., about others in the house to anyone; but I am sure you will remember that admonition from of old."

(4/11/91) (From Rochester, New York, awaiting a change of trains) "... You must now turn your attention from your Muzzy to tiddleywinks and other sports and try to remember the many lectures given as to what you are going to do. One thing that will bear repeating is that you are not going to get into any mess by repeating any gossip you may hear. On the contrary, place a heavy discount on all that is told you of that nature — especially on any such stuff as was mentioned this afternoon. You will treat all kindly, considerately and pleasantly and no one confidentially, there."

(10/6/91) "... I regret to see from your letters that you are having too much to say about Georgie's affair. You should let it alone or you will incur ill will in some quarters where you don't wish such feelings toward you to exist."

(10/31/91) "... Love doesn't take hold as firmly as malaria at such early stages. She [Georgie] may think it does but it don't. It takes a longer time to have that effect that it has run in her case."

(1/2/92) "... When you see Milsey, be very prudent in regard to statements as to the events of last week in Court circles."

Throughout his letters to Katie, Barclay gave voice to his deep and unwavering faith in God. He read the Bible daily and took great comfort from it. He also believed deeply in the power of prayer and sought to use their faith as a way to bring him and Katie even closer during times of separation. At one point, Barclay proposed that they begin reading the daily psalter each evening at the same time so they could share the same religious thoughts at the same hour once a day. He kept to this practice and frequently reminded her of it in his letters, speaking openly and often of the power of faith:

(2/1/91) "... Every day I pray for strength for us both and for patience and hope."

(2/4/91) "... Let us pray that all may yet be well with us and happiness return as it used to be with us in all respects. I will pray for it constantly."

(2/6/91) "... Our love shall save us with the blessing of God and His help for which we must constantly pray. Our troubles are bad but He can bring us out."

(2/12/91) (From Rochester, New York)
"... Read your Bible every day and remember me in your prayers. My sweetest thoughts and hopes and prayers are always of and for you and may our Father bless our love and keep us safely for each other."

(3/23/91) *"... If only you get well again, I am sure your loving gentle influence will set all things right, with the aid of our prayers. We have learned their blessed value in these hours of trial and perhaps the lesson was needed."*

(4/12/91) (Aboard the "Southwestern Ltd.")
"... My prayer is for you always and for some years yet together of love and peace. Let us hope for them and try to merit them."

In his daily letters to Katie, Barclay never discussed the substance of his work but occasionally provided glimpses of day-to-day life on the court. His personal routine, at least in Katie's absence, varied little. Barclay would generally rise at about 6 A.M. and would often take a walk before breakfast. The hotel was just a brief walk from the Supreme Court Building on the southeast corner of the Capital grounds.

Barclay frequently reported working until 10 or 11 P.M. before returning to the hotel. While Katie was in Clifton Springs, he made arrangements to sleep at the office on occasions when he worked late and the weather was bad.

In the afternoons, Barclay would often take a long walk with one of the other judges. His most frequent companions were Judge Francis Black, who served until 1894, or his law school classmate, Judge James Gantt. On occasion, he would be joined by one of the senators in town for the legislative session.

For entertainment, Barclay enjoyed an occasional game of whist, usually with his fellow judges or members of the legislature. On other occasions, Barclay would report an evening of good talk around the fire at the courthouse. Such occasions were rare, however, as Barclay more commonly worked late into the evenings.

Correspondence from Barclay's later years on the court has not been preserved, so it is not clear whether Katie was ever able to join him in Jefferson City on a more regular basis. Barclay resigned from the Court in February, 1898, while serving as Chief Justice. In a statement to the press issued shortly before his formal resignation, Barclay cited inadequate pay and the need to earn something to support him and Katie in their old age as his reason. However, Barclay's anguish over his lengthy separations from Katie almost certainly played a role in his decision not to seek reelection. Shortly after Barclay's resignation, his former classmates and law partner, William Champe Marshall, was elected to the court.

Upon his resignation from the court, Barclay formed a law partnership with John E. McKieghan and M.F. Watts, but his judicial service to Missouri was not yet over. In 1901, he was appointed by

Governor Alexander Dockery to fill a vacancy on the St. Louis Court of Appeals, where he served until 1903. During this service, Barclay rendered eighty-nine written opinions, which appear in volumes 90-97 of the Missouri Appeal Reports.

Thereafter, Barclay maintained an active and successful private practice until his death on November 2, 1925. During this period, he was associated for varying lengths of time with Thomas T. Fauntleroy, Patrick Henry Cullen, William R. Orthewin and S. Mayner Wallace. Wallace later authored a description of Barclay's legal career which was published in a private monograph commissioned by his nephew, Edward Mallinckrodt.

Although they had no children, Shepard and Katie were blessed with fifty years of marriage. Shepard survived Katie's death for only one year. Many of the condolences Shepard received at Katie's passing commented on their unusually felicitous union.

In his later years, aside from his busy law practice, Judge Barclay was in great demand as a speaker. He also contributed to a number of scholarly treatises, including some written in German and Italian. He served as Secretary of the Missouri Historical Society and as a Vice President of the American Bar Association.

The esteem in which Barclay was held by his contemporaries in the Bar was memorialized not long after his death by the action of the Board of Governors of the Missouri Bar Association in establishing the Judge Shepard Barclay Prize at the University of Missouri, where Barclay was awarded an honorary L.L.B. in 1897. The prize has been awarded by the law faculty each year since 1930 to the senior class student attaining the highest standing in scholarship and moral leadership. Our current Chief Justice, William H. Billings, is a recipient of the Judge Shepard Barclay prize.

In well-crafted legal opinions we may witness the work of a great legal mind but see little of the very human qualities that make for truly great judges. In Shepard Barclay's letters, we can see a man who loved his wife deeply, experienced frustration and loneliness, worked hard, maintained his sense of humor, respected his fellow man and cared deeply for his country. He had no pretensions and regularly sought guidance from Above.

Shepard Barclay's sacrifices in the highest traditions of public service are by no means unique. No doubt many others have borne equal or greater burdens and, like Barclay, voiced no complaint. The value of Barclay's correspondence is that it provides us with greater insight into the nature of the man and the type of sacrifices so many have made in serving on the Missouri Supreme Court.

BIBLIOGRAPHY

Shepard Barclay Papers, Archives, Missouri Historical Society, St. Louis.

H. Williamson, *Shepard Barclay, Aristocrat of the Law*, 17 J. Mo. Bar 28 (1961).
L.R. Gifford *Shepard Barclay*, (private monograph) Archives, Missouri Historical Society, St. Louis, Missouri.
Dr. J.S. Summers, Jr., *A Home for the Supreme Court*, Mo. S.Ct. Hist. J., Vol. I, No. 4, p. 8 (Winter 1987).

President Finch Dies

(continued from page 1)

School in 1968 and the Certificate of Merit of the Law School in 1970.

Judge Finch was a member of the American Bar Association, The Missouri Bar, the Law Institute, the American Judicature Society, a Fellow and Past President of the Missouri Bar Foundation; a past chairman and member of the Board of Directors of the National Center for State Courts and Chairman of the State of Missouri Dioxin Commission.

Judge Finch is survived by his widow, the former Helen Carrol, and by one daughter and two sons.

\$10,000 Grant from Jordan Foundation

On April 1, 1988, the Society received an award of \$10,000 from the Mary Ranken Jordan and Ettie A. Jordan Charitable Foundation. Notification of the award was received in a letter from Fred E. Arnold, spokesman for the Foundation's Advisory Committee.

The Foundation was established in St. Louis in 1957 by members of the Jordan family, a sister and sister-in-law. The estate is now worth 14 million dollars. The Foundation annually funds projects only in Missouri that are concerned with the arts, education and health.

Robert Neill, former member of the Society, represented both ladies for some time and was Chairman of the Advisory Committee at the time of his death. President Finch had contacted Mr. Neill in December about funds for the Society. Unfortunately the letter announcing the grant arrived the day Judge Finch died.

Brownlee Named President

(continued from page 1)

sult of the recent membership drive, bringing total membership to 257.

In the absence of Judge Norwin Houser, Chairman of the Editorial Committee, Mr. Baker reported on the Committee's recent conference with Professor Gerald Dunne concerning the proposed history of the Supreme Court which Professor Dunne is authoring.

Amendments to the By-Laws were passed increasing the number of trustees by one.

Along with the name of Mr. Brownlee, who was named president, David Brydon, Chairman of the Nominating Committee, presented the name of Wade Baker for the post of trustee. Both were elected by acclamation.

Plans for the annual meeting were discussed, with the decision as to date, time and place left up to the president with the provision that it be held in September to conform with the By-Laws.

Society's Annual Meeting

The Annual Meeting of the Mo. Supreme Court Historical Society will be held in Columbia, MO. Friday, September 9th at the Holiday Inn Executive Center (formerly the Hilton Hotel). There will be a cash bar starting at 6:00 p.m. with dinner at 7:00 p.m. Professor Gerald T. Dunne, the author of the court's history, will be the speaker. The subject of his talk will be "Foiling the Great Governorship Steal, the Court's Finest Hour."

Please mark this date on your calendar now. This is a football weekend in Columbia, so hotel/room reservations should be made well in advance of the meeting if you will be staying overnight.

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