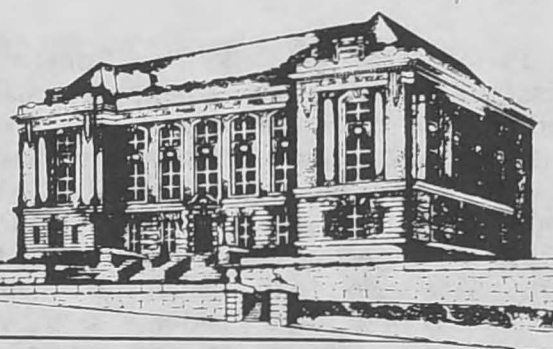


# The Missouri Supreme Court Historical Journal

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## Missouri and the U.S. Constitution: a love-hate relationship

by Duane Meyer, Ph.D.

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It seems appropriate to begin the Lorberg Lecture by quoting a toast given in Cape Girardeau in 1837. M.G. Lorberg, Jr. was, you will recall, a Professor of Speech and the chairman of his academic department at Cape Girardeau's Southeast Missouri State University. He was also the Chairman of the Missouri Committee for the Humanities. Professor Lorberg would have been impressed with the exuberant rhetoric in the theologically creative toast which was offered in his city in 1837, as follows:

The Constitution of the United States — Its distruction (sic) would cause angels to weep, and in hell a jubilee would be celebrated by the ghosts of departed tyrants. (*Jefferson Republican* of Jefferson City, September 30, 1837)

Most Missourians, like the Cape Girardeau toastgiver, have had great respect for the U.S. Constitution, but some have been outspokenly critical of the document and, especially, interpretations of it. To describe Missourians' views of the Constitution, the term "Love-Hate Relationship" seems appropriate. As in human love relationships, a strong bond of affection between two individuals does not preclude a clash of wills, or a conflict of values precipitating heated exchanges. Such "lover's quarrels" characterized the relationship between Missourians and the U.S. Constitution particularly during the years 1819 to 1861.

On this 200th anniversary of the writing of the U.S. Constitution it is important that we consider realistically that document which has now served us for two centuries. The U.S. Constitution has been one of the most enduring charters of government in the history of the world. We are aware that the Federal Government formed by it has provided many blessings for its citizens. But we should also recognize the weaknesses and failures of our constitution-directed government. In the 198-year history of the United States the most significant failure of our political system was the inability to solve the question of slavery in a peaceful, ethical, rational way. The issue of

slavery had been debated briefly in 1787 at the Constitutional Convention, but it was not until Missouri asked for admission to the Union that a national debate on slavery began in the years 1819-1821. This was followed by a forty-year period of acrimonious disputation, legislative maneuvering, and judicial pronouncements. The magnitude of the failure can be seen in the 600,000 lives lost in the Civil War, in a century of troubled race relations following the tragic conflict, and in the unfulfilled lives of those Black Americans whose potential was never realized because of the injustices of the post-war society.



The author is President Emeritus and Professor of History at Southwest Missouri State University in Springfield, Mo. This article was Commissioned by the Missouri Committee for the Humanities.

In the forty-year period of debate and political struggle prior to the Civil War, two landmark events had their origin in Missouri. In the Missouri Compromise struggle of 1819-1821 the issue was joined. In the Dred Scott Decision of 1857 the U.S. Supreme Court declared that Congress had no power to limit the spread of slavery to the territories.

This examination of Missouri and the U.S. Constitution, then, is divided into three parts: Part One, the Colonial Background; Part Two, the Missouri Compromise; and Part Three, the Dred Scott Decision.

### The Colonial Background

To understand Missouri attitudes we do need to remind ourselves of Missouri's colonial roots. In 1787, when the Founding Fathers were gathered

in Philadelphia to write the Constitution, the Missouri region was governed by Spanish officials and most of the settlers in the area spoke French. The major settlements of Creoles in Missouri were at Ste. Genevieve (beginning about 1750), St. Louis (1764), Carondelet (1765), St. Charles (1769), Portage des Sioux (1779), and Florissant (1786). According to the DeLassus census of 1789, there were only 1005 residents in St. Louis, the largest of the settlements, and over a quarter of them (268) were slaves. Missourians in 1787 were still recovering from the catastrophic flood of 1785 which was 15 to 20 feet higher than any previous Mississippi River flood. That drastic inundation covered the original Ste. Genevieve and caused the inhabitants to move the higher ground. These Creoles living along the Mississippi River had villages with surveyed streets, wooden and masonry homes, common fields for farming, mills, churches, a thriving Indian trade, and billiard halls. But the French settlers in Spanish Missouri did not have a written constitution, or representative government, or freedom of religion, or trial by jury. In truth there is no evidence that the Creoles of the region felt the need for a constitution or for constitution-protected rights. It should be noted that some of the English-speaking settlers who moved into the Missouri region during the Spanish period seemed pleased to escape from the United States. This was clearly true of Daniel Boone who came to the Spanish region in 1798, still complaining of his experiences with the courts of Kentucky regarding land titles.

Frederick Bates, the newly-appointed Secretary of Territorial Governments, in 1807, observed that the Creoles of the Missouri area were so docile, so tractable, that they did not even think of protesting or asserting themselves if government officials used them badly. As Bates explained it,

If their Commandant spurned them from his presence, deprived them of half their Estate or ordered them to the black Hole, they received the doom as the dispensation of Heaven. (**Life and Papers of Frederick Bates**, vol. I, pp. 242-43)

But, on March 10, 1804, their world changed. The surprising purchase of Louisiana by the United States was symbolized by the raising of the Stars and Stripes in a ceremony in St. Louis. Captain Amos Stoddard, U.S.A., represented the United States Government at the transfer. He noted that some of the Creoles there that day had tears in their eyes. He assumed, according to his account, that those tears were expressions of joy. It is possible, of course, that the tears flowed from feelings of apprehension and fear regarding their new relationship with the U.S. Government.

As he had been instructed to do, Stoddard immediately promised the St. Louisians that their customs and their property rights would be protected by the United States. Interestingly, it was the Black slaves of St. Louis who were the most excited about the transfer. Word had circulated among them that slavery was outlawed

in the Northwest Territory. Perhaps, they reasoned, slavery would also be outlawed in Upper Louisiana. Auguste Chouteau warned Amos Stoddard about what he called the "fermentation" among the slaves, and asked Stoddard to make a clear statement on the issue. Stoddard then proceeded to declare publicly that the United States Government had no plan to abolish the institution of slavery in the Missouri region. The coming of constitutional government to St. Louis brought no advantage or solace to the slaves there.

During the colonial period both French and Spanish administrators refused admission of lawyers to the territory. Joseph Nicollet, the French-born cartographer, described the arrival of the first members of the Missouri legal establishment as follows:

It is easier to imagine than to describe the astonishment and wonder of the good colonists, when, as a sequel to the sundry and official acts by which they were declared **republicans**, and their country a member of the great American confederation **founded by Washington**, they witnessed the arrival of a legion of judges, lawyers, notaries, collectors of taxes, etc., etc., . . . (**Early History of St. Louis**, p. 160)

The Creoles may have been astonished by this turn of events, but in fact they adjusted rapidly to the new American way. Their passivity disappeared. Auguste Chouteau in 1804 presided at an open meeting of citizens in St. Louis which led to petitioning Congress for changes in the federal law placing Upper Louisiana under the Territory of Indiana. Contrary to what Frederick Bates had said of the servile attitude of the Creoles toward their Commandants, when a U.S. Territorial Court was formed in Upper Louisiana a jury indicted Commandant Louis Lorimer of Cape Girardeau for horse stealing. Former Lt. Governor Charles DeLassus himself was called into Territorial Court as a defendant in land title cases. The Creoles soon learned how to exercise their constitutional rights.

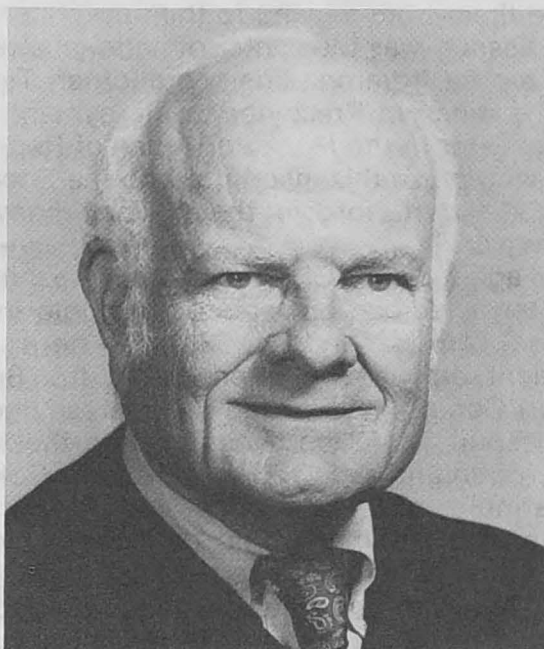
### The Missouri Compromise

At the time the U.S. Constitution was written, slavery seemed to be a weakening institution in America. Some Southern planters felt the use of slave laborers in agriculture was no longer profitable. The New England states and Pennsylvania had abolished slavery. Every state but South Carolina and Georgia had outlawed the importation of new slaves from outside the country. Such Virginia slaveholders as George Washington, James Madison, and Thomas Jefferson were troubled by the existence of the system which conflicted with a natural rights philosophy. But slavery was so entrenched in the South, critics could not envision a way to halt the practice without creating economic chaos. Jefferson described their situation as similar to clutching a

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## BLACKMAR NAMED CHIEF JUSTICE



Judge Charles B. Blackmar has assumed the position of Chief Justice of Missouri's Supreme Court on July 1, 1989. He has served as a member of the Court since December 15, 1982. He succeeds Judge William H. Billings as Chief Justice.

Chief Justice Blackmar, 67, is a native of Kansas City. A graduate of Princeton University, class of 1942, he received his law degree from the University of Michigan School of Law in 1948 and was admitted to The Missouri Bar the same year. He served in the U.S. Army from 1942 to 1946 and was awarded the Silver Star, Purple Heart, Bronze Star and Combat Infantry Badge.

Judge Blackmar was in the private practice of law in Kansas City from 1948 to 1966 during which time he also served as professional lecturer in law at the Kansas City University School of Law. In 1966 he joined the faculty of St. Louis University School of Law as professor of law and became emeritus professor in 1983. He also served as a special Assistant Attorney General of Missouri from 1969 to 1977 and was engaged as a professional labor arbitrator from 1967 to 1982. The author and co-author of numerous law books and articles, Chief Justice Blackmar is a member of Phi Beta Kappa, Order of the Coif, American Law Institute and the National Academy of Arbitrators. He has served as chairman of the Kansas City Fair Public Accommodations Commission and the Kansas City Human Relations Commission. He received the Equal Justice Award of Legal Services of Eastern Missouri in 1983.

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## First Women Named To Missouri Supreme Court

A notable event in Missouri judicial history was made on December 22, 1988 when Governor John Ashcroft named Ann K. Covington, 47. Judge of the Missouri Court of Appeals, Western District, as the first woman to serve on Missouri's Supreme Court. Judge Covington had served as a member of the Court of Appeals since 1987.

The new Missouri Supreme Court judge is a native of West Virginia and a 1963 graduate of Duke University. She obtained her law degree from the University of Missouri-Columbia in May, 1977, the year she was admitted to The Missouri Bar. Judge Covington spent the years from 1963 to 1965 teaching in the Oxfordshire Schools in Oxford, England. After admission to the bar she served as an Assistant Attorney General in Missouri from 1977 to 1979. She was in the private practice of law in Columbia from 1979 to 1987 when she was appointed to the Court of Appeals.

Judge Covington is a member of the Boone County Bar Association, The Missouri Bar, the American Bar Association and an honorary member of Phi Alpha Delta legal fraternity. She served as a member of the Board of Directors of the Mid-Missouri Legal Services Corporation, as Chairman of the Juvenile Justice Advisory Board in Columbia, as a Board member of the Ellis

Fischel State Cancer Hospital, as Chairman of the Columbia Industrial Revenue Bond Authority and as chairman or member of numerous committees of the United Methodist Church of Columbia.



## FOURTH ANNUAL MEETING DATE SET

The fourth annual meeting of the Supreme Court of Missouri Historical Society will be held Saturday, September 30th at the Holiday Inn Executive Center, 2200 I-70 Drive SW, Columbia, MO. There will be a cash bar starting at 6:00 p.m. with dinner following at 7:00. Additional details will be included in the individual invitations to be mailed later. Please mark this date on your calendar.

## GRANTS RECEIVED FROM JORDAN CHARITABLE FOUNDATION AND GAYLORD FOUNDATION

Once again the Society has been awarded grants from the Jordan Charitable Foundation and the Gaylord Foundation. The grants are for \$1,430 and \$1,000 respectively. Plans call for these funds to be used to obtain another display case and to cover the cost of a new display featuring the "Old Drum" case.

The Jordan Charitable Foundation was established in 1957 by Mary Rankin Jordan and her sister-in-law Ettie A. Jordan to promote projects in Missouri concerning the arts, education and health. The funds are administered by an Advisory Committee in St. Louis.

The Gaylord Foundation was established by Clifford Willard Gaylord who founded the Gaylord Container Corporation. The funds are administered by a Board of Trustees in St. Louis. In recent years they have elected to fund historical societies that are interested in preserving Missouri history.

## Meyer

(continued from page 2)

"wolf by the ears." It was awkward to hold on and it was dangerous to let go.

In 1819 Missouri sought admission to the Union. After two years of national debate, Congress, under the leadership of Henry Clay, finally permitted Missouri to enter as a slave state to balance the admission of Main as a free state, with the proviso that no other slave states could be created from the Louisiana Purchase north of 36 degrees, 30 minutes latitude. That decision by Congress has been called the Missouri Compromise. Some refer to it as the First Missouri Compromise of 1820.

The constitution of the new slave state, which had been written in 1820, called for outlawing the entrance of free Black persons into Missouri. To the growing number of congressional critics of slavery this provision was clearly in conflict with the stipulation in the U.S. Constitution that citizens of each state would have the "privilege

and immunities of citizens in the several states." Black persons were voting citizens in New York City, but the Missouri Constitution appeared to exclude them from moving to the new state. Once again Missouri was the center of national attention as she moved from one crisis to another. Timothy Flint, the itinerant Presbyterian clergyman, wrote of a prankster in the Missouri House of Representatives who place this inscription on the Speaker's chair, "Missouri, forgive them. They know not what they do."

Once again Henry Clay led in extinguishing the fire. After a tedious but spirited struggle in both the U. S. House and the Senate, he secured agreement on what is often called the Second Missouri Compromise of 1821. Congress declared that Missouri would be accepted into the Union, but the offending article in the Missouri Constitution "should never be construed" to call for passage of a law that would limit the "privileges and immunities" of a citizen of any other state. And the Missouri Legislature was required to pass "a solemn public act" agreeing to that condition. The Missouri legislature grudgingly complied with the congressional directive in June, 1821, and Missouri officially became a state August 10, 1821.

Those of us who teach American political science or history often use the Missouri Compromise in our teaching to demonstrate the process of give and take in our legislative system. The activities of Henry Clay provide effective illustrations of the importance of strong leadership and of "honest brokers." It has been the writer's experience that students are more likely to remember the Missouri Compromise than such other events of that time as the Monroe Doctrine, the Bank War, or the Maysville Veto. Students today can usually recall the symmetry of the Compromise with Maine admitted as a free state to please the North and Missouri admitted as a slave state to placate the South. But how did Missourians feel about it in the 1820s?

In the Missouri Compromise debate of 1819-21, the title Restrictionist was applied to those who opposed the spread of slavery to the new states. Restrictionists were a small minority. There was a great outpouring in Missouri of Anti-Restrictionist speeches, toasts, editorials, letters to the editors, and resolutions. Four of the five newspapers in Missouri (the **St. Louis Enquirer**, the **Missouri Intelligencer** of Franklin, the **Jackson Independent Patriot**, and the **St. Charles Missourian**) took immediate stands against any restrictions on slavery as part of Missouri's admission to the Union. Only the **Missouri Gazette** under the editorship of Joseph Charless had a more open position and agreed to run letters from Restrictionists. There were public protest meetings against restrictions in seven counties. And seven grand juries adopted resolutions decrying restrictions. The tone of these Anti-Restrictionists can be observed in one of the first public meetings which was held in Montgomery County on April 28, 1819. The placing of restrictions on the Missouri



statehood bill was described in the Montgomery County meeting as a "usurpation of our most sacred rights, unprecedented, unconstitutional."

On the other hand, the voice for restriction were few and weak. The **Missouri Gazette** printed only a few anonymous letters taking that positions. A handful of Restrictionists declared their candidacy for serving in the Constitutional Convention in 1820. Not one was elected. In Howard County, a Restrictionist named Humphrey Smith asked a Methodist slaveholder how he could justify human slavery in the light of the doctrines of his own Methodist Church. The slaveholder promptly had Humphrey Smith indicted by the Howard County Grand Jury for inciting slaves to revolt.

The issue of slavery which was the root cause of the Missouri Compromise brouhaha would continue as a festering sore on the body politic for another two decades.

### The Dred Scott Decision

Thomas Hart Benton was chosen as the U.S. Senator from Missouri in 1820 and seated in that prestigious body in 1821. For the next three decades Benton nearly dominated Missouri politics and played a prominent role in the national political scene. Known as the "Lion of the West," Benton roared in the Senate chamber for his favorite issues — hard money, westward expansion, and cheap prices for federal land. "Old Bullion Benton" served in the U. S. Senate at the same time as such other legislative giants as Henry Clay, John C. Calhoun, and Daniel Webster. He wrangled with all of them and ultimately was alienated from Clay and Calhoun. Benton was a tall, stately man with a great head who carried himself erectly and always seemed prepared to launch into a harangue or a debate. The forcefulness of his delivery, the great mass of detail he cited, and the passion of his accusations made him one of the most sought-after orators in America. On the stump he normally spoke for two or three hours. He was so well informed, so acid-tongued, so partisan that few were willing to contend with him; and he virtually controlled the Missouri Democratic Party from 1821 to 1840. It was politically dangerous to disagree with him. After 1840 the anti-Benton forces cautiously began to surface.

Benton was involved in many constitutional issues during his years in Washington, but two issues were of most importance to him. First, he strongly disagreed with South Carolina's Calhoun, who said that a state had the right to refuse to obey a federal law if the state had gone through a deliberative process, such as the calling of a constitutional convention, and voted to declare the law null and void. This constitutional point of view was called Calhoun's nullification theory. Secondly, Benton opposed Calhoun on the issue of expansion of slavery into the western territories. Calhoun stated that the Federal Government had no constitutional power to limit such an expansion

of slavery and declared, "Slavery follows the flag."

Benton's position on slavery was a complex one. He inherited slaves and held household slaves until his death. In the debates of the 1819-21 period he opposed the placing of restrictions on slavery in Missouri. The pro-slavery interests in Missouri had no concern over his stance regarding slavery until the 1840's. He then began to rethink his position.

Benton, of course, as a member of the U. S. Senate, had to vote on many issues involving nullification theory and the expansion of slavery. The issues that he debated and agonized over included the South Carolina Nullification crisis, the Admission of Texas to the Union, the Wilmot Proviso, the admission of California to the Union, the Fugitive Slave Law, and the ending of the slave trade in the District of Columbia. As he struggled with issue over issue some of his ideas changed.

The crucial period of his political career came in 1849. In January of that year Senator John C. Calhoun of South Carolina called together the leaders of the Democratic Party from the slave states to consider and then issue a public statement on the extension of slavery. The pronouncement which they issued became known as the Southern Address. The document restated the well-known Calhoun position that the Federal Government has no right to restrict slavery, so any American can take his slaves into the Territories of the United States. Benton refused to attend the meeting or to sign the document. He referred to the Calhoun doctrine as being "ominous."

The year 1849 was the most hectic in the life of the senator. His beloved Missouri Democratic Party split on the issue raised by Calhoun. On Calhoun's side supporting the free expansion of slavery were Missouri's other senator, David Atchison, and the state Democratic Party leaders, Samuel Treat and Claiborne Jackson. Jackson now took the initiative in Jefferson City and persuaded the Missouri legislature to pass the Jackson Resolutions in March, 1849. Those resolutions affirmed the pro-slavery sentiments of Calhoun's Southern Address and then went on to **instruct** the U. S. senators and representatives to "act in conformity" with them.

Senator Benton was furious. He declared that the Jackson Resolutions did not in fact represent the thinking of Missourians. He declared he would crush the slavery-extension wing of the party in Missouri. Among the political leaders of Missouri who answered Benton's call were Montgomery Blair, Francis P. Blair, Jr., and B. Gratz Brown, all of St. Louis.

The sixty-seven-year-old Senator then set forth on a five-month-long campaign across Missouri, traveling by horseback over 1000 miles and speaking in court houses, churches, and at open air meetings.

Benton's campaign in 1849 to take the Jackson Resolutions to the people of Missouri was probably the most significant interlude in his political life. It is worthy of much more attention

than we can afford it here. Three points seem most important regarding this campaign.

First, Benton changed his views on slavery. He opened his campaign with a speech in Jefferson City on May 26, 1849. In the chamber of the House of Representatives he gave his testimony on the issue of slavery. Following are the words of a slaveholding senator from a slave state to his fellow Missourians:

My personal sentiments, then, are against the institution of slavery, and against its introduction into places in which it does not exist. If there was no slavery in Missouri today, I should oppose its coming in; if there was none in the United States, I should oppose its coming in to the United States. I should oppose its coming in to the United States; as there is none in New Mexico or California, I am against sending it to those territories, and I could not vote for such a measure.

He stated his position. He stated it clearly. Then he launched in to his campaign to convince others of the merit of his stand. He particularly campaigned in the heavy slave-holding regions of the state.

Second, Benton identified the Jackson Resolutions as being part of a new nullification movement. He declared it was an attempt to permit disgruntled minorities to resist bona fide federal regulations passed by majority vote in Congress. He predicted that it would lead to a "Southern Confederacy" and treason against the Union.

Third, Benton was personally uncompromising in his attacks on Calhoun, Claiborne Jackson, and the Jackson Resolutions. The comment that he repeated in town after town was "and between them and me, henceforth and forever, **a high wall and a deep ditch!** and no communications, no compromise, no caucus with them." This abrasiveness toward the opposition can be seen in his comments to the crowd at one speech when, as he began, he spied Claiborne Jackson and two other leaders of the Anti-Benton movement seated in the front row, probably to interrogate him or to protest his views. Benton announced their presence to the large crowd and referred to them as being "demure as three prostitutes at a christening." Jackson and his friends did not say a word.

In November, 1849, Thomas Hart Benton left from Cape Girardeau by steam boat for Washington, D. C. He had been greatly encouraged by the large crowds he drew and by the enthusiastic response of the people. Now, he could wait with confidence for the 1850 elections.

When the results of the election of 1850 had been tallied, more Benton Democrats were elected to the Missouri Legislature than anti-Benton Democrats. Thus, Benton seemed to have won the struggle within his own party. However, the Democratic Party warfare had encouraged votes for the Whigs, who received more seats in the legislature than either Democratic faction. The

Democrats voting together in 1850 could have re-elected Benton, but the unforgiving anti-Benton faction refused to do so. After 12 days and 40 ballots the legislature selected a Whig, Henry Geyer, as the next senator. Benton lost that battle. His senate career was ended. In 1852, he won the First District congressional seat, but failed to win re-election. He lost a race for a U. S. Senate seat in 1854; and the following failed in his bid for the Governor's office.

In focusing on Benton's dramatic reversal of stand and his announced opposition to slavery, one should not overlook the service of hundreds of Missourians of that time who opposed slavery and, in some instances, practiced civil disobedience to serve Black Missourians. There is time to mention only a few. Educators who clearly broke the law to school Black children included Baptist missionary John Mason Peck, John Berry Meachum, and the Sisters of St. Joseph of Carondelet. In 1845, a mob destroyed the Sisters' convent in reprisal.

Abolitionists who risked the ire of slaveholders were such people as the Rev. John Clark (a Methodist and Baptist preacher), Dr. David Nelson and the Rev. Elijah Lovejoy, both Presbyterian clergymen, and the Rev. David White of the Christian Church in Chillicothe. Both Elijah Lovejoy, of St. Louis, and Colonel George S. Park, of Parkville, had their presses destroyed by mobs because their newspapers proposed the abolition of slavery. Benton was not alone in challenging the institution of slavery, but he was certainly the most prominent person to support that view openly.

Benton was sorely troubled when the decision in the Dred Scott case was handed down by the U. S. Supreme Court on March 6, 1857. Montgomery Blair, one of his long-time friends, had served as a lawyer for the St. Louis man suing for his freedom. Scott, the slave of an army physician, had been taken to live in the Minnesota region — then a Territory which was clearly north of the 36° 30' line of the Missouri Compromise. Scott sued for his freedom on the basis of the fact that he had been held improperly as a slave in an area which could not legally allow slavery. The Supreme Court denied the request and went on to affirm Calhoun's view that the U. S. Constitution protected slaveholders if they wished to take their property (that is, their slaves) into any territory. The Court declared that Congress could not act to restrict slaveholders and that the Missouri Compromise line was null and void.

Although he was mortally ill, Thomas Hart Benton was so angered by the Dred Scott Decision that he sat down and wrote a 130-page rebuttal, with 60 pages of appendices, to deny the validity of the decision which seemed to sustain the views of the now-deceased Calhoun. Thirteen months later, on April 10, 1858, Benton died.

Benton, always a warrior, lost many battles in Missouri and in the ranks of his beloved

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# THE GREAT GOVERNORSHIP "STEAL"

by Gerald Dunn

On March 14, 1940, Lawrence ("Larry") McDaniel filed for the Democratic nomination for governor of Missouri. McDaniel was a longtime party warhorse and St. Louis' excise (liquor) commissioner. Traditionally Democratic Missouri had customarily taken its governors from that party, and the strong possibility of FDR's presence on the ticket for an unprecedented third term made McDaniel's prospects bright indeed.

There were drawbacks. Able, good-looking Allen McReynolds of Carthage was in the field as a party rival. Worse yet, the seeming Democratic hegemony masked an uneasy alliance between the big city machines in Bernard Dickmann's St. Louis and Thomas Pendergast's Kansas City with the courthouse "rings" in Protestant outstate Missouri. Pendergast in particular had come under attack in 1932 when urbane, patrician Russell Dearmont, seeking the governorship had strongly attacked the Kansas City machine's influence in state affairs. The reformist assault was renewed in the bitter Supreme Court primary election of 1938 between James Billings and James Douglas.

McDaniel had other disadvantages. Methodist Sunday teacher that he was, McDaniel's portly, owled-eyed appearance was that of an archetypical Irish Catholic politician, particularly Boss "Tom" Pendergast. He was pilloried mercilessly by the cartoonists, but the machines' power held and he rolled to victory in the primary. His style carried over to the general election where he used two lines with great effect to rouse the Democratic faithful. His speeches customarily opened: "The question is not: when do we eat? but **do** we eat?"<sup>1</sup> and he closed with the peroration that endorsed the third term of FDR and attacked the public utility past of Wendell Willkie, G.O.P.

nominee: "Let's keep Willkie in the powerhouse and Roosevelt in the White House!"<sup>2</sup> Sitting as a co-partisan Democratic candidate on the same platform with McDaniel around the state, Supreme Court Judge George Robb Ellison ("a gentleman among gentlemen"<sup>3</sup> according to colleague Paul Barrett) listened airily — possibly aware, thanks to a non-partisan court proposal on the same ballot he might be hearing such hokum for the last time.

It was the bitterest primary in memory and the

residue carried into November where the entire Democratic ticket swept to victory with one exception: Republican Forrest Donnell of Webster Groves won the governorship by a margin of 3613 votes out of close to a million cast.

The result was truly a party disaster, for the governorship with a cornucopia of appointments to judgeship, boards, commissions and like offices was truly the jewel in the patronage crown. Worse yet, the transfer of that office to the G.O.P. might well spark a renaissance of the seemingly moribund minority. "The Democrats could not reconcile themselves to the fact that they had lost the governorship"<sup>4</sup> recalled veteran St. Louis lawyer, Richmond Coburn. Within

hours of the election C. Marion Hulen of Mexico, Mo., chairman of the State Democratic Committee was darkly hinting of pervasive vote fraud and massive vote-buying.<sup>5</sup> On November 13, 1940, five



<sup>1</sup> Personal Recollection of the author

<sup>2</sup> *Ibid.*

<sup>3</sup> Letter, dated June 23, 1987 from Judge Barrett to the author.

<sup>4</sup> Deposition-Interview, Dec. 27, 1985, Original in Archives, Supreme Court of Missouri Historical Society, Jefferson City, Mo.

<sup>5</sup> See generally March, *History of Missouri*, (1967) p. 1421 et seq.

major Democrats-U.S. Senator Bennett Champ Clark, St. Louis Mayor Bernard F. Dickmann, St. Louis Democratic Party chairman Robert Hannegan, State Party chairman C. Marion Hulen, and State Attorney General Roy McKittrick along with several identified smaller fry (St. Louis Election Board Chairman Charles M. Hay, State Senator Michael Kinney, Secretary of State Dwight Brown, and Anheuser-Busch legislative counsel, Anthony Buford) gathered at St. Louis' DeSoto Hotel (regular rate \$3 per night) for a post-mortem. They met amid sporadic reports of Republican electoral wrong-doing. As Coburn recalled:

They got together and decided to handle the matter by means of a provision in the Constitution of Missouri (which provides) that in case of an election for governor . . . the speaker of the House of Representatives in the presence of the members of the House and Senate would count - tabulate - the votes and then proclaim to the general public who had won.<sup>6</sup>

The "meeting" strikingly exemplified the jape of comedian Will Rogers that he did belong to no organized political party but instead was a Democrat. The conclave was not held at the Democrat's regular gathering place, the old Jefferson Hotel but at the DeSoto. The affair seemed totally unstructured. It had neither rules of order, agenda, nor presiding officer; participants floated in and out of the room all afternoon, coming and going at will as knots of conversationalists severally discussed the electoral disaster and its consequence for their own prospects. Typical was the experience of Anthony A. Buford, Anheuser-Busch attorney who encountered Robert Hannegan in a chance meeting on Locust Street and in Hannegan's disclosure of being *en route* to see Senator Clark went along to the DeSoto on the offchance of discussing pending federal legislation. The opportunity never really materialized and instead, Buford subsequently found his picture on the front-page of the **Post Dispatch**,<sup>7</sup> displayed as putative conspirator term in a latter-day Gunpowder Plot.

Senator Clark later described the gathering as a "gabfest" and Hannegan issued a written statement<sup>8</sup> characterizing the conference as a quasi-social foregathering of co-partisans, devoid of any sinister purpose. Possibly (as Coburn noted) there was discussion of Art. V of Missouri Constitution which provided in an obvious analog to the Constitution of the United States that the certified election returns would be delivered to the Speaker of the House for tabulation and announcement at a joint session of the state legislature. Discussion, such as it was could well have focused on exploiting this provision under some plausible factual base, the meeting of the

DeSoto group broke up, apparently leaving to state chairman Hulen the decision of whether the reports of Republican fraud were substantial enough to require offsetting legislative action. The Republican had constantly beaten the Democrats in fund-raising with the consequent suspicion of the latter that the bulging G.O.P. war-chest had spilled over into vote-buying and like irregularity. Only one sour note was sounded. Canny Attorney General McKittrick publicly warned that in addition to investigation costs of \$25,000, the Machiavellian ploy could backfire in that the St. Louis machine faced a spring election, whereas the "county boys" had two years to ride out any incipient scandal.<sup>9</sup>

Hulen (probably the real architect of the maneuver) perfected it at a meeting of the Democratic state committee in Jefferson City on December 30, 1940, and structured it on the role of the Speaker of the House. Coburn's indecision on the difference between "count" and "tabulate" marked the jewelled pivot-point of the DeSoto Hotel plot which hinged on whether the speaker (1) could only read the face of the election certificates or (2) had discretion to go behind those documents and verify their recitations. The difference was critical, for the accession of the governor depended on the Speaker's announcement. If held up long enough, sufficient fraud - 3614 flawed votes would do it - might be found in G.O.P. strongholds to undo the overall electoral result. It was a brilliant stroke, by-passing the tedious and expensive legal recount procedure which required that the nominal winner be seated pending any outcome and enjoy all the powers, privileges, and patronage of office in the interim.



*Prof. Dunn is a member of the faculty of the St. Louis University School of Law. This article comprises a chapter in the History of the Missouri Supreme Court which he is writing under commission from the Supreme Court Historical Society.*

On January 8, 1941, the General Assembly convened in Jefferson City. A House caucus bound the Democratic majority there to support the pre-emptive strike of deferred announcement which was duly enacted into a Resolution #3 of the General Assembly which forbade the speaker to take action until a special legislative committee had re-examined the ballots. Attorney-General McKittrick told his co-partisans in the Senate that the proposal to bar Donnell was perfectly legal. On January 10, the returns were delivered to speaker Osborn, but as the Missouri Supreme

<sup>6</sup> Coburn deposition, note 4 *supra*.

<sup>7</sup> "Inside Story of How McDonnell-McDaniel 'Contest' Begin". St. Louis **Post-Dispatch**, January 30, 1941.

<sup>8</sup> "HANNEGAN SAYS HOTEL MEETING WASN'T SECRET". **Post Dispatch**, Jan. 30, 1941, p. 4a, col. 4.

<sup>9</sup> St. Louis **Post-Dispatch** "Inside story of How Governorship Fight Began," note 6, *infra*.



Court later recited, he "declined" to announce the result and declare Donnell governor asserting he was forbidden to do so by Joint Resolution 3.<sup>10</sup>

The ostensible legal base of the resolution was the filing of a complaint of the Democratic State Committee charging fraud in the gubernatorial vote and asking a legislative investigation. Many county Democratic organizations filed like resolutions, and a singular private one came from future governor James Blair acting as "a citizen and voter of Cole County."<sup>11</sup> Accordingly, the assembly passed Joint Resolution 3, which was duly vetoed by Governor Stark, and a joint committee moved to investigate and recount the ballots.

Under the State Constitution, the new governor's term began January 13. On that day Chief Justice Leedy routinely swore in the statewide Democratic ticket minus McDaniel. The Donnell inaugural was postponed, and Lloyd Stark became the first holdover governor in Missouri history. That same day, Forrest Donnell filed a petition in the state supreme court for the ancient, common-law writ of mandamus<sup>12</sup> instead of taking his inaugural oath.

**Mandamus** (we command) was a judicial order to a public officer to perform a public duty as to which the law afforded the officer no choice. The tactic had been chosen by a trio of Republican lawyers, James Finch, Sr. (Cape Girardeau) Frank Atwood, a former member of the supreme court (Jefferson City) and Charles Rendlen (Hannibal).<sup>13</sup> It was a simple, streamlined solution: The speaker was merely to announce - not recount - the election results.

A second suit<sup>14</sup> was filed in prohibition which was the mirror-image opposite of mandamus: a judicial command to an individual, a body, or a court forbidding the latter's action outside legal jurisdiction. This sought to bar the joint legislative committee (called the "Searcy Committee" after its chairman, Senator Searcy) from re-counting the ballots. The two cases were argued in

succession on February 11, 1941, Chief Justice Leedy ordering the matters consolidated and expedited in view of their obvious importance. St. Louis lawyers, Richmond Coburn and Richard Shewmaker, joined the original trio to argue the prohibition action.

The questions of the judges indicated the temper of the court. Judge Gantt, the tribunal's curmudgeon, hammered Attorney General McKittrick particularly hard at the mandamus hearing. The moment the latter opened his mouth and began his argument ("Where is there anything in those plain and simple words that authorizes what you are defending?")<sup>15</sup> During his argument on

the prohibition suit, Coburn observed to the judges: "What are they trying to do? Make a governor out of Morris Osborn?" He added "And they all laughed. We felt we were getting along pretty well with the Court when they reacted that way."<sup>16</sup>

The hilarity on the Supreme Court bench produced by the mere thought of the hayseed House speaker exercising gubernatorial authority via the proclamation power was not matched elsewhere. Instead a firestorm of protest swept the state. Coburn recalled that "the uproar ... exceeded anything I ever saw. People just went crazy, and they were just — oh, the reaction against the Democratic leadership and functions that

were being exercised was terrific. And that had a good deal to do with what happened ultimately in the litigation."<sup>17</sup> The sleazy cynicism of the

ON TODAY'S EDITORIAL PAGE

On to Jefferson City—No. 2, Bypass on Highway 50: Curious.

Honor Roll of Missouri Democrats: Editorial.

# ST. LOUIS POST-DISPATCH

Only Evening Newspaper in St. Louis

VOL. 93, NO. 146. (63rd Year.) ST. LOUIS, WEDNESDAY

## PREMIER METAXAS OF GREECE DIES OF THROAT INFECTION, ALL THREE WEEKS

Became Dictator by Coup d'etat in 1936 — New Government, Composed of Present Ministers Quickly Formed.

Alexandros Korizis Sworn In — King, in Proclamation, Says War Against Italy Will Be Carried On as Before.

ATHENS, Jan. 29 (AP) — Gen. Metaxas, Premier and dictator of Greece for nearly five years, died today of a throat infection at the age of 70, bequeathing his hope of victory over Italy to a Government swiftly reorganized and dedicated to that purpose.

The strong man, ill for only three weeks, retained consciousness just before he died. It was said, and addressed these words to Minister of Home Security Constantine Maniatis at his bedside.

"There is no hope whatever. I understand. It is not for me that I died, but I place my

## Inside Story of How Donnell-McDaniel 'Contest' Began; 8 Politicians Meeting Secretly in Hotel Left Job to Hulen





C. M. HULEN ROBERT HANNEGAN MAYOR DICKMANN





SENATOR CLARK C. M. HAT A. A. BUFORD





ROY MCKITTRICK MIKE KIBBEY DWIGHT H. BROWN

Democrats Agreed That State Chairman Should Make Inquiry 'to See He Could Gather Evidence of Fraud' in Governorship Vote.

McKittrick Related That Warned Hannegan: 'You Have City Election Spring; We Count Boys Have Two Years Get Over It.'

By Carlos F. Hurd

Of the Post-Dispatch Staff.

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OUT of a politician's meeting in a room on the third floor of the De Soto Hotel at Eleventh and Locust streets the afternoon of November 1st, came the sorry chapter Missouri's history which will be the title "Governorship Contest 1941."

There, eight days after the election and a week after it became known that Forrest C. Donnell, publisher, had been elected Governor, nine of the most active interested supporters of defeated Democratic Candidate Lawrence McDaniel gathered.

Their meeting place was not one of the major hotels, though one there had been headquarters of McDaniel's campaign. The De Soto was a day and a night, its lobby quarters commercial or rather than urban — was better suited to their purpose, one of which was not to attract publicity.

<sup>10</sup> State ex rel. Donnell v. Osborn, 147 S.W.2d 1065, 1067 (1941). (hereinafter cited as Osborn).

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Interestingly, the sons of Rendlen and Finch later sat on the Missouri Supreme Court.

<sup>14</sup> State ex rel. Donnell v. Searcy et al. 152 S.W.2d 8 (1941). (Hereinafter cited as Searcy).

<sup>15</sup> St. Louis Post-Dispatch, February 11, 1941 p. 5A.

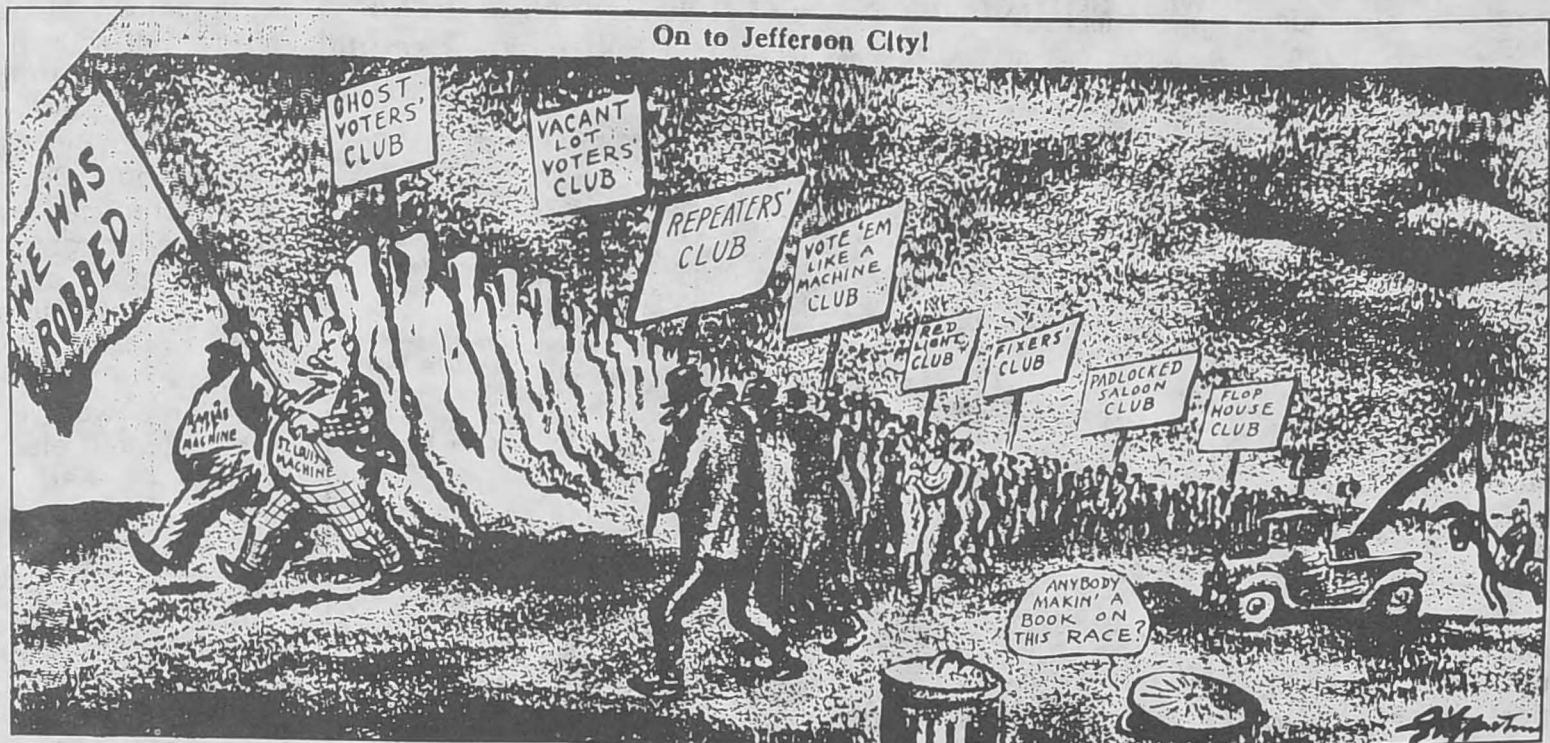
<sup>16</sup> Coburn Deposition, Note 3, supra.

<sup>17</sup> Ibid.

parliamentary maneuver, based on the preposterous idea that the corrupt political machines had been beaten at their own game of vote-stealing and ballot box stuffing was exemplified in a Daniel Fitzpatrick cartoon in the St. Louis **Post-Dispatch** ("March on Jefferson City") wherein a parade led by two portly cigar-chomping politicians representing the St. Louis and Kansas machines under the placard "We Was Robbed" led a parade: "Ghost Voters Club," "Vacant Lot Voters Club," "Repeaters Club," "Red Light Club," "Flophouse Club" whose rear was brought up by a tow truck carrying McDaniel astride a moribund Democratic donkey.<sup>18</sup> The **Post's** condemnation of the steal was matched by the censure of its local rival **Globe-Democrat** ("nothing but a bare-faced attempt of the Democratic machine leaders to deprive Forrest C. Donnell of the office of governor"<sup>19</sup>) and cross-state Kansas City **Star**. In rural Missouri the situation was the same where only a few incorrigibly partisan organs like the Lewiston **News** ("A Stuck Hog Always Squeals"<sup>20</sup>)

were in. If there was going to be any monkey business, they would do it."<sup>23</sup>

Mrs. Shewmaker's revulsion was shared by any number of leading Democrats: Governor Lloyd Stark vetoed Joint Resolution 3 and who thereafter used his line-item veto disapprove appropriation vouchers thereby bringing state business (including the legislators' pay) and the "investigation" to a standstill. Stark was joined by Democrats of the stature of State Senator Allen McReynolds and Senate majority leader, Phil Donnelly, as the ruling Democratic majority shattered on the rock of scandal. Nor did the Assembly help matters. When the legislators caught sight of a black face in a group of St. Louis protestors in their gallery, the floor of the chamber exploded to shouts of "find him a cotton sack, we don't want any 10¢ votes".<sup>24</sup> Moreover, in a significant grass-roots' rebellion, a number of counties refused to surrender their ballots, notwithstanding what Joint Resolution 3 commanded.



The **Post's** cartoon, presented with Fitzpatrick's stiletto-pen became devastating. Indeed thanks to corrosive ridicule, what began as a degradation of the democratic process rapidly became something of an **opera booth** with the cartoonist's rendering of the tow truck and the dead Democratic donkey as its cachet.<sup>21</sup> Attorney-General McKittrick was also duly pilloried via carton.<sup>22</sup>

Mrs. Richard Shewmaker, the Democratic wife of one of Forrest Donnell's counsel, summed up the anomaly: "After all, it was the Democrats who

The dissident Democrats were joined by their seven co-partisans of the solidly Democratic state supreme court which decisively resolved the mandamus and prohibition cases. Their first judgment came in the mandamus case on February 19, 1941 wherein a unanimous court peremptorily ordered Morris Osborn to do what the State Constitution plainly ordered him to do - simply tabulate and proclaim the results on the basis of certifications previously furnished him. Next day the **Post-Dispatch** headline told the story:

<sup>18</sup> St. Louis **Post-Dispatch**, January 14, 1941.

<sup>19</sup> St. Louis **Globe-Democrat**, January 22, 1941.

<sup>20</sup> Lewiston **Times**, April 24, 1941.

<sup>21</sup> See **Post-Dispatch**, November 18, 1940, January 2, 1941, and January 25, 1941.

<sup>22</sup> *Ibid.*, January 22, 1941.

<sup>23</sup> Deposition-Interview, Richard Shewmaker, Feb. 17, 1986, an Archives, Supreme Court of Missouri Historical Society, Jefferson City, Mo.

<sup>24</sup> St. Louis **Post Dispatch**, January 30, 1941 p. 1-4D



## DONNELL IS DECLARED ELECTED BY SPEAKER UNDER COURT ORDER<sup>25</sup>

And a Fitzpatrick cartoon, "The Majesty of the Law" supplied a felicitous epigraph of the controversy. Forrest Donnell was quietly inaugurated a week later, James Marsh Douglas, now Chief Justice, administering the gubernatorial oath. By singular irony, Douglas, a Pendergast target in the 1938 primary, wrote the opinions of the court in both cases.

The prohibition opinion was not handed down until June 21, the delay being occasioned by a post-electoral complication wherein Lawrence filed an orthodox recount petition on March 4, 1941. A different recount was begun whose preliminary findings confirmed Donnell's election and increased the latter's majority to 7,000. On May 21, McDaniel conceded Donnell's election and withdrew his petition. The same day, the General Assembly discharged its own contest committee, causing the court to comment; "because the people of Missouri attach supreme importance to the office of governor, it can be safely said that any such decisive action concerning a contest of this office is also a matter of common knowledge throughout the state".<sup>26</sup> Accordingly, the controversy in the prohibition became pointless in the absence of any real controversy and the court dismissed the petition and the great governorship steal ended, not with a bang but with a whimper. Not really a whimper because in consequence of the great governorship "steal" or otherwise, by the end of the decade, St. Louis and Kansas City machines were in ruins and virtually all of the DeSoto conspirators had disappeared from Missouri's public life.<sup>27</sup>

The author of trenchant description of the episode<sup>28</sup> supplied an insightful closing note: "The

voters were remarkably efficient in punishing those responsible for the 'steal'. Generally, only those Democrats directly involved were defeated. Second, the role of the court demonstrates the importance we place on judicial judgement. A heated, partisan conflict with much at stake was ended by a single opinion. Parallels to Watergate can be overdone, but there are similarities."<sup>29</sup>

The truly tragic denouncement belonged to Robert Hannegan, who seemingly escaped unscathed from the DeSoto Conspiracy to go on to the national chairmanship of the Democratic party and membership in the Truman cabinet as Postmaster General. He resigned in late 1947 to become part-owner of the St. Louis (baseball) Cardinals. His departure prior to the 1948 election reputedly angered the sorely beset and seemingly doomed President Truman whose concern with political loyalty was well-known. Hannegan had been an all-round athlete at St. Louis University and water polo enthusiast later in noon hours at the Missouri Athletic Club, but a failing heart produced frequent reports of incipient disability and necessitated installation of a ramp over the stairs to his office at the ball park. He died October 11, 1949, President Truman sent the recently depoliticized Jesse Donaldson, the technocrat Postmaster General as his official representative while Chief Justice Vinson, Associate Justice Clark along with Senator Olin and Lyndon Johnson attended his funeral on their own; Vice President Barkley in St. Louis on that day did not even come to the Church.

St. Louis political folklore records Hannegan's dying words (referring to his famous reversal of the names of Justice William Douglas and Senator Harry Truman in transmitting FDR's 1944 vice-presidential pronouncement to the Democratic Convention)<sup>30</sup> as "Just put this on my tombstone: 'I kept Bill Douglas out of the White House.'"<sup>31</sup> Buried in the same cemetery with Dred Scott and Father John Cummings, Hannegan's grave is marked by a large Celtic cross which makes no reference to his life and achievements but proclaims only "Hannegan."

<sup>25</sup> St. Louis *Post-Dispatch*, Feb. 20, 1941.

<sup>26</sup> *Searcy* p. 10.

<sup>27</sup> Mayor Dickman was defeated for re-election in the Spring municipal election of 1941. McKittrick defeated Senator Clark in the Democratic primary the previous year and lost to Donnell in the general election.

<sup>28</sup> Soapes, "The Governorship Steal and The Republican Revival" *Missouri Historical Society Bulletin*, Vol. 30 p. 158-172 (1976).

<sup>29</sup> Letter to the author, December 14, 1987.

<sup>30</sup> See Douglas *The Court Years* (1980) 293, 384.

<sup>31</sup> Personal recollection of the author.

## Meyer

(continued from page 6)

Democratic Party, but he was an astute observer of the American political scene who correctly foresaw that Calhoun's nullification theory and slavery extension views would lead to secession and national conflict.

Interestingly, Benton may have won a battle after his death. As he had predicted, the Dred Scott Decision was such an extreme Calhoun statement, it could not be accepted by Northern

Democrats. Thus, the party split in the election of 1860, and as a result Republican Abraham Lincoln was made President. Then, upon Lincoln's election, South Carolina, using nullification logic, seceded from the Union and precipitated the Civil War. Governor Claiborne Jackson in Missouri wanted his state to secede, too, but moderates in the legislature passed an act calling for the people to elect delegates to a Constitutional Convention to decide for or against secession. The election on February 18, 1861, attracted 140,000 votes. It is

(continued on page 14)

## Obituaries

During the past six months four former members of The Missouri Supreme Court have died. Two were former Supreme Court Judges, Judge Lawrence Holman and Judge Henry Eager. Two were former Supreme Court Commissioners,

Judge Alden Stockard and Judge Cullen Coil. It is with a feeling of great loss to Missouri, to its judiciary and to the legal profession that their passing is memorialized in this issue of the JOURNAL.

Former Supreme Court of Missouri Judge Lawrence Holman died February 23 in McAllen, Texas, as the result of injuries suffered in an auto accident 15 days earlier. He was 82.



**HOLMAN**

Judge Holman served on the Supreme Court of Missouri from May 1963 to December 1976. He was chief justice from July 1967 to July 1969.

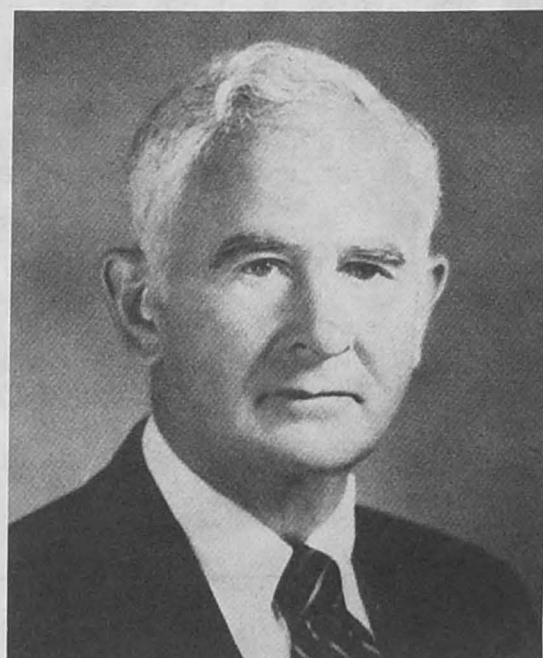
He received his legal degree in 1929 from the University of Missouri School of Law in Columbia. He practiced law in Moberly for nearly 20 years. During that time, he served a five-year stint as Randolph County prosecuting attorney, and was elected in 1938 to a two-year term in the Missouri House of Representatives.

He was appointed judge in the Ninth Judicial Circuit (now the 14th Circuit) in January 1948 and reelected to a full term in November 1952.

He resigned that position in March 1955 to accept appointment as a Missouri Supreme Court Commissioner. In May 1963, he was appointed by Gov. John Dalton as a full judge of the Supreme Court of Missouri. In November 1964, he was retained for a 12-year term ending in December 1976.

Cullen Coil, 81, Jefferson City, a former commissioner of the Missouri Supreme Court and senior member of the law firm of Coil, Carson, Riley, McMillin, Levine and Viet, died Thursday, July 13, after an extended illness. He had recently been a resident of the Lenoir Health Care Center in Columbia.

Judge Coil was a graduate of the University of Missouri-Columbia where he received both his undergraduate and law degrees. He was admitted to the Missouri Bar in 1932 and was in private practice of law in St. Louis until his appointment as a commissioner of the Supreme Court in 1951. He served on the Court until 1964 when he returned to the private practice of law in Jefferson City.



**COIL**

A fellow of the American College of Trial Lawyers, he was also a member of Phi Delta Phi legal fraternity, Order of the Coif, The Cole County Bar, The Missouri Bar and the American Bar Association. He served two terms as president of the Missouri Alumni Association and of the Jefferson City Country Club. A past member of the Board of Governors of Memorial Community

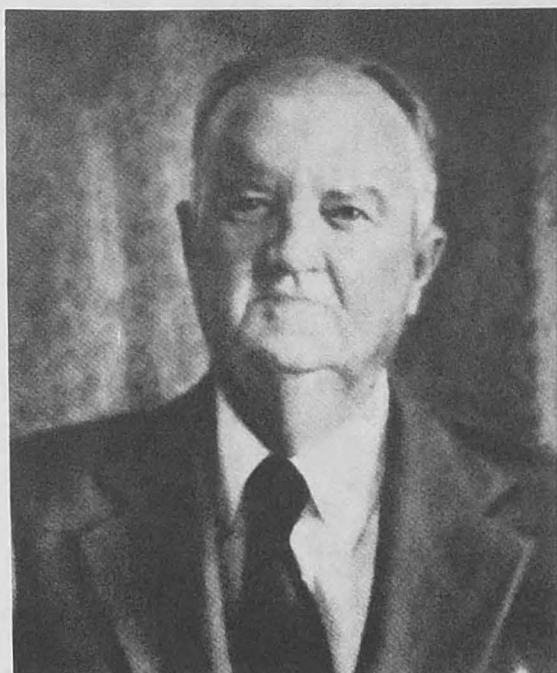


Hospital, he had also served on the Board of Trustees of William Woods College and the Board of Directors of Woodhaven Learning Center. Judge Coil was also a member and elder emeritus of the First Christian Church of Jefferson City.

Judge Coil served as chairman of the Missouri Supreme Court Committee on rules from 1969 to 1979 and was a former member of the Board of Governors of The Missouri Bar. He also served for years as a member of the Editorial Board of the Journal of The Missouri Bar. In 1959 he was named the outstanding lawyer of the year by the St. Louis Lawyers Association.

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Judge Henry I. Eager of Jefferson City, former Chief Justice of the Supreme Court of Missouri, died February 10 at the age of 93.



**EAGER**

Judge Eager served on the state's highest court from 1955 until his retirement in 1968, including a term as chief justice from 1963 to 1965. Following his retirement, he was appointed special commissioner to the court, a position he retained until his death.

Judge Eager received his undergraduate degree from the University of Washington and his law degree from the University of Michigan. Admitted to The Missouri Bar in 1920, he was a partner in the Kansas City law firm of Blackmar, Eager, Swanson, Midgley & Jones from 1920 until 1955.

He served on the Missouri Board of Law Examiners from 1946 to 1954 and was a member of the Missouri Judicial Conference, the American Bar Association, the Kansas City Bar Association, the Cole County Bar Association and Delta Theta Phi law fraternity. He was also a charter member of the Lawyers Association of Kansas City.

Judge Eager received the Honorary Order of the Coif from the University of Missouri-Columbia and the Sesquicentennial Award from the University of Michigan.

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Retired Missouri Supreme Court Commissioner Alden Stockard died on January 23 in Jefferson City. He had served as a commissioner of the Supreme Court for 28 years, retiring in 1982.



**STOCKARD**

Judge Stockard was appointed to the commissioner post in 1954 and served as the last commissioner of the Court at the time of his retirement. He was a graduate of the University of Missouri-Columbia and the UMC School of Law. While in law school he was awarded the James S. Rollins scholarship in law; the Missouri Law School Foundation Prize, membership on the board of editors of the Missouri Law Review, the Delta Theta Phi Scholarship Key and the Order of the Coif. He also graduated first in the class of forty-four students. Following law school he served in the National Guard and entered the Army in 1942. A member of the Judge Advocate General's staff, he served as a staff member of the court during the Nuremberg trials following World War II.

Upon returning to civilian life, he served as administrative assistant to Senator James P. Kem and was special counsel to the United States Judiciary Committee.

In 1980, The Missouri Bar awarded to Judge Stockard the Spurgeon Smithson Award in recognition of his outstanding service to the legal profession. His home town of Republic, Missouri, also honored him as its outstanding citizen during its centennial celebration.

## Meyer

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remarkable that 110,000 votes were for candidates declared to be against secession. Not a single secessionist advocate was elected; and, of course, Missouri stayed with the Union as Benton would have wanted. That was a most important factor in the outcome of the Civil War. It seems unlikely that Missouri would have voted so overwhelmingly against secession without the remarkable campaign waged by Benton 12 years earlier against the Jackson Resolutions. Certainly, some Missourians remembered his prediction that the Calhoun doctrines would lead to a Southern Confederation.

In summary, it is appropriate to describe the relationship of Missourians and the U. S. Constitution as a Love-Hate relationship. From the point of view of the colonials it was an arranged marriage that they grew to appreciate. In the early statehood years, Missourians were delighted to establish the new relationship of full participation in national government. But the issue of slavery led to a series of marital spats. The differences became so great that divorce was contemplated. In 1861 Missourians went to the polls to decide whether to terminate the marriage. Thanks in part to the oratory and influence of Thomas Hart Benton, the citizens of the state voted overwhelmingly to continue the marriage, and Missouri was spared the trauma of defeat suffered by her sister slave states in the war that followed.

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