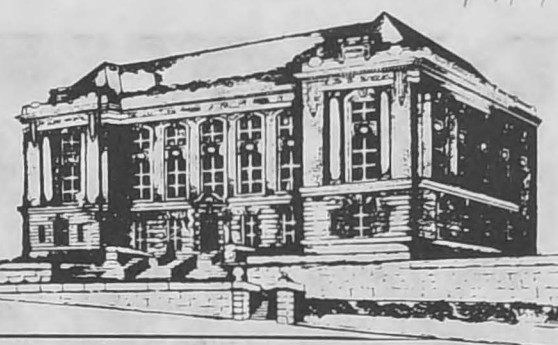


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Historical Review of the Judicial System of Missouri

By

HON. LAURANCE M. HYDE

Former Judge of the Supreme Court of Missouri

OFFICE OF SECRETARY OF STATE
MISSOURI STATE ARCHIVES

The Missouri area has been under three flags, France, Spain and the United States, and thus had experience under three separate judicial systems. Unlike that part of the nation east of the Mississippi, it was never under the flag of Great Britain and did not begin its judicial system under the common law. France and Spain ruled this territory for more than a century. They were both civil law countries and the laws and customs of these countries were well established before the United States took over the area by the Louisiana purchase. It was not until after statehood that the common law fully replaced the civil law in Missouri. In the State of Louisiana, the civil law still remains the basis of the legal and judicial system. It was not without a struggle that a different result was reached in Missouri. The victory for the common law system was due to outstanding lawyers who came into Missouri during territorial days and became its champions during the period when the state was formed.

FRENCH RULE IN MISSOURI 1682-1763

On April 9, 1682, La Salle took formal possession of the region including Missouri in the name of Louis XIV, King of France, and called the area "Louisiana" in his honor. Louisiana, until 1763, included territory on both sides of the Mississippi. This region was at first dependent on the government of "New France" or Canada. The first permanent settlement was at Biloxi in 1699. Authority over the whole area was granted by the King to Antoine Crozat in 1712 but he was unsuccessful and surrendered his Charter in 1717. In 1718, John Law obtained exclusive trade

privileges for his Company of the West, established to develop the territory, but which later collapsed in the debacle known as the Mississippi Bubble. New Orleans, which was founded the same year, became the capital in 1722. However, Louisiana came under the direct administration of the French Crown in 1733 and for the next 30 years was ruled by appointed Governors.¹ The French were the first white people to settle in Missouri. Soon after 1700, exploring parties came into Missouri looking for gold and silver and discovered the lead mines. These mines were first worked by mining parties and settlers from Kaskaskia and Cahokia, across the Mississippi in Illinois, who did not remain in these localities during the winter. Other Frenchmen came at various times to trade with the Indians and established temporary forts. The first permanent settlement in Missouri was at Ste. Genevieve about 1732 and its

population was estimated at not more than 600 when Spain took over the territory thirty years later.² French Louisiana was subject to the jurisdiction of the Superior Council at New Orleans, which administered law according to the Custom of Paris
(continued on page 2)



Correction

In the Spring, 1992 issue of this JOURNAL it was stated that Supreme Court Judge Robert T. Donnelly 'resigned' from the Court on December 31, 1988. This was in-correct. It should have stated that Judge Donnelly 'retired' as of that date.

Editor's Note:

No history of the Missouri Supreme Court would be complete without information concerning development of the judicial system of which it is a part and which it supervises. In 1952, former Missouri Supreme Court Judge Laurance M. Hyde authored an article, "Historical Review of the Judicial System of Missouri" which provides a concise and accurate picture of the development of Missouri's judicial system from colonial days to the time of publication of the article in 1952. Judge Hyde details the systems by which justice was administered in what is now Missouri under French rule from 1682 to 1763; under Spanish rule from 1763 to 1803; under territorial rule from 1803 to 1821; as a state court system under the Missouri Constitution of 1820, and subsequently its development and changes under various Constitutional Judicial Articles up to the time of Judge Hyde's writing in 1952.

Beginning in this issue of this *Journal*, Judge Hyde's "Historical Review of the Judicial System of Missouri" will be published as a series of articles presenting Judge Hyde's material in its entirety, supplemented after its conclusions, with information pertaining to Judicial Articles enacted since 1952.

The judicial history covered in this issue of the *JOURNAL* will review that period from the French rule in 1682 through the days of the Missouri Territorial government up to adoption of the Missouri Constitution of 1820.

Historical Review (cont. from page 1)

as modified by edicts of the Kings of France. The Commandant of the Illinois settlements at Fort Chartres on the east side of the Mississippi had civil and judicial authority over the area on both sides of the river; and his decisions were subject to review by the judges of the Superior Council.³ In certain cases, the decisions of the Superior Council were subject to review by the Council of State at Versailles. During the period of French rule, there were so few permanent settlers in Missouri that it is unlikely there were many cases not settled by the local Commandant.

SPANISH RULE IN MISSOURI 1763-1803

Louisiana west of the Mississippi was transferred to Spain in 1762 and all of the French possessions east of the river ceded to England in 1763, by the Treaty of Paris at the close of the Seven Years War, known in America as the French and Indian War. However, the formal Spanish assumption of control of Upper Louisiana took place in St. Louis on May

20, 1770.⁴ St. Louis had been founded in 1764 by a French Expedition from New Orleans and many French settlers from Illinois had moved across the river to Missouri to escape being under English rule, so that the population had increased considerably when Spanish Government began. The Spanish Governor at New Orleans, Count Alexander O'Reilly had an abridgement of the Spanish law prepared in 1770 and this was the legal code of the territory.⁵ The Spanish laws, like the French laws they replaced, were based on the Roman code. The titles of officials changed but their powers remained about the same. The government was organized on a partial military basis. The royally appointed Spanish Governor at New Orleans, who was also a General in the Spanish Army, selected a Lieutenant-Governor, subject to royal confirmation, who represented him in the district of Upper Louisiana, including the Missouri area. The Lieutenant-Governor, who was an officer of the Spanish Army, was stationed at St. Louis and had the responsibility for the administration of justice. He appointed a Commandant over each of the five districts of Upper Louisiana. (St. Louis, St. Charles, Ste. Genevieve, Cape Girardeau and New Madrid.) The Commandant had judicial as well as administrative and military powers, and heard civil and criminal cases with right of appeal to the Lieutenant-Governor.⁶ There were also several officials in each district, appointed by the Commandant, called Syndics who heard local cases with right of appeal to the Commandant. (Daniel Boone was a Syndic for the Femme Osage settlement in the St. Charles District.⁷) Arbitration was commonly used to settle business differences. The Lieutenant-Governor could conduct the arbitration himself or appoint arbitrators who would report their decisions to the District Commandant and it could be enforced by him.⁸

The Spanish system of judicial administration left little place for a lawyer. There was no right of trial by jury. Surviving records show that cases were started by the filing of a simple declaration of the complainant's grievance before the Commandant or the Lieutenant-Governor. The other party was informed of the complaint, the official heard both parties at once and a decision was rendered. Usually the case ended there. Appeals could be taken to the Cabildo, presided over by the Governor General at New Orleans, which superseded the French Superior Council; and further appeal could be taken to a judicial tribunal in Cuba and from this tribunal to the Audiencia of San Domingo, and from there even to the Council of the Indies in Spain.⁹

On October 1, 1800, Napoleon re-acquired Louisiana for France by the secret Treaty of San Ildefonso, and transferred it to the United States by the Louisiana Purchase Treaty, signed at Paris April 30, 1803. The Spanish Government encouraged immigration and many land grants were made by Spanish officials during this intervening period. These grants were a prolific source of litigation for half a century after the transfer to the United States. Congress passed an Act in 1804 declaring void all grants made after the transfer from Spain to France in 1800. A Special Commission was established to confirm grants secured from Spanish Officials before October 1, 1800 and settled upon prior to December

20, 1803, the date of formal transfer to the United States.¹⁰ Practice before this board was an important part of the law practice of early territorial days. The board began hearings in December, 1805 and made its final report January 24, 1812. It confirmed 1340 claims and rejected over 2000.¹¹ Later cases were settled in the United States District Court and some of them reached the United States Supreme Court.¹² There was also much litigation over these land claims in the early state courts.

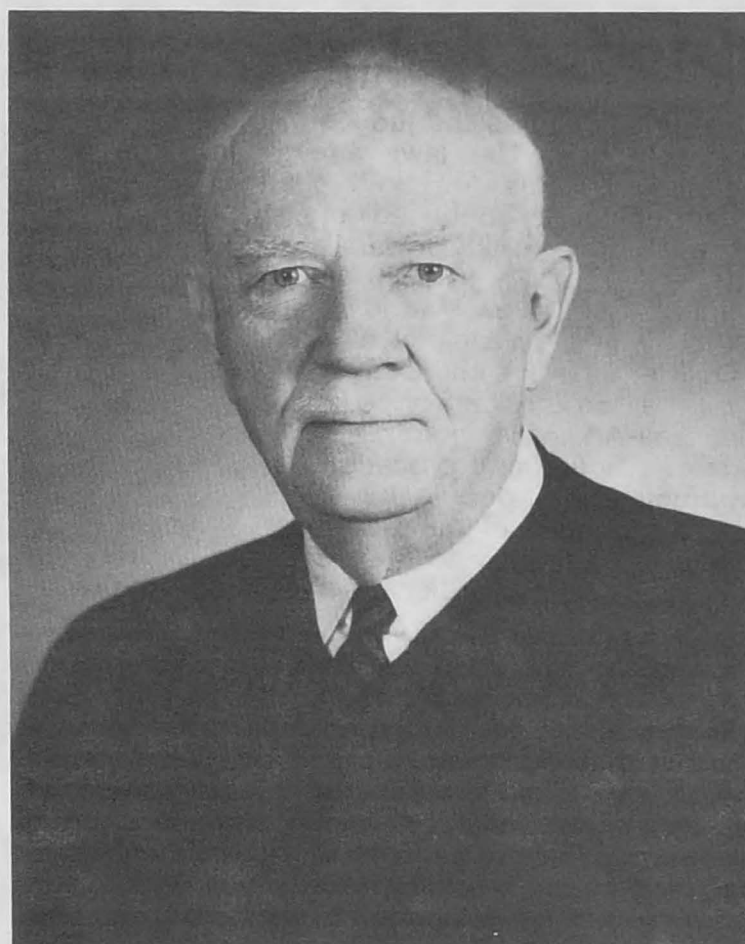
TERRITORIAL JUDICIAL SYSTEM 1803-1821

After ratification of the Louisiana Purchase Treaty Congress adopted an Act, approved October 31, 1803,¹³ authorizing the President to take possession of the territory ceded by France and providing that until the expiration of that present session of Congress, all military, civil and judicial powers, exercised by the officers of the existing government, should be vested in such persons and be exercised in such manner as the President should direct. Thereafter, Congress adopted another Act, approved March 26, 1804,¹⁴ creating the District of Louisiana to include all of the area north of the thirty-third parallel. (The area south of it was organized as the Territory of Orleans and later became the State of Louisiana.) This Act vested the executive power in the Governor of Indiana Territory and the legislative power in the Governor and three judges of that territory; and provided that the judges, or two of them, should hold court within the District twice annually. This Act also provided: "The laws in force in said District of Louisiana at the commencement of this Act, and not inconsistent with any of the provisions hereof, shall continue in force, until altered, modified or repealed by the Governors and Judges of the Indiana Territory, as aforesaid." Thus the Spanish civil law code was continued in effect.

COURTS OF THE DISTRICT OF LOUISIANA

The laws promulgated by the Governor (William Henry Harrison) and the Judges of Indiana Territory, October 1, 1804, provided for a system of courts which continued until 1812 when the Territory of Missouri was established. The highest Court was the General Court composed of the three territorial judges. In each of the five districts, established by the Spanish Governors, there were Courts of Quarter Sessions to try criminal cases, Courts of Common Pleas to hear civil cases, and Justices of the Peace. There was also a Probate Court with one judge in each District.

The Courts of Quarter Sessions were composed of the Justices of the Peace, or any three of them, appointed by the Governor for the district.¹⁵ They held sessions four times annually at the times specified. Appeals could be taken to the General Court. The Judges of the General Court had power to try criminal cases individually as Justices of the Assize, of oyer and terminer and of jail delivery, and had exclusive jurisdiction of all capital felonies.¹⁶ Attorneys were required to be licensed to practice by the General Court.¹⁷ The Justices of the Courts of Common Pleas were appointed by the Governor in such number as he deemed necessary for each district and any three of them could hold court.¹⁸



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There was also right of appeal from these courts to the General Court. Cases tried by a Justice of the Peace (jurisdiction limited in 1807 to cases not exceeding \$60.00; increased to \$90.00 in 1814) could be appealed to the Court of Common Pleas, if the amount involved exceeded ten dollars.¹⁹ In all criminal cases the trial was by a jury of twelve and in all civil cases the trial was by jury if either of the parties required it.

The Judges of the Common Pleas Courts were laymen and Governor Harrison appointed about an equal number of citizens of American and French descent.²⁰ It was important to have French citizens on these courts because the civil law usages and customs of the Spanish Government were followed in many commercial transactions and parol proof of them was frequently resorted to in trials. This situation continued until the later territorial days when the population of English-American descent became much larger.

COURTS OF THE TERRITORY OF LOUISIANA

There was much dissatisfaction among the people over being attached to Indiana Territory and after petitions were presented, Congress adopted an Act, approved March 3, 1805, organizing the District of Louisiana into the Territory of Louisiana.²¹ The Act vested the legislative power in the Governor and three judges of the new territory, but required trial by jury in all criminal cases and in civil cases of the value of \$100.00 if either party required it. The three judges were appointed for four year terms with the

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Historical Review *(cont from page 3)*

same jurisdiction as the judges of Indiana Territory previously had. The laws already in force were continued by this Act until changed. The same system of courts continued and chancery jurisdiction was added to the powers of the General Court October 26, 1810.²² In 1806, the southwestern part of the District of New Madrid was laid out into a new district named the District of Arkansas and Courts of Quarter Sessions and Common Pleas provided for it.²³ (The territory extended south to the present Louisiana-Arkansas boundary.) A comprehensive code of practice and procedure based on common law practice was adopted July 3, 1807.²⁴ At the same time, the Judges of the Courts of Common Pleas were given authority to hold Orphans Courts with jurisdiction over guardians, servants and apprentices.²⁵

COURTS OF THE TERRITORY OF MISSOURI

Congress by an Act approved June 4, 1812 provided that the territory called Louisiana should thereafter be called Missouri.²⁶ The legislative power was vested in a General Assembly composed of the Governor, a legislative council of nine members appointed by the President for five year terms, and a house of representatives of 25 members elected for two year terms. The General Assembly was authorized to establish inferior courts and prescribe their jurisdiction. The judicial power was vested in a Superior Court, inferior courts and justices of the peace. The Superior Court was the highest court, replacing the former General Court, and had three judges appointed by the President for four year terms. An amending Act approved April 29, 1816,²⁷ authorized the General Assembly to require the Judges of the Superior Court to hold circuit courts composed of one of the judges and appoint the times and places of holding court, and provided that the circuit courts should have jurisdiction of all criminal cases, original jurisdiction in civil cases of the value of \$100.00 and chancery powers as well as common law jurisdiction in all civil cases.

The territory was divided into counties, which replaced the former districts and were soon increased in number to seven.²⁸ On August 20, 1813, an Act of the General Assembly provided for a Court of Common Pleas of three judges in each county.²⁹ The judges were appointed by the Governor for four year terms and any two of them could hold court. They had the same powers and jurisdiction previously provided for judges of district courts of common pleas, quarter sessions of the peace, and orphans' courts and these courts were abolished. The new common pleas courts were also given full probate jurisdiction. They were also given the power to hold special sessions for the purpose of performing the duties previously required of district or county auditors.³⁰ (December 29, 1813.) Thus they exercised some of the administrative functions later performed by county courts and this was the beginning of our county court system, a body that now has no judicial powers.

On January 4, 1815,³¹ the General Assembly established county courts composed of the justices

of the peace of the county, any three constituting a quorum, with the powers previously possessed by courts of common pleas relating to roads, taxes, and elections and jurisdictions over other concerns of the county. However, the county courts were abolished in 1816 and their duties transferred to the circuit courts; but they were reestablished in 1820 (with three judges and probate jurisdiction) but they were altered again after statehood to return to justice of the peace membership.³²

Circuit courts were also created (January 4, 1815) and two circuits (designated northern and southern) were established.³³ The judges were appointed by the Governor and were required to be "learned in the law." After 1815, the circuit courts displaced the common pleas courts as the principal trial courts of the territory. A third circuit (the northwest) was added in 1819.³⁴ The number of lawyers, with common law training had increased considerably by 1815 and they took the lead in getting the circuit court system adopted so that they might try cases before judges with legal training. The common law of England was adopted as the rule of decision in the territory January 19, 1816.³⁵ Thus the common law finally replaced the civil law in Missouri.

1. Encyclopedias — Americana Britannica; Houck's History of Missouri, Chapter IX.
2. 1 Shoemaker's Missouri and Missourians 86-89.
3. 1 Shoemaker 82; Houck, Chapter IX.
4. 1 Shoemaker 104.
5. English — The Pioneer Lawyer and Jurist in Missouri, Vol. XXI — No. 2 — The University of Missouri Studies 36.
6. English 37-28.
7. 1 Shoemaker 97.
8. 1 Shoemaker 111.
9. English 38; Houck, Chap. XVI.
10. English 39.
11. English 40-43.
12. Soulard Heirs v. U.S., 10 Peters 100; Mackay v. U.S., 10 Peters 340; Strother v. Lucas, 12 Peters 410.
13. 2 U.S. Statutes at large 245.
14. 2 U.S. Stat. 283.
15. Laws of a Public and General Nature of the District of Louisiana, of the Territory of Louisiana, of the Territory of Missouri and of the State of Missouri up to the year 1824 (1842 Ed.) p. 59.
16. Laws to 1824, p. 61.
17. Laws to 1824, p. 49.
18. Laws to 1824, p. 62.
19. Laws to 1824, p. 20, pp. 171-178, pp. 306-315.
20. English 48.
21. 2 U.S. Stat. 331.
22. Laws to 1824, p. 239.
23. Laws to 1824, p. 68. This was repealed in 1807, Laws to 1824, p. 179. The County of Arkansas was established in 1813, Laws to 1824, p. 293. For maps of the original District of Louisiana and the Territory of Missouri, showing the establishment of counties, see Official Manual of the State of Missouri (1943-44), pp. 1130-1136. The Territory of Arkansas was established in 1819 and the present southern boundary of Missouri fixed by Act of Congress. 3 U.S. Stat. 493.
24. Laws to 1824, pp. 105-125.
25. Laws to 1824, p. 140.
26. 2 U.S. Stat. 743.
27. 3 U.S. Stat. 328.
28. Laws to 1824, p. 293.
29. Laws to 1824, p. 272.
30. Laws to 1824, p. 291.
31. Laws to 1824, p. 345.
32. Laws to 1824, p. 449; Laws to 1824, p. 684; 1 R.S. 1825, p. 271.
33. Laws to 1824, p. 346.
34. English 55.
35. Laws to 1824, p. 436. Sec. 1.010, V.A.M.S. is substantially the same as this territorial Act.

Judge Blackmar Retires From Supreme Court



Judge Charles B. Blackmar retired from the Missouri Supreme Court on Wednesday, April 1, 1992. He had been appointed to the Supreme Court by Governor Christopher Bond in December, 1982 upon the retirement of Judge Robert Seiler.

Prior to his appointment to the Court, Judge Blackmar was a member of the faculty of the St. Louis University School of Law, a post he held for 16 years. Before assuming the role of 'teacher' Judge Blackmar practiced law for 18 years in Kansas City as a member of the law firm of Blackmar, Swanson and Smidgley, a firm in which his father was a founding partner. He also served as an assistant attorney general 1969-77 and as a professional labor arbitrator from 1967 to 1982. He held both of these positions while serving as a faculty member at the St. Louis University School of Law.

During his tenure as a law school professor, Judge Blackmar also served as appellant's counsel in the case of *In the matter of R.M.J.* This case, which involved Supreme Court rules controlling lawyer advertising, was carried to the U.S. Supreme Court which ruled in Judge Blackmar's client's favor.

A graduate of the University of Michigan School of Law, Judge Blackmar was admitted to practice in Missouri in 1948.

Trustees Meeting — April 25, 1992

A meeting of the Trustees of the Supreme Court of Missouri Historical Society was held in April, 1992 at the University of Missouri School of Law, Hulston Hall. Officers and Trustees attending were:

Ronald K. Barker
David Brydon
D.A. Divilbiss
Mrs. Sinclair S. Gottlieb
William H. Leedy
Honorable June P. Morgan
Honorable Robert G. Russell
Mrs. Avis G. Tucker
Thomas A. Vetter

Thomas Vetter presided; D.A. Divilbiss acted as Secretary. The President declared that a quorum was present for purposes of considering proposed amendments to the By-Laws previously sent to the Trustees pursuant to the By-Laws.

The following amendments to the by-laws were duly moved, seconded and unanimously approved:

Section 6, Article VII of the By-Laws is amended by adding the following: Members of the Board of Trustees may participate in a meeting of the

Supreme Court Judge Albert L. Rendlen Retires



Missouri Supreme Court Judge Albert L. Rendlen retired from the Supreme Court on April 7, 1992 upon reaching the mandatory retirement age of 70. He had served as a member of the Supreme Court since the time of his appointment by Governor Christopher Bond on January 5, 1977. Judge Rendlen served as Chief Justice from January, 1983 to July, 1985.

He succeeded Judge Lawrence Holman on the Supreme Court.

Prior to his appointment to the Missouri Supreme Court, Judge Rendlen had served on the Missouri Court of Appeals, Eastern District, from 1974 to the time of his appointment to the state's highest court in 1977.

From the time he was admitted to the Missouri Bar in 1948 until his appointment to the Bench, Judge Rendlen was engaged in the private practice of law in Hannibal as a member of the law firm of Rendlen, White and Rendlen, in which his father and brother were also members. He is a graduate of the University of Michigan School of Law.

Judge Rendlen has had a dual military career in addition to his legal and judicial roles. During World War II he served as a member of the U.S. Army during the invasion of France and Germany by the allied forces. Then, in 1951, he joined the U.S. Coast Guard Reserve in which he held a commission until he retired from the service with the rank of Commander in 1970.

Judge Rendlen also served as a member of the Board of Governors of The Missouri Bar from 1973 to 1975.

Trustees by telephone conference and such participation shall constitute the presence of such Trustee at the meeting.

Section 2, Article X of the By-Laws is repealed and a new Section 2 is adopted as follows: *Meetings and Quorum.* The Executive Committee shall meet upon the call of the President. Three (3) members of the Committee shall constitute a quorum at all meetings. Members of the Executive Committee may participate in a meeting of the Committee by telephone conference and such participation shall constitute the presence of such member at the meeting.

Section 1, Article X of the By-Laws is repealed and a new Section 1 is adopted as follows: *Membership.* There shall be an Executive Committee of the Board of Trustees, which committee shall consist of the President, who shall preside at all meetings; the three (3) Vice-Presidents and the Secretary-Treasurer. The

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Two New Members of Supreme Court

Governor John Ashcroft's final appointments to the Missouri Supreme Court recently took the oath of office. Following are remarks made by each of the new judges during swearing-in ceremonies.



A Kansas City practicing attorney, **WILLIAM RAY PRICE, JR.**, was sworn in as a member of the Missouri Supreme Court on Thursday, June 4, 1992. A member of the Kansas City law firm of Lathrop and Norquist, Judge Price was named by Governor John Ashcroft to fill the vacancy created by the retirement of Judge Charles Blackmar.

Judge Price, a native of Fairfield, Iowa, received his law degree from the Washington and Lee University School of Law in 1978. He was admitted to the practice of law in Missouri in 1978.

Judge Price has served as chairman of the Kansas City Board of Police Commissioners and is on the board of directors for the Family Development Center and the Citizens Advisory Panel on Foster Care for Missouri Children. After graduation from the University of Iowa, he had a year's fellowship at the Yale University Divinity School.

This is a truly special day for me and my family. It is all the more special because so many of the people that we admire and truly enjoy being with have come to share it with us.

The opportunity to be a Judge on this Court is a treasure to me. I need to thank many people for making this possible. Immediately, of course, I need

to thank the members of the merit selection commission for their selection of me as one of the panel members sent to the Governor. I also thank Governor Ashcroft for appointing me from the panel to become the Judge. He has always stood as an example to me, and I believe to many others here in Missouri, of a man of principle and faith with the strength and willingness to fight for what he believes.

I need to thank my mother and father as well. They gave me the values that had more to do with the good fortune I've enjoyed than anything else. I can never remember a time when hard work, fairness, truth, humility, compassion and common sense were not stressed.

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JUDGE STEPHEN N. LIMBAUGH, JR., was sworn in as a member of the Missouri Supreme Court by his father, Federal District Judge Stephen N. Limbaugh, Sr., on Wednesday, September 23, 1992. A native of Cape Girardeau, Judge Limbaugh had served as Circuit Judge in the 32nd Judicial Circuit since 1987. Prior to that he had served as Prosecuting Attorney in Cape Girardeau County and had been in the private practice of law with his grandfather and father in the law firm of Limbaugh, Limbaugh, Russell and Syler.

Judge Limbaugh is a graduate of Southern Methodist University School of Law. His grandfather, Rush H. Limbaugh, Sr., Missouri's oldest practicing attorney, celebrated his 101st birthday on September 27, four days after Judge Limbaugh took his seat on Missouri's highest court. He had argued his first case before the same court 71 years earlier. Judge Limbaugh dedicated the ceremony to his grandfather who was unable to attend.

Judge Limbaugh was appointed to the high court by Governor John Ashcroft to fill the seat vacated by retiring Judge Albert L. Rendlen.

For me, this is a day of thanksgiving, and to each of you I extend my heartfelt gratitude for your kindness, your friendship, and your prayers.

I am especially grateful to Governor Ashcroft and the members of the Appellate Judicial Commission who have expressed their confidence in me. Governor, as a judge, my utmost desire is to emulate your superlative example of selfless public service.

I see up front my dear friend Judge Bob Dowd. As most of you know, Bob and I were on the same panel of three persons selected by the Appellate

(continued on page 8)

Price (continued from page 6)

I owe a great debt to the lawyers of the Lathrop Norquist law firm, past and present. They trained me to be a lawyer. They showed me a tradition of public service. They taught me to demand excellence in the practice of law and to respect our partners, associates and clients. Lawyers like Bert Bates, Joe Stevens, Bill Leedy, Jack Headly, Bill Stapelton, Jim Tierney, and Bob Virden are rare indeed. The longer you know them, the more you respect them. The opportunity to have worked for and with them and the other lawyers at Lathrop was an honor to me no less than the honor I enjoy today.

It is not mere chance that with these men as examples, the younger lawyers in the Lathrop firm have excelled as well; John Maughmer has served as a federal Magistrate Judge and Kathy Vratil has just been nominated to become a federal District Court Judge in Kansas. I am certain that Tom Stewart, Bill Waugh and Jerry Riffel will continue to lead the Lathrop firm to a future as bright as its 120 year old past.

I am most thankful to my wife, Susan, and to my children, Emily and Joseph. They have always been my greatest source of joy and strength. All the time that I spent learning to be a lawyer, tending to the business of the law firm, serving on the Police Board, serving on the Truman Hospital Board and serving in other church and civic activities came from time I would otherwise have had with them. I have always thought that they have sacrificed more than I have for my interest in public service.

And, in one way or another, I need to thank most of you. I know I would not be here if I didn't have the help and friendship and support of nearly every one of you here. In many cases, it was your work that made me look good. In other cases, your friendship and support helped carry me over whatever burden or worry that otherwise troubled me at the time.

SPECIAL RECOGNITION:

Al Brooks
Cliff Sargent, and
Clarence Kelly.

For the past month, I not only started my work here, but I lived here as well. The first few nights I had trouble sleeping and I walked up and down these halls and in these courtrooms. All around me were portraits of men, some still living, but most long since dead. Men I know very little about, but that they were Judges who served justice, as now I will.

George Elliot described justice in this way:

"Who shall put his finger on the work of justice and say, 'It is there?' Justice is like the kingdom of God — it is not without us, a fact, it is within us, yearning." (Romola Book III, Chapter 67, page 497.)

People have yearned for justice from the beginning of time. Our earliest writings have been codes of law, whether of man, such as the code of Hammurabi or of God as the Ten Commandments. In an early prayer King Solomon asked of God:

"Give therefore to thy servant an understanding heart to judge thy people and discern between good and evil." (1 Kings 3:9)

From those of us from the Judeo-Christian tradition, the root of all justice comes from the very first chapters of Genesis. There, it is written that God created the world and that God said it was good and that God created us.

The idea that God created us delighted my children when they were very young. I remember them coming home from Sunday School proclaiming that we were all God's children, even mommies and daddies.

That idea has an awesome responsibility attached to it. If we are all God's children, then our duty to one another is great. As Judge Lawrence Cooke of New York said:

"This is the most hallowed type of work outside of the clergy. To determine the rights, property, life, civil duties of other people is sacred work."
(Sullivan County Democrat, 12-18-84)

As a judge in a court of law, perhaps I should not use so much religious language. But, the very root of my understandings of justice, regardless of the way it is stated, is that we were created to live together as a community and we are to respect each other accordingly. We must have the discipline, determination, and strength to make our laws, to enforce our laws, and to abide by our laws to this end. Whether we use religious terms and say we are all God's children and must love one another, or secular terms such as the words of President Lyndon Johnson, "Don't spit in the soup, we all have to eat," the idea is the same.

What then are the qualities of a good judge? There are three qualities that I will try to exhibit: fairness, values, and balance. First and foremost, judges must be fair. People must believe that they have a fair and equal chance to tell their side of the story, be they rich or poor, plaintiff or defendant, individual or corporation, black or white, prosecutor or accused. Whether they win or lose, they must believe they had a fair hearing and a fair chance for justice.

Second, judges must be clear in stating the basic values that must be upheld. The values that allowed our country to become great and that we cannot lose sight of now — family, work, individual responsibility, honesty, compassion, cooperation for the good of all, and, basic common sense.

Finally, balance. While the values that drive our decisions are fairly simple, the cases that come to this Court are usually complicated and present conflicting values. Where is the middle line that serves best all of our people and their various interests? When is compromise appropriate? When is it not? The great Judge Benjamin Cardozo said:

"It is when the colors do not match, when the references in the index fail, when there is no decisive precedent that the serious business of the judge begins."

(Nature of the Judicial Process 21 (1921))

As I stand here now, I cannot see into the future anymore clearly than any of you. I don't know what issues will arise or the decisions that will be made. But I can tell you that I will work my hardest with these other good Judges to find the best answers to make the best law that we can for the people of Missouri.

Limbaugh *(continued from page 6)*

Judicial Commission for this vacancy. At the time of the announcement of the panel, Bob and I made a pact of friendship that if he was chosen by the Governor, I would be present, front and center, at his ceremony, and likewise, if I was selected, he would attend my ceremony. Bob, I am proud to call you my friend, and I am honored by your presence.

For the past five years there are two people who have been indispensable parts of my professional life. They are present, and I would like to publicly acknowledge their loyal support: My Court Reporter, Sue Rogers, and my secretary, Nancy Sehle.

I am also grateful for the presence of the officers of the Missouri Bar Association, President Ortrie Smith, President-Elect John Black, and Vice President Dudley McCarter, as well as Executive Director Keith Birkes. My father and grandfather are past presidents of The Missouri Bar Association. I, myself, have attended every annual meeting of The Missouri Bar since my admission to practice, and for the balance of my career I pledge to continue my active support of the programs and functions of the integrated bar.

On my arrival to the Court, I have noticed a pronounced collegiality among its members. It has been apparent to me from the outset that these six judges are imbued with every quality expected of people of their office. I have been the beneficiary of their largesse. Already they have become more than mere colleagues; they are my mentors and my warm-hearted comrades.

I have had good fortune far beyond that which I deserve. Certainly the greatest blessing is my family. I would like to introduce first my dear wife Marsha. For more than 19 years of marriage, she has been my best friend. She is the love of my life. Next, are our two sons, Stephen, who is nine, and Christopher, who is eight. Come up guys. I knew from the day of their first visit to the chambers on the third floor that they would have no objection to the move from Cape Girardeau. They spent the visit not with me, but with Judge Duane Benton, running foot races up and down the hall. My brothers Jim and Andy are also here along with my niece Katie and my nephew J.P., my Uncle Manley and Aunt Mary, and cousin Pat. And several of you have asked about my cousin Rush. He and his brother David are unable to attend today because of a celebration dinner in New York, with a crowd as large as this, commemorating the fourth anniversary of his radio talk show. I cannot speak of my mother and father without becoming maudlin. Suffice it to say, that every moment of every day they have bestowed on me their unconditional love. Five years ago when I was sworn in as circuit judge, my father administered the oath of office, as he has done today. I said to the audience at that time, without trying to be trite or corny, that I want to be a judge like my father is a judge. I repeat that statement today. Those of you who have practiced before him understand the meaning of my message.

My grandfather, Rush Limbaugh, has been ill for much of the summer, and is still unable to travel. I wish that each one of you could know him as I do. Seventy-one years ago he argued for the first time before this Court and in this very room. His immense

enthusiasm for the teachings of law and the workings of the legal profession has fueled him through 76 years of active practice. He is a lawyer's lawyer, the model by which lawyers everywhere may successfully fashion their careers. Indeed their lives. At this point during the ceremony, it was my intention, with leave of the Court, to ask that my grandfather rise to be recognized, four days early, on the occasion of his 101st birthday, September 27. In his absence, I dedicate this day to him and to his honor.

For the last three weeks I have read briefs, heard oral arguments, and debated the merits of the cases with my fellow Judges. It is the most exhilarating, the most invigorating, the most challenging experience of my life. The privilege and responsibility of passing on the important and difficult issues of our times places me in a fiduciary relationship with the citizens of this state. I recognize and accept this public trust.

By what standards shall I be guided in the exercise and administration of that trust? I suppose it would be appropriate to expound upon my understanding of the role of government in our lives, or to preach of a philosophy of appellate judicial decision-making. But I prefer, instead, to tell you of the sage counsel of my grandfather, about an ideology that he professes, an ideology that provides, in part, the foundation for our civilized conduct. Couched in Christian terms, it can be transposed successfully to the doctrines of other religions, for it is an ideology that transcends all others. It is an ideology that compels respect for all people regardless of their gender, their race, their wealth or power, or even their abilities. My grandfather's instruction is to read each day from the Twelfth chapter Paul's epistle to the Romans.

Let me paraphrase:

We should not think of ourselves more highly that we ought to think.

Each of us is a part of the whole of humankind, an indispensable part, each contributing in a unique way to the welfare of the whole.

Through God's eyes, each person has a life of worth and dignity.

And, having gifts that differ according to the grace given to us, the true measure of our worth is not that we have gifts which are greater or lesser, it is how we use those gifts.

As Judge of this Court, these are the precepts and the ideals by which I will abide.

Thank you.

Trustees *(continued from page 5)*

immediate past-president shall be an ex-officio member of the Committee.

A discussion was held concerning the replacement of the frame on Judge Henley's portrait. The cost was estimated to be between \$800 and \$900. To help defray the cost involved, David Brydon suggested contacting the judge's family. Judge Morgan suggested contacting the artist, Chip Early. Ron

Barker suggested contacting former law clerks. It was the consensus of the group that the purchase of a new frame for a living former judge would not be appropriate but in view of the unique circumstances, the Society should proceed to arrange for replacement of the frame and undertake a special solicitation, beginning with Judge Henley's former clerks, to defray the expenses involved.

The adoption of the calendar year as the official year for membership was passed on a motion by Robert Russell and seconded by David Brydon.

There was a discussion about eliminating the office of Third Vice-President now that Wade Baker has resigned. No action was taken, but the consensus of the group was that we do not need this office.

A discussion of the history of the Supreme Court written by Gerald Dunne followed. President Vetter distributed copies of a Publisher's Agreement between the Society, Gerald Dunne and the University of Missouri Press. The Society would have all of the royalty rights to the book with ten copies to Professor Dunne. The President was authorized to execute the Publisher's Agreement on behalf of the Society. President Vetter told the group that his review of the manuscript revealed several problems including incorrect footnotes, inaccurate list of Supreme Court Judges etc. He informed the Trustees that the University of Missouri Press had advised that because of the condition of the

manuscript that it would not be published until 1993, although it will appear in their fall catalogue. President Vetter asked for approval to employ Nancy Ripperberger, a third year law student at the University of Missouri-Columbia and a member of the Law Review, to review and correct the footnotes. David Brydon suggested having someone review the manuscript. President Vetter suggested Professor William Fratcher be contacted with an offer to pay him. These suggestions were agreed to on a motion from Mrs. Gottlieb. Mr. William Leedy suggested trying to obtain copies of Judge Clark's notes on the court as a good record of the 19th century. He thought David Harrison might be contacted for them.

D.A. Divilbiss reported that an issue of the *JOURNAL* would be published in May. President Vetter mentioned Wally Richter's health problems and the possibility of paying him although he had refused an earlier offer.

President Vetter mentioned that a few of the portrait frames in the En Banc courtroom needed to be repaired. The cost was estimated at \$150.00 to \$200.00. Funds for these repairs were approved on a motion by Judge Morgan, seconded by David Brydon.

The last item was a brief discussion of the annual meeting. Suggested speakers were Dr. Jim Goodrich or Bob Priddy. The meeting would be held in the Fall probably in Columbia on a Saturday.

Henley Portrait

Three former law clerks for Supreme Court Judge Fred L. Henley have contributed funds for a new frame for the portrait of the judge which hangs in the Supreme Court building. Contributors are Deborah Daniels, Columbia, Joe Wellerth, Independence, and Albert Crump, Jr., Camdenton.

Maintenance and restoration of portraits of deceased judges which are on display in the Supreme Court Building are funded, in part, by the Supreme Court Historical Society. However, portraits of retired living judges are not included in this funding and their maintenance and restoration must be funded by other sources.

7th Annual Meeting Scheduled

The 7th Annual Meeting of the Supreme Court Historical Society will be held in Columbia on Saturday, Nov. 7, 1992. The evening meeting will be held at the Holiday Inn Executive Center, beginning with a reception at 6 p.m. followed by dinner at 7 p.m.

Bob Priddy, well known Missouri news reporter, author and historian will be the featured speaker at the dinner. Priddy, News Director of MissouriNet, is well known for his radio series "Across Our Wide Missouri." He has authored a number of books about Missouri history and Missouri historical figures.

Reservations for the dinner meeting may be obtained by contacting D.A. Divilbiss, Librarian, Missouri Supreme Court, Jefferson City, MO 65101.

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