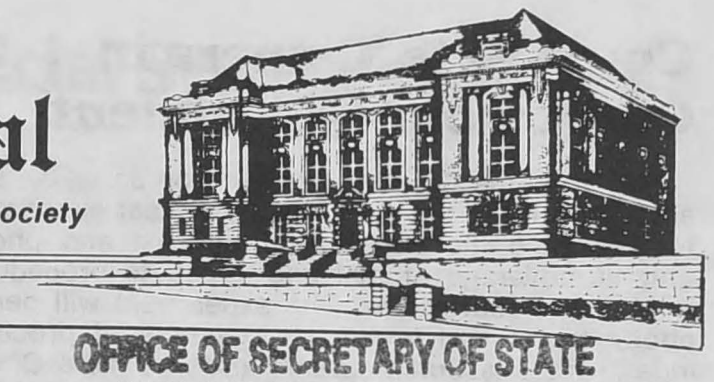
The Missouri Supreme Court
Historical Journal
Published by the Missouri Supreme Court Historical Society

Vol. 5, No. 1 Summer, 1993



The Importance of Preserving The Past

Excerpts from an address by Robert Priddy, News Director, Learfield Communications Network and historical author, at the Annual Meeting of the Missouri Supreme Court Historical Society, November 7, 1992.

The other day I was doing some research at the state library and renewed my friendship with a book edited by A.J.D. Stewart, published in 1898 by the Legal Publishing Company. *The History of the Bench and Bar of Missouri,* it is called."With Reminiscences of the Prominent Lawyers of the past and a record of the law's leaders of the present," it was subtitled.

It's a wonderful book that I wish I had in my library, about 700 pages of fascinating reading.

I got to thinking two things as I went through it.

1. I wish somebody would republish it. Perhaps as we near the centennial of the book's publication, somebody will.

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K.C. Star Columnist Annual Meeting Speaker

James J. Fisher, historical columnist for the Kansas City Star and regular guest of the McNeil-Lehrer Television Report, will be the featured speaker at the 8th Annual Meeting of the Missouri Supreme Court Historical Society. The meeting will be held on Saturday, October 23, 1993, at the Holiday Inn Executive Center in Columbia.

Mr. Fisher is a nationally-recognized authority on historical events and writes a column based on them which appears three times a week in the Kansas City Star. His recently published series of articles observing the 150th Anniversary of the opening of the Oregon Trail has won wide praise from readers. The series was based on his research in personally retracing the route of the Trail.

The address will follow the Annual Dinner of the Association.

Judge Ann K. Covington Named Chief Justice

In a history-making event, the Missouri Supreme Court elected Judge Ann K. Covington, the first woman member of the Missouri Supreme Court, to the office of Chief Justice. Judge Covington, who has been a member of the Court since December 1988, assumed her new role on July 1, 1993.

The new Chief Justice, a native of West Virginia, is a 1963 graduate of Duke University and obtained her law degree from the University of Missouri-Columbia in 1977, the same year she was admitted to The Missouri Bar. Prior to her appointment to the Supreme Court, she had served as a judge of the Missouri Court of Appeals, Western District. She was in the private practice of law in Columbia from 1979 to 1987 and had served as an Assistant Attorney General from 1977 to 1979.

Judge Covington, who is married to Joe Covington, former dean of the UMC School of Law, spent the years from 1963 to 1965 teaching in Oxfordshire Schools in Oxford, England. She has been active in legal services and juvenile justice programs and has also served on the boards of many social organizations.

Court Sets 'Camera in Courtroom' Experiment

The Supreme Court of Missouri, on Jan. 20, 1993, adopted Rule 16 providing for a two-year experiment to determine the effects of broadcast and photographic coverage of trial and appellate procedures in Missouri courtrooms. The experiment will permit photographic and broadcast coverage of proceedings in the Missouri Supreme and Appellate Courts and in 11 designated circuit courts. The trial court experiment will be conducted in the trial courts in the First, Fifth, Thirteenth, Sixteenth, Seventeenth, Nineteenth, Twenty First, Twenty Second, Twenty Third, Thirty Eighth and Forty First Circuits.

Missouri apparently set a historical precedent in the 1950s when it became the first state in which a trial was covered by television. At that time, Judge Sam C. Blair permitted television station KOMU-TV, Columbia, to cover the murder trial of State vs. Varner. Excerpts of the trial were filmed, since video recorders were not yet available, and later broadcast. The coverage was directed by Phil Berk, News Director of KOMU-TV.

Judge Blair was able to permit such coverage without violating the Code of Judicial Conduct because the Code was not promulgated by the Missouri Supreme Court until Dec. 30, 1966. Although there were at that time no ethical or legal restrictions against photographic or broadcast coverage of courtroom proceedings in Missouri, voluntary observance of the ban suggested by the ABA Model Code was, with the one exception of Judge Blair in the Varner case, universally observed by Missouri judges.

While Missouri was apparently the first state in which a trial was televised, it was one of the last to permit such coverage by Rule of Court. In spite of recommendations by the Missouri Bar Board of Governors in 1978 that such coverage to permitted, and a request by the Missouri Broadcaster Association for a relaxation of the ban, forty-five other states acted to permit photographic and broadcast coverage in some or all of their courts prior to Missouri's Supreme Court action to experiment with relaxation of the rule.

Chief Justice Robertson being interviewed by Gene Hirsch, News Director, WRTH/WIL, St. Louis.

Supreme Court Hosts Court-and-Media Forum

During the past several years, the Missouri Supreme Court has undertaken to increase public understanding of the judicial system and, specifically, the role of the Missouri Supreme Court. In addition to a broad public education program undertaken by the judges through addresses and participation in educational seminars, the court has made a special effort to provide the media with information needed to more effectively report on court proceedings and decisions. One of these efforts has been an annual Court-and-Media Forum in which members of the media meet with members of the court to discuss legal and judicial events of current interest.

Judge Covington discusses work of the Critical Issues Committee with (from left) Bob Watson, Jefferson City News-Tribune, Judge Limbaugh, Judge Covington, Daryl Duwe, Learfield Network, and Doug Crews, Missouri Press Association.

On Tuesday, March 30, 1993, such a forum was held in Division 2 of the Supreme Court. Nearly 30 members of the broadcast and print media participated in the event. Supreme Court and circuit court judges took part in the discussion which covered such topics as the Critical Issues Committee, the Judicial Conference Legislative Steering Committee, the Nonpartisan Court Plan in Review and the role of the Missouri Bar.

The Forum was chaired by Chief Justice Edward D. Robinson. Discussions were headed by Judges Ann K. Covington, Stephen N. Limbaugh, Jr., William R. Price, Jr., Duane Benton and Circuit Judge Byron Kinder.

Historical Review of the Judicial System of Missouri

By
Hon. Laurance M. Hyde
Former Judge of The Supreme Court of Missouri

Part II

THE JUDICIAL SYSTEM UNDER THE CONSTITUTION OF 1820

The final court organization of the Territory was not substantially changed by the Constitution of the new state. The Superior Court became the Supreme Court, likewise with three judges and the Circuit Courts were continued. One innovation was a Chancellor with jurisdiction co-extensive with the state. However, that court was abolished by the first Constitution Amendment, adopted in 1822, and chancery jurisdiction placed in the Supreme Court and the Circuit Courts. Such inferior courts were authorized as the General Assembly might establish; and as many justices of the peace "as the public good may be thought to require" were authorized. It was also provided that inferior tribunals should be established in each county "for the transaction of all county business, for appointing guardians, for granting letters testamentary, and of administration, and for settling the accounts of executors, administrators, and guardians.[36]" The Courts of Common Pleas so important in early territorial days were not continued as a statewide system of courts. No doubt the new circuit courts had made them unnecessary.

The Supreme Court had appellate jurisdiction only, except that it was given general superintending control over all inferior courts and power to issue, hear and determine original remedial writs. The General Assembly was authorized to establish not to exceed four districts in which the Supreme Court was required to hold two sessions annually at a place fixed by the General Assembly.[37] The Circuit Court had jurisdiction over all criminal cases not otherwise provided for by law and exclusive original jurisdiction in all civil cases not cognizable before justices of the peace.[38] It had superintending control over inferior tribunals and justices of the peace.

SELECTION AND TENURE OF JUDGES

The Judges of the Supreme Court and the Circuit Courts were appointed by the Governor, with the advice and consent of the Senate, to hold office during good behavior and they were to receive not less than $2000.00 annually. Their compensation could not be diminished during continuance in office. Judges of these courts were required to have attained the age of 30 and could not continue after 65.[39] The courts were authorized to appoint their clerks who should also hold their offices during good behavior. Any of these judges could be removed on the address of two-thirds of each house of the General Assembly to the Governor for cause stated after notice and hearing before the General Assembly. The Judges were also subject to impeachment and could not be removed by address for any cause for which they might be impeached.[40]

The General Assembly, however, used another method of removing judges, namely, by Constitutional Amendment, which required a proposal by two-thirds of each house, publication in all newspapers three times at least twelve months before the next general election, and ratification by two-thirds of each house at the first session after the election. By this method, the offices of judges were vacated on four separate occasions between statehood and the Civil War; although on several occasions judges whose offices were vacated were reappointed.[41] These amendments were mainly due to the agitation for an elective judiciary, which was intensified by the Jacksonian movement of the eighteen-thirties to make all offices elective.[42] The first General Assembly proposed such an amendment which was ratified in 1822.[43] This amendment, which also abolished the office of Chancellor, provided that the compensation of the judges should be fixed by law and that the offices of the Judges of the Supreme Court and the Circuit Courts should expire at the end of the first session of the next General Assembly. Again in 1834, by the second amendment adopted to the Constitution of 1820, it was provided that the offices of all circuit judges should be vacated on January 1, 1836.[44] This amendment also provided for election of clerks of the circuit court in each county for six year terms. In 1848, by the fourth amendment to the Constitution of 1820, the offices of all the judges of the Supreme Court and Circuit Courts were vacated on March 1, 1849, and their tenure changed to twelve years for Judges of the Supreme Court and eight years for Circuit Judges.[45] They were still to be appointed by the Governor. In 1850, the advocates of election won; the sixth and seventh amendments to the Constitution of 1820 vacated the offices of all Supreme Court Judges and Circuit Judges on the first Monday in August, 1851 and reduced their terms to six years.[46] The new judges were elected on that date.

However, long before the tenure of judges was cut down, their common law authority to conduct trials was being gradually whittled away. One of the first important restrictions on trial judges, which was made a part of the criminal code, was to prohibit the judge from summing up or commenting upon the evidence, unless by request of both parties or their counsel, and allowing the judge only to instruct the jury as to the law of the case. This restriction is still a part of our code, as Section 546.380, V.A.M.S., requiring the judge to instruct the jury in writing. At the same time, the jury was given the power to assess punishment in its verdict and the court was required to pass sentence according to the finding

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of the jury. The court was allowed to exercise its own discretion only in cases where the jury failed to agree on the punishment. This is also still the law, now being covered by Sections 546.410-546.460, V.A.M.S. The act taking these powers from the trial court was approved January 12, 1831.[47] About this time, the Legislature also began to regulate in more detail the procedure of the courts. A complete code of criminal procedure was adopted in 1835, most of it in substantially the same form as it is today.[48] However, it was a well drafted progressive code for that time. Likewise, Missouri, in 1849, followed New York in adopting the Field Code of Civil Procedure.[49] This too was a progressive step, abolishing common law forms of action and distinctions between actions at law and in equity. It also removed many common law technicalities of pleading which had caused delay and unnecessary expense to litigants. It served for almost a century with very few changes until the recent adoption of our modernized code of civil procedure in 1943.[50] However, by these codes the making of procedural rules was removed from the courts to the Legislature.

CHANGES BY LEGISLATION

The Revised Statutes of 1825 provided for a judge of probate in each county (appointed by the Governor for four years) with exclusive jurisdiction over probate of wills, granting letters testamentary and over guardians of minors and persons of unsound mind.[51] A county court was also provided for, composed of not less than three nor more than seven of the justices of the peace of the county.[52] The county court had the administrative management of county affairs and property, taxes and revenue, paupers and prisoners and laying out, altering and discontinuing roads. By 1835, the justice of the peace membership had been abolished and the county courts were thereafter composed of three judges elected by the people of the county for four year terms.[53] The probate court had been abolished and the county court given full probate jurisdiction, the county court being a court of record with judicial powers in addition to its administrative functions. It remained a judicial court of record until the adoption of the 1945 Constitution, although its judicial functions were considerably limited after 1835. By 1845, a court of common pleas and a criminal court had been established in St. Louis County. The common pleas court had concurrent original jurisdiction with the circuit court in civil actions at law and had one judge appointed by the Governor for a six year term.[54] The criminal court had original jurisdiction of criminal cases with appeals to the circuit court; it had one judge appointed by the Governor (but nominated by the House of Representatives) for a six year term.[55] By 1855, there was also established in St. Louis County, a Land Court with exclusive original jurisdiction over recovery of real estate, enforcing liens thereon, partition and quiet title; a Law Commissioners Court with jurisdiction over actions on contracts, trespass and other law actions involving not to exceed $150.00 and to try misdemeanors, and a probate court with full probate jurisdiction.[56] The judges of each of these courts were elected for six year terms. Thereafter, probate courts and courts of common pleas were established in other counties by special acts. Some of the common pleas courts later provided for did not have a separate judge but were held by the circuit judge.

CIVIL WAR PERIOD

There were further ousters of judges from office on two occasions during the turbulent times of the Civil War. The Convention of 1861-1863, which became the provisional government of the state, replacing the elected executive officers who sympathized with the southern states, prescribed a test oath of loyalty to the Union for all state and county officers. The judges of the Supreme Court refused to take the oath and were ousted as were many other public officers.[57] Three new members of the Supreme Court were appointed January 13, 1862 by the Governor (Hamilton R. Gamble) chosen by the Convention. They were elected for full six year terms at the election of November, 1863, called by the Convention.[58] New circuit judges were also elected at that time. Conservative Union men controlled the Convention and won the election of 1863. However, the radical Union group controlled the Constitutional Convention called in 1865. This Convention vacated the offices of the judges of all courts of record by ordinance effective on May 1, 1865, and authorized the Governor to fill the vacancies by appointment for the remainder of their terms. The next election for judges of the Supreme and Circuit Courts was set by the Constitution for the general election of 1868. The Judges of the Supreme Court refused to surrender possession of the Court and its records and were forceably removed by the State Militia.[59]

THE JUDICIAL SYSTEM UNDER THE CONSTITUTION OF 1865

The greatest change made by the Constitution of 1865 in the judicial system, as it then existed, was the establishment of district courts of appeals. The Supreme Court still had the same powers and three judges elected for six year terms; and it was also still required to hold court in four districts established by the General Assembly.[60] A new provision authorized a special judge, agreed upon by the parties or appointed by the Court upon their failure to agree, to sit with the Court to decide any case in which the judges sitting should be equally divided and prohibited a judgment upon an equal division.[61] Advisory opinions upon important questions of constitutional law were provided for when required by the Governor, the Senate or the House of Representatives.[62] Appeals from circuit and inferior courts went to the district courts and the General Assembly was authorized to provide for appeals from the district courts to the Supreme Court. Five districts, outside of St. Louis County, were authorized and the district appellate courts were to be held by the judges of the circuit court, in the district, or a majority of them.[63] The circuit courts had the same

jurisdiction as before with one judge in each circuit except in St. Louis County, which was made a separate circuit with three judges, and these three judges sitting together constituted a district appellate court for St. Louis County.[64] The circuit judges were elected for six year terms but the Governor was authorized to fill vacancies by appointment until the next election in either the Supreme Court and the Circuit Court.[65]

The age qualifications for judges were left at 30 years but no maximum age was fixed.[66] Compensation of judges was to be fixed by law and could not be diminished during their terms.[67] A provision was retained which was added to the Constitution of 1820, by Amendment Five in 1849, authorizing a circuit judge of any other circuit to hold any term in a circuit case of vacancy, sickness or absence of the judge of the circuit or upon the request of the judge of the circuit.[68] The provisions of the 1820 Constitution for removal upon address of the General Assembly and for impeachment were retained.[69] Establishment of inferior tribunals was left to the General Assembly except that county courts, for the transaction of all county business, were required.[70] The Supreme Court and the district appellate courts were authorized to appoint their own clerks but clerks of all other courts of record were required to be elected for four year terms.[71] The district courts apparently did not work well because they were abolished by an amendment adopted at the election of November 8, 1870.[72] By another amendment adopted at the following general election, November 5, 1872, the Supreme Court was increased to five judges and their terms increased to ten years, and it was also provided that one judge should be elected to the Court every two years.[73]

THE JUDICIAL SYSTEM UNDER THE CONSTITUTION OF 1875

The Judicial Article of the 1875 Constitution was much more detailed than those of the two previous Constitutions.[74] It contained 44 sections, while the 1820 Judicial Article had only 19 and that of 1865 only 24. It was soon lengthened by the Amendment of 1884, authorizing three courts of appeals, and the Amendment of 1890, increasing the number of judges of the Supreme Court from five to seven and authorizing them to sit in two divisions. The appellate courts operated under the system set up by these two amendments for more than half a century. The final amendment of 1940 provided for nonpartisan selection and retention of appellate judges and the circuit judges of the two largest cities. The Constitution of 1875 was in effect during a period of great increase in population and development of commerce and industry in this state. The amendments made to the Judicial Article were necessary to increase the capacity of the courts to handle the increased judicial business growing out of these conditions. These amendments and the authorization of Commissioners (in effect providing additional appellate judges) were attempts to give the courts sufficient manpower to keep up with the growth of their dockets. The complete revision made by the Constitution of 1945 was finally necessary to meet these needs.

COURTS OF APPEALS ESTABLISHED

The Constitution of 1875 continued the Supreme Court with five judges elected for ten year terms with the same qualifications as before.[75] It had the same jurisdiction, except that the St. Louis Court of Appeals was established with appellate jurisdiction over four counties.[76] Appeals were authorized from it to the Supreme Court: "In all cases where the amount in dispute, exclusive of costs, exceeds the sum of two thousand five hundred dollars; in cases involving the construction of the Constitution of the United States or of this state; in cases where the validity of a treaty or statute of, or authority exercised under the United States is drawn in question; in cases involving the construction of the revenue laws of this State, or the title to any office under this State; in cases involving title to real estate, in cases where a county or other political subdivision of the State or any State officer is a party, and in all cases of felony.[77]" These provisions were later made the basis of the jurisdiction of the Supreme Court (as to appeals from all circuit courts) by the 1884 Amendment which gave the Supreme Court exclusive appellate jurisidction over all such cases and provided for appeals to the Courts of Appeals in all cases not included in these provisions.[78] The Legislature was authorized to increase or diminish the pecuniary limit of the jurisdiction of the courts of appeals.[79] This was increased to $7500.00 in 1909.[80] Judges of Courts of Appeals were elected for twelve year terms.[81]

It was provided that the judge oldest in commission should be Chief Justice of the Supreme Court.[82] However, as to courts of appeals, it was provided that the judge having the oldest license to practice law should be the presiding judge.[83] The provision as to the Supreme Court was changed by the amendment of 1890 which authorized the court to elect its Chief Justice and each division to elect its presiding judge.[84] The Kansas City Court of Appeals was established by the 1884 Amendment[85] and a third court of appeals authorized[86] but it was not established until 1909 when the Springfield Court of Appeals was created.[87] There was no appeal to the Supreme Court from the decisions of the Court of Appeals (as was originally provided for the St. Louis Court of Appeals) but the 1884 Amendment provided for certification to the Supreme Court for final decision when one of the judges of a Court of Appeals deemed its decision contrary to any previous decision of any one of the Courts of Appeals or of the Supreme Court.[88]

DIVISIONAL SYSTEM AND COMMISSIONERS

Establishment of the Courts of Appeals was a great aid to the Supreme Court by relieving it of appeals in misdemeanor cases and in civil cases involving limited amounts. However, more help was soon necessary and, by the Amendment of 1890, the Supreme Court was increased from five to seven judges and it was authorized to sit in two divisions.[89] The divisional system was an excellent improvement because it enabled the Court to hear and determine many more cases than could have been disposed of

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by the Court en Banc hearing every case. Few states have had as long experience with this system as Missouri and it has made possible the most efficient use of judicial manpower. The assignment of cases to each division was required to be made by the whole court,[90] except it was provided that Division Number Two should have exclusive cognizance of all criminal cases.[91] Judges were specifically designated for each Division (by the dates of their election) and thereafter were elected to the Division in which the terms expired.[92] Unanimous divisional opinions were final unless transferred to the Court en Banc on the order of the Division or unless a federal question was involved, in which case the cause would be transferred on application of the losing party.[93] If a judge of the Division dissented, the losing party likewise had the right to have the case transferred to Banc on his application. Of course, some cases were always assigned directly to Banc and never heard in Division. These were usually proceedings on original writs or cases of great public interest. Even with these measures, the Supreme Court was unable to keep up with its growing docket and further assistance was given in 1911 by authorizing it to appoint four Commissioners to sit with the court during the argument of causes, and to write opinions for adoption by the court.[94] Under the act their tenure was to be four years; the four commissioners were continued by legislative act in 1915[95] and in 1919 the number was increased to six.[96] It was reduced to four in 1923,[97] but increased again to six in 1927[98] and has remained at that number since. Commissioners usually sit with the divisions and they write many of the divisional opinions. For many years two commissioners have also been authorized for the St. Louis Court of Appeals and two for the Kansas City Court of Appeals.[99] Thus on the Supreme Court and the three Courts of Appeals, there are 26 judges and commissioners writing opinions. The assistance of Commissioners has enabled the appellate courts to get and keep their dockets on a current basis. A 1919 legislative report showed the following as to conditions in 1911, when Commissioners were first authorized: "Litigants in cases (appealed from the circuit courts as well as those certified up from the various courts of appeals) were required at that time to wait three years and two months on the average after the term to which their cases were returnable in the supreme court, before they could be heard."[100]

The Commissioner system has become well established and our Appellate Courts could not have kept up with their large dockets without their assistance.

TRIAL COURTS

The circuit courts were continued with substantially the same organization and jurisdiction.[101] By 1875, they had become firmly established as the greatly respected courts of original jurisdiction, replacing the earlier courts of common pleas except in a few places where these were continued as a matter of local convenience to cities larger than their county seat towns. Provisions more often were made for these to be presided over by the circuit judge and finally only the Cape Girardeau Court of Common Pleas remained as such a court with a separate judge. Authorization was also given for additional circuit judges in any circuit composed of a single county (which were the counties containing the larger cities) as the business should require.[102] Under this authority the City of St. Louis (which was authorized to separate from St. Louis County by this Constitution)[103] was eventually given 18 circuit judges, Jackson County (which includes Kansas City) ten, St. Louis County four, Buchanan County (which includes St. Joseph) three, Greene County (which includes Springfield) two, and Jasper County (which includes Joplin) two. It was also provided there should be a probate court in every county, which should be a court of record, and that such courts should be uniform in their organization, jurisdiction, duties and practice.[104] This was done to end the confusion then existing of diverse local courts (each with different jurisdiction) throughout the state. The jurisdiction of the new probate courts was specifically stated. County courts were also made courts of record, although meant to be mainly administrative bodies to transact county business, and the Legislature was authorized to prescribe their duties.[105] The Legislature gave them some judicial functions (such as condemnation of land for roads) with right of appeal to the circuit court. Justices of the peace were authorized, with their selection, number, powers, duties and duration of office left to the Legislature.[106] Municipal corporation courts were also authorized to exercise judicial power.[107] Other provisions of the Constitution prohibited creation of courts, or changing their jurisdiction or procedure, by local or special laws.[108] Two important changes were made by amendments to the Bill of Rights adopted in 1900.

One authorized the use of informations in felony cases as a concurrent remedy with indictments.[109] The other authorized verdicts by three-fourths of the members of the jury in civil cases in courts of record, and also permitted juries of less than twelve in courts not of record with two-thirds verdicts.[110]

36. Art. V, Const. of 1820, set out in V.A.M.S., Vol. 1, pp. 88-91.
37. Secs. 2-4, Art. V, Const. of 1820; The Supreme Court sessions were first held at four places near the Missouri and Mississippi rivers, namely, Jackson, St. Louis, St. Charles and Franklin.
38. Secs. 6-8, Art. V, Const. of 1820.
39. Secs. 13-15, Art. V, Const. of 1820.
40. Sec. 16, Art. V, Const. of 1820.
41. English 84-85.
42. English 90-92; Hyde-Judges: Their Selection and Tenure, 22 N.Y.U. Law Quarterly 389, 30 Journ. Am.Jud.Soc. 152.
43. Amendment Article I, V.A.M.S., vol. 1, pp. 100, 101.
44. Amend. Art. II, V.A.M.S., vol. 1, pp. 101, 102.
45. Amend. Art. IV, V.A.M.S., vol. 1, pp. 103, 104.
46. Amend. Art. VI & VII, V.A.M.S., vol. 1, pp. 104, 106.
47. Laws 1830-31, p.33.
48. R.S. 1835, pp. 471-499.
49. Laws 1848-49, pp. 78-109.
50. Laws 1943, pp. 353-397, V.A.M.S. §56.010 et seq.
51. 1 R.S. 1825, p. 269.
52. 1 R.S. 1825, p. 271.
53. R.S. 1835, pp. 155-157.
54. R.S. 1845, pp. 315, Chap. 42.
55. R.S. 1845, p. 318, Chap. 43.
56. 2 R.S. 1855, pp. 1587-1601 (Local Acts).
57. Shoemaker, Chap. 36.

58. Judicial Historical Data, Official Manual State of Missouri, 1949-50, p. 275.
59. Shoemaker, Chap. 37, pp. 949-950.
60. Art. VI, Secs. 106, Const. 1865, V.A.M.S., vol. 1, pp. 136-141.
61. Art. VI, Sec. 10, Const. 1865. This was continued in the Constitution of 1875, Art. 6, Sec. 11, but omitted from the Constitution of 1945. See, now, Const. 1945, art. 5, §9.
62. Art. VI, Sec. 11, Const. 1865.
63. Art. VI, Sec. 12, Const. 1865.
64. Art. VI, Secs. 13-15, Const. 185.
65. Art. VI, Secs. 8, 14 and 16, Const. 1865.
66. Art. VI, Sec. 18, Const. 1865.
67. Art. Vi, Sec. 20, Const. 1865.
68. 28 Mo.R.S.A. 253; Art. VI, Sec. 16, Const. 1865.
69. Art. VI, Sec. 19, Const. 1865.
70. Art. VI, Sec. 23, Const. 1865.
71. Art. VI, Sec. 22, Const. 1865.
72. V.A.M.S., vol. 1, pp. 151-153.
73. V.A.M.S., vol. 1, pp. 153, 154.
74. There were provisions about publication of opinions, Secs. 43 & 44; for election contests of judges and clerks, Secs. 30 & 39; and fixing terms of the Supreme Court and Court of Appeals, Secs. 9 & 14; all Art. 6, Const. 1875, see V.A.M.S., vol. 1, pp. 213-232.
75. Secs. 1-8, Art. 6, Const. 1875.
76. Secs. 12-20, Art. 6, Const. 1875.
77. Sec. 12, Art. 6, Const. 1875.
78. Art. 6, Am. 1884, Sec. 5.
79. Art. 6, Am. 1884, Sec. 3.
80. Laws 1909, p. 397.
81. Sec. 13, Art. 6, Const. 1875.
82. Sec. 4, Art. 6, Const. 1875.
83. Sec. 16, Art. 6, Const. 1875.
84. Art. 6, Am. 1890, Sec. 2.
85. Art. 6, Am. 1884, Sec. 2.
86. Art. 6, Am. 1884, Sec. 3.
87. Laws 1909, p. 393.
88. Art. 6, Am. 1884, Sec. 6.
89. Art. 6, Am. 1890, Sec. 1.
90. Art. 6, Am. 1890, Sec. 3.
91. Art. 6, Am. 1890, Sec. 1.
92. Art. 6, Am. 1890, Sec. 2.
93. Art. 6, Am. 1890, Sec. 3.
94. Laws 1911, p. 190.
95. Laws 1915, p.254.
96. Laws 1919, p. 284.
97. Laws 1923, p. 138.
98. Laws 1927, p. 157.
99. Commissioners were authorized for the St. Louis Court of Appeals in 1919. Lwas 1919, p. 277; and for the Kansas City Court of Appeals in 1927, Laws 1927, p. 151.
100. Report of Special Committee appointed to investigate the status of the Supreme Court Docket. Fiftieth General Assembly Journals, Vol. III, Appendix 1919.
101. Secs. 22-26, Art. 6, 1875 Const.
102. Secs. 28, Art. 6, 1875 Const.
103. Secs. 20-25, Art. 9, 1875 Const.
104. Secs. 34-35, Art. 6, 1875 Const.
105. Sec. 36, Art. 6, 1875 Const.
106. Sec. 37, Art. 6, 1875 Const.
107. Sec. 1, Art. 6, 1875 Const.
108. Sec. 53, Art. 4, 1875 Const.
109. Sec. 12, Art. 2, 1875 Const.
110. Sec. 28, ARt. 2, 1875 Const.

To Be Continued In The Next Issue

Importance of Preserving the Past *(continued from page 1)*

2. I wonder if the bar in Missouri has any thoughts about a similar volume that recounts the history of the bench and bar of Missouri in this century, as that book chronicled things from the last century.

The History of the Bench and Bar of Missouri, unlike many books of its time, is often more entertaining than you might think. And so tonight, as I talk about time — the passage of time — and the experiences we have as the hours tick away, I want to share with you the recollections of some of the people who come to life in that 1898 book.

I hope at the end, the point has been made that we are all historic figures, that our lives are as interesting and as valuable as the lives of famous people we've seen in our history books.

Herbert Winlock was an internationally-known Egyptologist. In 1920, he wrote in a publication of the Metropolitan Museum of Art about the discovery of a hoard of items in the tomb of a man named Meketra, in ancient Egypt.

"The beam of light shot into a little world of four thousand years ago, and I was gazing down into the midst of brightly painted little men going this way and that. A tall, slender girl gazed across at me perfectly composed, a gang of little men with sticks in their upraised hands drove spotted oxen; rowers tugged at their oars on a fleet of boats, while one ship seemed floundering right in front of me with its bow balanced precariously in the air. And all of this busy going and coming was in uncanny silence, as though the distance back over forty centuries I looked across was too great for even an echo to reach my ears."

Four thousand years is an eternity. Just saying it over and over again gives no conception of the ages that have gone by since that funeral. Stop and think of how far off William the Conquerer seems. That takes you only a quarter of the way back. Julius Caesar takes you halfway back. With Saul and David you are three fourths of the way, but there remains another thousand years to bridge. Yet in that dry, still, dark little chamber those boats and statues had stood indifferent to all that went on in the outer world, as ancient in the days of Caesar as Caesar is to us, but so little changed that even the fingerprints of the men who put them there were still fresh upon them. Not only fingerprints, but even flyspecks, cobwebs, and dead spiders remained from the time when these models were stored in some empty room in the noble's house waiting for his day of death and burial. I even suspect that some of his grandchildren had sneaked in and played with them while they were at that house in ancient Thebes.

Nearer to our own time, but equally interesting and of more current historical significance, let's take a look at some of Missouri's legal legends as profiled in Stewart's *History of the Bench and Bar of Missouri.*

James O. Broadhead is a former Missouri Congressman who once headed the American Bar Association. He later was the American minister to Switzerland.

"There was something adventurous and exhilirating in the life of a young lawyer in Missouri 55 years ago, who commenced his career as most of them did, with a horse, saddle, bridle and a pair of saddle

bags as his only possessions, except perhaps a copy of the Revised Code of 1835, Blackstone's Commentaries and a copy of Chitty's Pleadings. His ambition and his hopes were the incentives that stimulated his energies and opened up before him a bright future. For a while, at least, he depended upon his credit, and credit was freely given to any one who had an honest face, a correct deportment and industrious habits. It was a land of plenty so far as the necessaries of life were concerned, and when a young lawyer swept out his office, chopped his own wood and made his own fires, he was considered worthy of credit of one month's board at least . . .

"When eggs were six cents per dozen, beef three cents per pound, wheat from fifty to seventy cents per bushel and everything else in proportion, a lawyer could not expect large fees. Ten Mexican dollars to try an action of forcible entry and detainer, the most important case before a Justice of the Peace, after riding a distance of twenty miles, was considered a good fee."

Another prominent lawyer of the last century, W. O.L. Jewett, recalled fellow lawyer James R. Abernathy, the first Lawyer of note in Monroe County.

"His was a long and eventful career, as he lived to be over ninety. Like Rip Van Winkle, he slept for a number of years — six or eight. During this time he was in a semi-dormant state. At the end of the period he aroused himself and was livelier than ever before. This occurred about the time he was 85 years old. He was full of spirit and fun, enjoyed jokes and pranks, and this trait was even more marked in his old age than in his younger days. He never was very much of a lawyer, yet he had a long and varied practice. It is related that Judge Jack Gordon, himself a fine lawyer, was appointed to examine Mr. Abernathy when he applied for admission to the bar. He talked about the candidate and finding his legal knowledge deficient, asked him if he could sing and dance, which being answered in the affirmative, reported to the court that the candidate knew little of the common law but was hell on the statutes, and all through his career at the bar, Abbie relied on the statutes and paid little attention to anything else, save the Supreme Court reports."

John Fletcher Darby was a former mayor of St. Louis who wrote an autobiography late in the 19th century. He had come to Missouri just as this area was becoming American territory. He knew just about every famous Missourian who lived in the first 80 years of the 19th century in Missouri. His autobiography, republished a few years ago, is a wonderfully-readable account, filled with close-up and personal views of many people who are now just names in our history books. Darby was a lawyer who often handled cases in Jefferson City.

"It took me three days to make the trip from St. Louis to Jefferson City on horseback, crossing the Gasconade River at what was then called the town of Mount Sterling, the former and first county-seat of Gasconade County. At that time there was no ferry, and I was compelled to ford the river, which I did by holding on to the pommel of my saddle and holding my legs up out of the water, which came half-way up the saddle skirts.

"While at the seat of government, snow fell, on the 8th of January, to the depth of fifteen or eighteen inches, after which the weather turned intensely cold, so that when I reached the Osage River on my return trip, the river was full of floating ice, making it hazardous to attempt to cross in a flat-boat, and the men of the ferry utterly refused to undertake the trip. After waiting several hours, without any prospect of crossing, I rode through the woods, where there had been no road opened, and toiled through the deep snow several miles up the bottom lands on the margin of the Osage River, and stayed all night with another ferryman, named Shibley. Early the next morning he ferried me across that beautiful river."

David B. Hill wore purple spectacles, with side as well as front glasses. He was exceedingly fond of taking snuff, and talked through his nose. On one occasion he was sure he had discovered perpetual motion, and invited a good many lawyers to come down and see the model of the machine. When the gentlemen had arrived and were examining the piece of mechanism, Mr. Hill, taking out his stuff-box, said, "Now, gentlemen, (snuffing) it only wants a little more power on this side of the wheel, (snuffing) and it will then run to all eternity" (taking more snuff). Among the gentlemen who went to examine the machine was Joshua Barton, who was afterwards killed in a duel. Mr. Barton, after looking for a while at the invention, said, "Mr. Hill, I will tell you how to find out perpetual motion, and how it is to be demonstrated. Mr. Hill, just take hold of your breeches with your hands and lift yourself off the ground, and then, when you shall have done that, you will have found out the secret of perpetual motion." This remark from Joshua Barton caused Mr. Hill to cease any further explanation of his invention.

A.J.D. Stewart, who edited *The History of the Bench and Bar of Missouri,* recalled Nat C. Dryden as a genius. Dryden lived to be only 47 before he died in 1896.

"One of his characteristics was his extreme earnestness when conducting a case. Such was the depth of his feeling and sympathy, that the accused's own mother could not have been more sensitive to his client's danger than was the attorney. Merry and light-spirited as most other times, while defending a man for his life, a half-glance would reveal his solemn earnestness. He seldom gave play even to his scintiliant wit on such occasions, for he charged himself with the solemn obligation of saving a human life, and with one or two exceptions, he always did it. He was not a successful prosecutor, for his sympathies were too tender, and thus it was, in later years, that he seldom appeared elsewhere than on the side of the defense. He really convinced himself of his client's innocence, for trouble or sorrow never failed to touch his heart, and the heart thus convinced, led the mind.

" . . .in some quarters where the possession of money is the supreme test of success, his life may have been considered a failure, for he was an idealist and a dreamer, and believed there were things in life worthy and admirable outside of cold cash. He made much money, but he could not keep it, and while his life may have fallen short of success in the ability to accumulate worldly goods, to have been Nat C.

Dryden, and to have lived the forty-seven years of his life, were worth more to the world and to self, than a thousand years of narrow, sordid existence, with ignoble coin as its sole desire."

John W. Henry was a member of the state supreme court at one time.

"Several instances of gross insults offered by an attorney to an opposing counsel have come under my observation in this State: Insults so gross that the insulted party, obeying the impulse of manhood, struck the other in open court. Now I could not find it in my heart to condemn the man who struck the blow and if one attorney should give the lie to another, my inclination, as a Judge, would be to impose a fine upon him and not the one who resented it like a man, with a blow.

"In Missouri, to call one a liar is in public estimation, an aggravated assault, and the very next thing to breach of the peace. A lawyer can practice law without being discourteous to the adversary attorney, and this is a subject which the bar associations might with propriety seriously consider.

". . . Recently in a neighboring county, an attorney addressing a jury, denounced in severe terms, a witness whose father, maddened by the attack upon his son, assailed the attorney and was himself shot down in the courtroom by the party with whom he was in litigation. I am not prepared to say that the attorney's strictures upon that young man's testimony were not warranted by the evidence; but I do say his testimony might have been commented upon and its untruthfulness exposed, if false without the use of offensive epithets, in a manner to have impressed the jury and not enraged the parent. Let us all think of these things and cultivate courtesy at the bar. I am talking to you as if I were an old man, but young men can sometimes speak words of wisdom."

And another recollection from Judge Henry about another of his contemporaties, Judge William T. Wood.

"A scene once occurred in his court that has indelibly impressed upon my memory. William T., a lawyer of strong prejudice, of the Calhoun school of politics, was suing to set aside a sale of his lands, made during the war. I was acting as one of his attorneys and was sitting beside him. The opposing counsel was making severe strictures against him for waiting too long before bringing suit. The old man was deeply moved, so deeply in fact, that he slid down from his chair and died in a few moments. Judge Wood was so greatly affected that he adjourned court and the case was afterwards removed from his court . . . "

A few days ago I was in the chambers of the state supreme court, and spent a few minutes looking at the paintings of former members of the court. I stopped next to the familiar picture of one of the most storied members of the court of the past century, a man about whom numerous stories are told; Abiel Leonard, one of the great Cooper County lawyers whose face was once described as a mixture of "jaundice and jurisprudence."

Judge Henry remembered the time when a case was being tried in Randolph County in which the plaintiffs were trying to set aside a will.

"Mr. Leonard was one of the counsel and, in the progress of the trial, a female witness was giving damaging testimony against his client. He subjected her to a rigid cross-examination. She had testified that she had heard the old lady frequently would abuse the old man. Leonard asked her what the old gentlemen did when she would scold him. She said, "What do you do when your wife scolds you?" Said Leonard, "I just put on my hat and walk out of the room." "Yes, said the witness, and I have no doubt you very often put on your hat and walk out of the room, for I don't see how any woman could live with such a looking man as you without quarreling with him every day."

"This produced laughter at Leonard's expense, but he took it in good part. Judge Leonard was not a handsome man, about five feet eight inches high, a large head and a small body, a large face and a broad mouth, and heavy eyebrows that overhung large dark eyes. A woman would say he was ugly, but anyone would be struck with his appearance and set him down as a genius."

Most of the things I have shared with you tonight have been the personal recollections of various people. We all have those recollections, the things that we recall that add texture to our lives, our times, and an understanding of our professions or crafts.

I want you to think of your great grandparents. What do you know of them? The dates they were born, the dates of their marriages and deaths, where they're buried . . . Maybe the name of the ship they came to this country on. Perhaps you have an old hatpin of great grandmother's . . . great grandfather's civil war pistol . . . a picture of them, posed stiffly for the slow film of their time. But who were they, really?

Now think ahead to your great grandchildren. Will they have only dates of your beginning and end, a picture? Will those of you who have been members of the supreme court be like Abiel Leonard . . . a painting on a wall before which somebody stands one day and wonders what kind of a person that figure really was . . . What did you really think of the cases you heard . . . and I might note here that from the historian's viewpoint, the tired old comment from judges that "the opinion speaks for itself," is totally erroneous.

Laws are made, enforced and interpreted by human beings. Rulings do not appear in print on a page without being created by the diversity within the human mind and the conflicting ideas voiced around a conference table.

The law is human and the opinions do *not* speak for themselves. We do not know Matthias McGirk, the first chief justice of our supreme court, because of the formality of his opinions. We know his writings, but not the man. We know the results of his cases, but not the intellect that concluded them. We know his hand, but not his heart.

In our own lives, what will there be for our great grandchildren to understand of us . . . and more importantly, of our times. Our grandparents were as much real people as you and I . . . but they left us little that tells us who they were . . . and what contributions they made to the people we are.

But a century from now, if our descendants are to understand who they are, they should know who we were. If generations of judges and lawyers to come

are to understand their profession, then they should know the humanity of the profession now.

So tonight I give all of you an assignment. Write your autobiography . . . and if you don't want to write it, type it, tape it and place copies of the tape with this historical society, with the state historical society, and give copies to children.

Talk about the cases you handled as a lawyer, the cases you considered as a judge, the people who appeared in your courtroom and the kinds of people they were. Talk about growing up in your time, the things youdid, and the things that you hated. Describe the excitement of the first day in court, the drama of the toughest case you ever had, the sounds of the courthouse, the smell of the law school.

Think of the things we have shared tonight that make the people we have talked about more human:

- travels in adverse conditions, adventures in the paths of life, like those of John Fletchere Darby.

Maybe not being born in the log cabin, but what were the living conditions of the day.

- the first adventures in life, the first impressions, the surprises.
- the values learned, the colorful people, even colorful hypocrites, the teachings of religion
- remember trying to sleep on hot nights . . . the pleasant times in the country, the liveliness of cities, the books you read
- when a 20 or 30-mile trip was an adventure . . . remember the first movie, the first circus, the first airplane . . .
- reflections on aging . . . on those around you . . . on the progress of generations
- remembering the family, not just names, but what they did . . . the magic and music of them . . . the flavor of the quiet nights just before sleep.

Think about meeting someone 100 years ago, and what we'd think . . . feel, smell and see . . .

That's what your autobiography can provide . . . a chance for someone of the future to, in effect, meet someone of a century before.

And think about the opening of that old Egyptian tomb . . . and the beam of light that shot into that little world of four thousand years ago.

Your autobiography can be that beam of light for future generations . . . a beam that illuminates our times . . . and in doing so provides understanding to that future generation.

Don't be bashful about doing it . . . Too many people think they are not important enough for anybody to be interested in their life stories. But that is not your decision to make.

Begin with the understanding that you ARE important — of course I never met a judge or a lawyer who did not inately think he or she was . . . but believe you and your life are important enough to be of value to another generation in understanding our times and our society.

Think enough of yourself to share yourself with the future.

We are all historical figures. Our writings do not speak for themselves . . . unless they are about ourselves . . . .

Go to the supreme court room in Jefferson City and stand before Abiel Leonard and ask yourself, "Who as he?" And then ask yourself, "Who am I?"

And answer that question with your autobiography . . . Those you will never know will someday say "thank you".

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8th Annual Meeting of Missouri Supreme Court Historical Society

Saturday, October 23, 1993

Holiday Inn Executive Center - Columbia

6:00 pm Reception 7:00 pm Dinner

Featuring

JAMES J. FISHER

Historical Columnist for the Kansas City Star
Regular Guest on McNeil-Lehrer Report

Supreme Court of Missouri Historical Society
Treasurer's Report
November 6, 1992

Balance on Hand November 7, 1991

Checking Account	$ 5,067.53
Money Market Account	53,504.35
	$58,571.88

Income, November 7, 1991- November 4, 1992

Membership Dues	$ 6,860.00
Interest on Money Market Acct.	1,902.06
Contributions to Replace the frame on Judge Henley's portrait	890.00
	$ 9,652.06

Expenses, November 11, 1991-November 4, 1992

Holiday Inn Executive Center — 6th Annual Meeting	1,025.16
Brown Printing — Letterhead	137.94
U.S. Postmaster — Bulk Mail Permit	75.00
Shawn's — Lunch Meeting — President, Editor & Secty/Treas.	25.00
U.S. Postmaster — Postage for JOURNAL and Invitations	139.39
Western Manuscripts — Photos for Dunne's book	16.00
Gail Holt — Transcribe tape interview with Judge Barrett	65.00
Full Spectrum — Photos for Journal	13.28
University of Mo. Law School — Box lunch, Trustees meeting	72.00
Roy Blunt, Secty. of State — 1992 Annual Registration Fee	1.00
Modern Litho — Printing JOURNAL and brochures	1,321.19
Capitol Projects — Mailing JOURNAL	5.97
Nancy Ripperberger — Correcting errors in history of the court	875.00
Bonnie Whittier — Repair frames of former judges	100.00
Professor Gerald Dunne — Reimbursement for photos for book	26.48
Zeal Wright — Replace Judge Henley's frame	890.00
	$ 4,788.41

Balance on Hand — November 5, 1992

Checking Account	$ 3,079.12
Money Market Fund	60,836.99
	$ 63,916.11

Allocation of Funds on Hand

Herman Huber Memorial Fund	525.00
Unrestricted Funds	63,391.11
	$ 63,916.11

The Missouri Supreme Court Historical Journal

Published periodically by The Missouri Supreme Court Society
P.O. Box 448 Jefferson City, MO 65102

Nonprofit Org.
U.S. Postage
PAID
Jefferson City, Mo.
PERMIT NO. 181