

# The Missouri Supreme Court Historical Journal

Published by the Missouri Supreme Court Historical Society

Vol. 5, No. 2

Winter, 1994



## Judge John Rice Jones *A Living Chronicle of Passing Times*

By  
Floyd C. Shoemaker

*Editor's Note: The Following address was delivered by Floyd C. Shoemaker, then Director of the Missouri Historical Society, on June 11, 1963, at the John Rice Jones Luncheon of the Potosi Bicentennial Anniversary Observance.*



Man's interest in his personal past is perhaps even deeper than his concern over his future, yet he usually does little to preserve it beyond placing a sepulchral rock in a private or public graveyard. The John Rice Jones Luncheon of Potosi and the Washington County Bar stands as an isolated peak of appreciation of the dead 139 years after burial. Of course, Potosi still remembers the Texas Rangers who came here to take back the remains of the father of the "Father of Texas." The episode has not been forgotten. Nothing like that is likely to happen to the body of John Rice Jones, who was buried at the Catholic Burial Ground in St. Louis.

We know more about Moses Austin, the Connecticut Yankee, than John Rice Jones, the Welshman. But time will change that for the life of Moses Austin has already been featured in magazines and newspapers, while Jones still presents a challenge and man never

(continued on page 6)

## Chief Justice Proposes Automated Court System

Plans to automate Missouri's court system took another step toward fruition with the State of The Judiciary Address of Chief Justice Ann K. Covington to the 857th General Assembly. In her report on the state of the court system, Justice Covington outlined plans to integrate Missouri's statewide court system through a computerized



electronic network. Completion of the entire project is expected to take at least 10 years.

The goal of the project, the Chief Justice said, is to provide more efficient judicial services to Missourians at less cost. The total cost of the project which is expected to exceed forty-five million dollars is proposed to be funded with the imposition of a \$7 per case addition to court costs.

Key to the success of the project, Justice Covington has explained, is that it will be developed 'from the ground up' through involvement of circuit court judges, data processing personnel and court administrators who will work together to establish a system that best reflects the actual, practical needs of Missouri's 45 judicial circuits and the appellate courts.

The project will make it possible to better utilize scarce judicial personnel to administer and manage the court system. Through computers at multiple locations on the shared judicial network it will be possible to achieve a practically paperless workflow process for attorneys throughout the state. It will become possible for citizens to access court records and for attorneys to conduct judicial processes, file papers, conduct paperless transactions and use the system in other ways to serve clients more promptly and more efficiently at less cost. The judicial network will also be tied in with the state's criminal justice computerized data to provide prompt, accurate information for both prosecuting attorneys and defense lawyers.

Justice Covington's proposal this years was the third time it had been included in a State of The Judiciary Address. Then-Chief Justice Edward D. Robinson, Jr. had included an explanation of plans for the project in his State of The Judiciary Addresses to both the 86th and 85th General Assemblies.

# Historical Review of the Judicial System of Missouri

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

## (Conclusion)

*(Editor's Note: It should be noted that this article was written in 1952. Since that time a number of major changes have been made in Article 5 by subsequent Constitutional Amendments. These will be reviewed and updated in the next issue of the Journal.)*

### THE PRESENT JUDICIAL SYSTEM UNDER THE CONSTITUTION OF 1945

It will be seen from this review that there was a rather haphazard development of our judicial system. Changes and additions were made at times to meet specific problems and some courts and methods that did not work well were discarded. However, there was no real coordination achieved and we reached the twentieth century with the judicial department composed of a group of separate courts, almost as isolated from each other as in pioneer days when the state was first organized. The court system lacked unity and flexibility. There was no person or court charged with the duty of coordinating the whole judicial department and making it work efficiently. There were no provisions for transfer of judges, so that if some courts were overburdened and others had insufficient work, nothing could be done about it. Judges were nominated in political party primaries, ran as party candidates and were expected to contribute to party campaign funds. There can be no partisanship in the administration of justice and there should be none in the selection and tenure of judges. An attempt to modernize the constitution, and improve the judicial department, lost upon submission to the voters in 1924, after more than a year's work by a constitutional convention. Another movement for modernization was begun by the Missouri Bar in 1939 and resulted in the adoption of the 1945 Constitution. The first problem attacked was improvement in methods of selection and tenure of judges by a constitutional amendment.

### SELECTION AND TENURE OF JUDGES

Modern conditions require higher qualifications for the successful operation of government. Certainly there is no branch of the government in which high qualifications are more important than in the judicial branch. Judges, the same as persons in other positions requiring special knowledge and training, should improve with experience in doing their work, but in many states men are turned out of judicial office about as soon as they have learned how to do the job well. The party election system can work well in rural districts of small population where the voters can have personal acquaintance with the candidates for judicial office; but voters can have little informed basis for their decisions on judicial offices elected on state-wide tickets or in large cities; and, therefore, they take little interest in

them. The results turn on national political issues and not on the ability, record or qualifications of the judicial candidate. This was illustrated by our experience in Missouri, before the adoption of our non-partisan plan in 1940. In ten elections during the twenty years before the adoption of our new plan (1919—1939), only twice was a judge of the Supreme Court of Missouri re-elected to a second term after having served a full ten year term. In 1940, the people adopted the Non Partisan Court Plan Amendment, submitted on initiative petition.<sup>111</sup> This plan was re-submitted by the Legislature in 1942 and was retained by double the majority it received on the first submission. It was made a part of the 1945 Constitution without change except to place more judges under it.<sup>112</sup> Under this plan, selection is made by the Governor's appointment, but from a list of three names submitted to him by a selection commission.<sup>113</sup> The selection commission for the Appellate Courts (the Supreme Court and three Courts of Appeals), is composed of the chief justice of the Supreme Court as chairman, three lawyers elected by the bar, and three laymen appointed by the governor.<sup>114</sup> The six members, other than the chief justice, have six-year terms, staggered so that one term expires at the end of each year; and these members are not eligible to succeed themselves.<sup>115</sup> The lay members are appointed by the governor, one every two years, each from a different Court of Appeals district. The lawyer members are elected, one every two years, by the members of the bar of the Court of Appeals district which they represent. The ballots for the election of lawyer members are sent out by mail by the clerk of each Court of Appeals and returned to him to be canvassed by the judges or lawyers appointed by them. The selection commissions for the city trial courts have five members. They are the presiding judge of the Court of Appeals of the district in which the city is located as chairman, two laymen appointed by the governor; and two lawyers elected by the bar.<sup>116</sup> They also have six-year terms which are staggered so that the term of each member expires in a different year. Members of all commissions are limited to one term, they cannot hold any public or party office; and no governor can appoint all of these lay members because our governor has a four-year term and cannot succeed himself.

The next step, after a judge has been appointed from the list submitted, is that when he has served one year, the people vote at the next general election, following such year of service, upon the question of whether or not this judge shall have a full regular term.<sup>117</sup> (Trial courts, six years; appellate courts, twelve years.) Thereafter, a judge given a full term must, at the expiration of each term, submit his declaration of desire for another term to be voted on by the people. Likewise, all judges in office at the



time the amendment was adopted, at the end of the terms for which they were elected, had to be voted on by the people to get another term. At all such elections, the judges' names are placed on a separate judicial ballot, without party designation, the only question submitted being: "Shall Judge \_\_\_\_\_ of the \_\_\_\_\_ Court, be retained in office? Yes. No." Voting is by scratching one answer and leaving the other. Judges are prohibited from making any contribution to or holding any office in a political party or organization or taking part in any political campaign. Thus a judge has no opponent and runs against no political party, or national political policy, but only on his record of service on the bench. Unless that record is corrupt or obviously inefficient, there is every reason to expect that he would receive a favorable vote. Certainly, the voters may, if they desire, dispense with the services of a judge who has proven himself dispensable.

Our ten years experience with this plan has demonstrated its effectiveness to bring about a gradual and continuing improvement of the judiciary. It has taken our courts out of politics. Our political parties have respected it and have made no effort to influence elections under it. Judicial qualities have been substituted for party affiliations as the principal basis for selecting and retaining judges. Court dockets have been brought up to date, delays lessened and expense of litigation reduced because judges spend no time campaigning for reelection but are free to use all their time on their court work. Our judges can now always be working on the next case instead of on the next election. All this has increased the confidence of our people in the courts and raised the prestige of the Missouri judiciary throughout the nation. In at least half the states, Bar and Citizens Committees are working for the adoption of similar plans.

Our Constitutional Convention met in September, 1943. The committee which had sponsored the call obtained cooperation of the law schools and political science departments of our universities to do research work before and during the Convention. The delegates had been elected in the spring of 1943 and, at the suggestion of many of them, a joint committee of the Missouri Bar Association and the Missouri Judicial Conference worked throughout the summer of 1943 on the Judicial Article. When the convention met much helpful information had been assembled for its use. These joint committees submitted, to the Convention's Committee on the Judicial Department, a complete plan for revision of the Judicial Article. Other plans and proposals also were offered. The Convention's committees held public hearings weekly during its first five or six months, and the various articles were gradually worked out, and reported to the Convention. One notable fact about the Convention was that it never held a session behind closed doors or even a secret committee meeting. The result was one of the most progressive state constitutions ever adopted in the United States. No comment will be made on features other than the Judicial article, except to point out that the Bill of Rights, while retaining all the old safeguards, contains such up-to-date provisions as protecting freedom of communication of thought,<sup>118</sup>

## Supreme Court Librarian Retires



D.A. Divilbiss, Missouri Supreme Court librarian for the past 20 years, retired at the end of December. In the above photo, she is shown at work behind her large desk in the Supreme Court library. Mrs. Divilbiss, widow of former UMC Law School Professor John Divilbiss, was feted by Supreme Court judges, court personnel, lawyers and friends at a reception given in her honor at the Jefferson City Country Club.

When asked how many Supreme Court librarians had preceded her she replied that trying to determine the exact number was like trying to count how many angels could dance on the head of a pin! The act creating the State Law Library, as it was originally called, was passed in 1829. It designated the Secretary of State as Librarian. In 1843, the Clerk of the Supreme Court was appointed "ex officio" librarian. In 1845, Hampton L. Boon was appointed Librarian at a salary of \$2 per day for each day the legislature was in session.

There is no record of any other librarians until 1892 when J.W. Zivelly was appointed. From then until Mrs. Divilbiss' appointment in 1972, at least eight different persons occupied the position. However, there could have been more since there is a large gap between 1915 and 1942 when there is no record of anyone serving as librarian.

Although retiring from the Supreme Court library position, Mrs. Divilbiss will continue to serve as Administrator of the Supreme Court Historical Society and as Associate Editor of the Supreme Court Historical Society Journal.

---

whether by moving pictures, radio, or television, opening jury service to women,<sup>119</sup> authorizing the state to take depositions in felony cases,<sup>120</sup> and recognizing the right of labor to organize and bargain collectively.<sup>121</sup>

(continued on page 7)

# Supreme Court of Missouri Historical Society

## Treasurer's Report

### November 6, 1993

#### Balance on Hand November 5, 1992

Checking Account .....	\$ 3,079.12
Money Market Account .....	<u>60,836.99</u>
	\$63,916.11

#### Income, November 4, 1992-October 15, 1993

Membership Dues .....	\$ 7,472.00
Interest on Money Market Acct. ....	1,625.00
Proceeds from sale of Book .....	<u>1,140.89</u>
	\$10,237.89

#### Expenses, November 4, 1993-October 15, 1993

Speaker 7th Annual Meeting .....	\$ 500.00
Modern Litho Printing .....	2,995.82
Holiday Inn — Annual Dinner .....	1,200.38
Gateway 2000 — Computer .....	1,790.00
Brown Printing — Letterhead .....	125.00
Joseph Steward, Esq.. Overpayment on Dinner .....	8.00
D. A. Divilbiss — Computer Printer, Software and Surge Protector ....	500.99
U.S. Postmaster — Bulk Rate Permit and Postage for all Mailings .....	285.25
University of Missouri Press — Dunne's Book for Signing Ceremony in St. Louis .....	826.33
President Thomas A. Vetter — Parking and Photocopies — Book Signing, St. Louis .....	20.90
Wally Richter — Expenses for interviews with Rush Limbaugh, Esq. ..	201.05
Secretary of State — Registration Fee .....	1.00
Missouri Bar — Meeting Expense .....	50.00
D. A. Divilbiss — Recording/Transcribing Equipment .....	<u>64.48</u>
	\$ 8,569.20

#### Balance on Hand — October 15, 1993

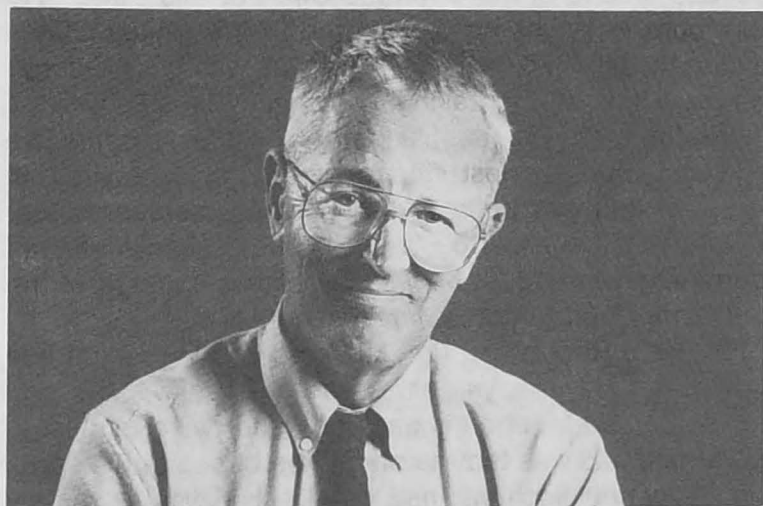
Checking Account .....	\$ 2,753.11
Money Market Fund .....	<u>63,460.99</u>
	\$66,214.10

#### Allocation of Funds on Hand

Herman Huber Memorial Fund .....	525.00
Unrestricted Funds .....	<u>65,689.10</u>
	\$66,214.10



## Minutes of the 8th Annual Meeting of the Supreme Court of Missouri Historical Society



The annual meeting of the Supreme Court of Missouri Historical Society was held October 23, 1993 at the Holiday Inn Executive Center in Columbia, MO.

President Thomas A Vetter gave a brief overview of the Treasurer's report which was approved. A copy of the report is published in this Journal.

The names of the four trustees whose term had expired, Richard Brownlee, Robert G. Russell, J.P. Morgan and Stuart Symington, Jr., indicated a willingness to continue to serve for another three year term. Unanimous approval was given on a voice vote.

President Vetter then gave a brief overview of the year's activities. He mentioned that the history of the Supreme Court written by Professor Gerald Dunne had become available in January 1993, and that President Vetter had obtained a 20% discount for all members. He mentioned a book signing ceremony with Professor Dunne held in St. Louis in connection with the Bar Association of Metropolitan St. Louis meeting in January 1993. The royalties from the sale of the book, to date, total over \$1,100.

The Society sponsored a tour of the Supreme Court building on April 7, 1993, in connection with the Missouri Bar Spring meetings. The attendance was small due to inclement weather. Arrangements have been made to repeat the tour in connection with the spring meetings scheduled for May 6, 1994.

President Vetter reported on the Trustees meeting held in St. Louis during the annual meeting of the Missouri Bar. He mentioned the advantages of meeting with the Bar Association as generating public exposure as well as a convenience for all trustees. Plans are to have a trustee's meeting in Kansas City in 1994. Actions taken by the trustees were to accept a gift of old docket books from David Harrison, whose grandfather, Albert M. Clark, was a judge on the Supreme Court from 1938-1960's, and to cooperate with the Missouri Bar in helping to celebrate the 50th anniversary of the integrated bar in connection with the Bar Meeting in Kansas City in 1994.

President Vetter introduced two guests, E.A. "Wally" Richter, Editor of the Historical Society Journal, and Sidney Larson, who has done all the work restoring portraits of former judges that are housed in the Supreme Court building.

President Vetter then turned the meeting over to the speaker, James J. Fisher, historical columnist for the Kansas City Star.

Fisher described his recent trip following the Oregon Trail in observance of its 150th Anniversary. He said he felt Missouri had missed a good opportunity to call attention to its importance as the trail's starting point during the historical anniversary celebration. Referring to it as "The Mother of Trails," Fisher said, "You'd never know it from the attention Missouri gives to its historical role in opening up this 2,000 mile roadway to the west coast. Many other states through which it passes do a much better job of calling attention to the trail's historical importance than Missouri does."

By failing to point up Missouri's key historical role as the starting point for the trail, Fisher said, "We are losing a good opportunity to develop a great tourist attraction."

### Frontier Justice



This detail for a mural being painted by Columbia artist Sidney Larson for the Boone County Courthouse, shows the sheriff meting out punishment in the case of State vs Maxie, 1825. Maxie had been convicted of stealing a heifer. His punishment consisted of 30 lashes, 30 minutes in the public pillory and a \$12 fine.

## Judge Jones (cont. from page 1)

rests until he meets and solves such a problem in fact or in fiction, by legend and story, or by figures and fancies—more closely related than even judges suspect.

And, now I rise to make this point: Judge John Rice Jones deserves all the honor you may give him and you who do him this honor deserve great credit. You are following in the way of the pioneer in blazing a new trail in honoring John Rice Jones. May I humbly and honestly compliment and congratulate you for no book has yet appeared on this first English speaking lawyer in Indiana and Illinois, first attorney general of Indiana Territory, president of the legislative councils in both Indiana and Missouri territories, a trustee of Indiana's first college at Vincennes and of Missouri's second academy at Potosi, draftsman and one of the Principal framers of Missouri's first State constitution, and member of Missouri's first Supreme Court.

In my "*Missouri's Struggle for Statehood, 1804-1821*," published in 1916, were gathered some of the facts of his life, which I summarized in an article on Judge Jones in *Missouri, Day by Day*, published by the State Historical Society of Missouri in 1942. Your Washington County history of 1888 has less than a half dozen references on him. The *Encyclopedia of the History of Missouri*, published in 1901, has an article of less than 200 words. Louis Houck gives a brief factual sketch. Bay in his *Bench and Bar of Missouri* does not mention Jones and even Darby gives him only a single line.

Just seventy-five years ago a well-known newspaper man of Jefferson City, name not given, in preparing a series of articles on Missouri's first Supreme Court for the Jefferson City *Daily Tribune* of December 19, 1888, wrote: "the writer has been unable to find anything of a biographical character concerning Honorable John Rice Jones . . ." And so on and on, except for an article by W. A. Burt Jones in the *Collections* of the Chicago Historical Society in 1890, little biographical material that is satisfactory has appeared in print. I hope the John Rice Jones Luncheon of the Potosi Bicentennial and the Washington County Bar will bring forth letters, unlock trunks with diaries, and induce descendants of your town and county founders to search and find. We cannot afford to follow longer the meager, two-work inscription on the original gravestone of Napoleon "HERE LIES." No name.

John Rice Jones was one of the ablest, most experienced, and best educated of Missouri's three score of lawyers of his day. His interests included law, politics, lead mining, land ownership, and education. His associates were such public men in Philadelphia as Dr. Benjamin Rush, the illustrious Benjamin Franklin, and the eminent lawyer Myers Fisher, General George Rogers Clark in Louisville, Governor William Henry Harrison in Vincennes, and Barton, Benton, and McNair in St. Louis, Henry Dodge and John Scott in Ste. Genevieve, and Moses and Stephen F. Austin, John Smith T., and Daniel Dunklin in Potosi.

The St. Louis *Enquirer* of Tuesday, February 3, 1824, carried this important obituary on Judge Jones:

DIED — In this City (St. Louis) on Sunday Morning, in the 65th year of his age, the Honorable JOHN RICE JONES, Judge of the Supreme Court of this State. He was born in Wales and emigrated to the United States during the Revolutionary war. He was with Gen. George Roger Clark at the taking of Vincennes and resided there for many years, filling many highly responsible offices. For the last fifteen years, he has lived in Missouri and has been a distinguished member of our Territorial Legislature and State (Constitutional) Convention. In 1820, he was appointed a Judge of the Supreme Court (and reappointed in 1822.)

He was a Republican (i.e., a Democrat) in thought and practice. He always felt above the vain show and pageantry of life, and his particular and dying request to his attendants was that he should be buried in the same simplicity in which he had lived. He was yesterday buried at the Catholic Burial Ground, attended by the Judges of the Federal and Circuit Courts, (which being in session adjourned for the purpose), and many respectable citizens.

The members of the St. Louis Bar entered into the following resolution:

At the meeting of the members of the St. Louis Bar, held in the Court House on Monday, the second inst. it was proposed and unanimously resolved that the members of this Bar, do wear crape on the arm for thirty days, as a mark of respect, to the memory of the Hon. John Rice Jones, late one of the Judges of the Supreme Court of the State.

ALEX. STUART, Chairman

A. MAGENIS, Secretary

John Rice Jones, one of fourteen children, was born in Wales, February 11, 1759. He was the oldest son of John Jones, Esq., a gentleman in good circumstances, of highly respectable social standing, and of an old Welsh family. Before coming to America John Rice Jones married Eliza Powell and on her death in Indiana he married Mary Barger. The oldest of his twelve children, Rice Jones, was a lawyer in Kaskaskia, where he was assassinated in 1808. The tragedy is said to have caused Judge Jones to move to Louisiana (Missouri) Territory in 1810, this is conjectural. Another cause of his leaving Kaskaskia may have been an arbitrary ruling of the Kaskaskia United States land commissioners disallowing his claim to several thousand acres of valuable land in Illinois. His claim was allowed his legal representatives by Congress in 1854.

Among his children were General John Rice Jones, postmaster general of the Texas Republic; General Augustus Jones, politician and successful businessman and landowner in Missouri and Texas; Honorable Myers Fisher Jones, politician, businessman, and farmer in Missouri and a large landowner and farmer - stock-raiser

(continued on page 9)



## Historical Review *(cont. from page 3)*

### SUPREME COURT'S RESPONSIBILITY FOR OPERATION OF ALL COURTS

Under modern conditions, it is essential that there be some head to a state judicial department. Some judge or court must be charged with responsibility for the efficient operation of the whole system. To accomplish this there must be authority to temporarily transfer judges from courts where the work is light to courts that are overburdened. The Judicial Article of the new Constitution gives our judicial system a real organization which makes it possible to handle efficiently the increased business which has followed the end of World War II. Our Supreme Court is given the responsibility for proper use of judicial personnel.<sup>122</sup> It may temporarily transfer trial judges to other trial courts or to the appellate courts. It can also increase the capacity of the appellate courts by creating temporary new divisions, manned by additional judges (either trial or appellate) called in to keep dockets on a current basis.<sup>123</sup> The Supreme Court is also given the authority to establish rules of both civil and criminal practice and procedure for all courts.<sup>124</sup> The jurisdiction, and power of the Supreme Court to review decisions of courts of appeals is broadened.<sup>125</sup> Justice of the peace courts are abolished and replaced by magistrate courts.<sup>126</sup> These are intended to be dignified courts, which should give people who have no contact with any other courts a better impression of our judicial systems. Citizen's rights are further safeguarded by providing that all final decisions, findings, rules and orders of any administrative agency, which are judicial or quasi-judicial and affect private rights, are subject to direct review by the courts.<sup>127</sup> It is also provided that, in all cases where hearing by an agency is required by law, this review shall include the determination as to whether the findings are supported by competent and substantial evidence upon the whole record. This broader review has superseded all previous limited review statutes. It has been extended to new agencies by an excellent administrative procedure act.<sup>128</sup> The necessity of real qualifications of learning and ability also has been recognized by requiring judges of all courts (eventually including probate and magistrate courts) to be licensed attorneys.<sup>129</sup> The fee system for compensation of judicial and enforcement officers is abolished and all such officers are to be compensated by salaries fixed by the Legislature.<sup>130</sup>

The new Constitution has greatly increased the responsibility of the Missouri Supreme Court, not only by making it the head of the state judicial system,<sup>131</sup> but also by giving it added duties which are unique in judicial history. This is most significant evidence of the confidence of the people of Missouri in the courts and affords new opportunities for improving the administration of justice. In addition to the rule-making power and authority to transfer judges, the Supreme Court is given the former duties of the Legislature to try impeachment cases and to hear election contests of the highest executive officers. Impeachment trials of all officers, except the governor or a judge of the Supreme Court, are

required to be tried before the Supreme Court.<sup>132</sup> Special commissions of judges would be chosen by the senate to try them. Contested elections for governor, lieutenant-governor and all other executive state officers are likewise required to be tried by the Supreme Court.<sup>133</sup> The matter of retirement from office of judges, who by reason of continued illness or physical or mental infirmity have become unable to properly discharge their duties, formerly left to the Legislature (by removal upon two-thirds vote of each house and approval of the governor) is decided by a special tribunal of three judges of the Supreme Court, one judge of each of the Courts of Appeals and three circuit judges, elected by the judges of the respective courts.<sup>134</sup> Appellate judges cannot serve beyond the age of seventy-five.<sup>135</sup> Under this new system our Supreme Court has caught up with its docket (which twenty-five years ago was almost three years behind) and is keeping it on a current basis. Moreover, during the last five years, the court usually has commenced each session without having any undecided cases remaining under submission. The few undecided cases were mainly those in which the judges had disagreed as to the result to be reached.

### TRIAL COURTS AND OTHER PROVISIONS

There were no substantial changes in the 1875 provisions concerning the circuit courts except that the authority was broadened for a circuit judge to sit in another circuit at the request of a judge thereof.<sup>136</sup> However, the Convention was careful to make provisions for improving courts of limited jurisdiction handling small claims, trying misdemeanors and holding preliminary hearings in felony cases. It provided for magistrate courts that should be real courts. All the judges must eventually be lawyers.<sup>137</sup> (In the transition period certain judges of the peace and probate judges who are not lawyers are eligible.) Their compensation is by salaries, and all fees collected go to the state.<sup>138</sup> In rural counties under 30,000 inhabitants, the probate judge is also judge of the Magistrate Court, so that in these smaller counties the two courts are combined; but in larger counties there is a separate magistrate court.<sup>139</sup> In counties over 70,000 there are two magistrates and in larger counties an additional magistrate for each additional 100,000 or major fraction thereof. The jurisdiction of each magistrate is county wide, and the magistrates may organize into one court with divisions. In counties under 70,000 the magistrate courts have concurrent juvenile jurisdiction with the circuit court and the powers of a circuit judge in chambers.<sup>140</sup> These courts also handle traffic cases except in the largest cities. These constitutional provisions have been supplemented by a comprehensive Magistrate Courts Act adopted by our Legislature in 1946.<sup>141</sup> The judge of a Magistrate Court is an important judicial officer and it is intended that people who go to that court will have assurance that their case (no matter how small) will have the consideration of a competent, well qualified judge.

However, all improvement was not left to the Constitutional Convention. Our 1943 Legislature

*(continued on next page)*

## Historical Review *(cont. from page 7)*

made a fine record of progressive legislation. It adopted a new code of civil procedure, bringing into Missouri procedure many of the improvements of the new federal rules.<sup>142</sup> It wrote a new modern corporation code.<sup>143</sup> It established a Judicial Conference of all trial and appellate judges, with an executive secretary and a permanent central office, giving the judiciary the organization and means to survey its own work, find its problems, and remedy its defects.<sup>144</sup> It also increased its own efficiency by creating a Legislative Council with a director and staff to aid in preparing legislation and to do research work between sessions.<sup>145</sup> This council was later made a constitutional body.<sup>146</sup> After the adoption of the new Constitution, the 1945 Legislature remained in session almost continuously for two years, revising the statutes to conform to constitutional changes. This was a monumental task performed at great sacrifice by the members. The last Legislature authorized the excellent 1949 revision of our statutes by the Legislative Research Council, made possible by a broadened constitutional provision,<sup>147</sup> giving us for the first time in the history of the state a permanent system of numbering the statutes. This is another outstanding improvement and will be a great help to Missouri lawyers, public officials and citizens.

### CONCLUSION

Improving the administration of justice must be a continuous process. The operations of the courts and their procedures must be frequently surveyed and tested to see if they are properly meeting the needs of the times. In a state as large as Missouri, with such complex conditions, this cannot be handled properly as a part time job. All these new responsibilities, including transfer of judges and rule making, must now be looked after on a part time basis by the Chief Justice, who has to write his share of the Court's opinions, with the assistance of the Secretary of the Missouri Judicial Conference, who also has much to do as Reporter of the Supreme Court in editing and publishing the official reports. The volume of work of the Supreme Court, not only to keep abreast of its increasing dockets, but also to do all of the administrative work of supervising the entire judicial system effectively, requires a full time administrative office with an adequate staff. The Administrator of such an office could work under the supervision of the Chief Justice and relieve him and the other judges of the details of the business of the courts. He could perform investigatory and management functions such as examining the state of the dockets of all courts, arranging for transfer of judges where courts need assistance, collect and compile statistics on the state of business of the courts, prepare and submit their budget estimates and supervise the research work required for rule making by the Court. Such an office has been found by experience in our federal judicial system to be essential to the efficient operation of the Judicial Department as an independent branch of the government.

In the Federalist papers, the founders of our government stated that a strong, well-qualified and independent judiciary was "equally requisite to guard the Constitution and the rights of individuals." This is essential to preserve our heritage of a government of laws and to prevent a government of men. We have twice in our generation fought in world wide conflicts to preserve the way of life our fathers established on this continent. But this cannot be done by war alone. It is less dramatic than war, but just as essential to make all of the institutions of our democracy function efficiently and fairly. None are more important than those responsible for the administration of justice. The challenge to the legal profession is to strengthen public confidence in our institutions by improving the administration of justice in both state and nation. This is particularly important at this time when our system of liberty and equal justice under law is challenged by a system of communistic dictatorship, threatening us both by force from without and by subversive influences from within. We have seen this cause the lamps of justice grow dim and become entirely extinguished in many part of the this troubled world. It is our task to keep them shining brightly here. That must be the high purpose of the legal profession. We must not — we dare not fail.

111. Art. 6, Am. 1940, Sec. 107.
112. Sec. 29, Art. 5, Const. 1945.
113. Sec. 29a, Art. 5, Const. 1945.
114. Sec. 29d, Art. 5, Const. 1945.
115. Supreme Court Rule 10.
116. Sec. 29d, Art. 5, Const. 1945.
117. Sec. 29b, Art. 5, Const. 1945.
118. Sec. 8, Art. 1, Const. 1945.
119. Sec. 22b, Art. 1, Const. 1945.
120. Sec. 18b, Art. 1, Const. 1945.
121. Sec. 29, Art. 1, Const. 1945.
122. Sec. 6, Art. 5, Const. 1945.
123. Sec. 7, Art. 5, Const. 1945.
124. Sec. 5, Art. 5, Const. 1945.
125. Sec. 10, Art. 5, Const. 1945.
126. Secs. 18-21, Art. 5, Const. 1945.
127. Sec. 22, Art. 5, Const. 1945.
128. Laws 1945, p. 1504, V.A.M.S. §536.010 et seq.
129. Sec. 25, Art. 5, Const. 1945.
130. Sec. 13, Art. 6 and Sec. 24, Art. 5, Const. 1945.
131. Sec. 2, Art. 5, Const. 1945.
132. Sec. 2, Art. 7, Const. 1945.
133. Sec. 5, Art. 7, Const. 1945.
134. Sec. 27, Art. 5, Const. 1945.
135. Sec. 25, Art. 5, Const. 1945.
136. Secs. 14-15, Art. 5, Const. 1945.
137. Sec. 25, Art. 5, Const. 1945.
138. Sec. 24, Art. 5, Const. 1945.
139. Sec. 18, Art. 5, Const. 1945.
140. Sec. 20, Art. 5, Const. 1945.
141. Laws 1945, p. 765, V.A.M.S. §482.010 et seq.
142. Laws 1943, p. 353, V.A.M.S. §506.010 et seq.
143. Laws 1943, p. 410, V.A.M.S. §351.010 et seq.
144. Laws 1943, p. 514, V.A.M.S. §§476.320-476.390.
145. Laws 1943, p. 632, V.A.M.S. §23.010 et seq.
146. Sec. 35, Art. 3, Const. 1945.
147. Sec. 34, Art. 3, Const. 1945.



## Judge Jones *(cont. from page 6)*

in Texas; George Wallace Jones, first United States Senator from Iowa; William Powell Jones, who at the time of his death was a passed-midshipman in the United States navy. His daughters Eliza Jones married the Honorable Andrew Scott, Federal judge for Arkansas, and Harriet Jones married Thomas Brady, a successful businessman of St. Louis, and after his death married the Honorable John Scott of Ste. Genevieve, Missouri's first congressman. Judge Jones' eldest daughter, Maria, never married and died among relatives and friends in London at an advance age. One son died in infancy and another son and daughter died at an early age.

John Rice Jones spent his first twenty-five years in Wales and England. He was educated in Oxford, took up the study of law and medicine, married, had four children, and practiced law in London. He came to America in 1784, where he lived his remaining forty years — two each in Philadelphia and Louisville, nine in Vincennes, thirteen in Kaskaskia, and fourteen in Ste. Genevieve, St. Louis, and Potosi, Missouri. In his eight places of residence outside his native Wales he formed friendships with outstanding men, who forwarded his fortune.

He was said to have been one of the wealthiest men and one of the largest landowners in the Mississippi Valley. Was he wealthy when he died? Or, had the War of 1812 and the panic and depression of 1819-1822 cleaned him out like it had Moses Austin, who had been a partner of Judge Jones in lead mining and in the founding of Potosi as a countyseat, and who went to Texas to recoup his fortune. Judge Jones is reported to have paid taxes in 1808 on 16,400 acres in Monroe County, Indiana Territory, and later with Moses Austin owned 5,760 acres of rich mineral lands at Mine à Breton for which and some town lots the two were reported to have been offered \$150,000. Did the national crash wipe out all or much of this?

Recent research discoveries may lend belief to his declining fortune. These discoveries resulted from personal research in the contemporary newspapers from 1808 to 1827 and State records in the State Historical Society of Missouri by Mrs. Shoemaker and myself. The newspaper investigations on his declining fortune may be briefly stated as: 1. advertised sale of land for taxes; 2. advertised sale of land for debt; 3. advertised sale of land and other property in Washington County by Augustus Jones, administrator, to pay debts of John Rice Jones estate; 4. advertised sheriff sale of lots and houses — including the Missouri Hotel in St. Louis City, to satisfy claims against John Rice Jones in that city.

Judge Jones prospered on the frontier as a lawyer, politician, and landowner. His twenty-two years residence in Vincennes and Kaskaskia were fruitful in honors, influence, and wealth. Part of this success was due to his close friendship with William Henry Harrison, territorial governor of Indiana, and much came from his

practice as a lawyer. His fine education and exemplary moral habits brought respect and influence. He had an acquaintance with Spanish and French law and was reported to be versed in mathematics. He was grounded in Greek and Latin and conversant with French and Spanish, English and Welsh.

In appearance he had a dark complexion and black hair and eyes. Although small he was erect and dignified. Neat in person he wore knee breeches and dressed his hair in an antique cue. He carried himself as a natural leader and was a forceful speaker. His strong passions and personal courage were assets on the frontier.

His proslavery views in the Vincennes proslavery convention of 1802, although then owned no slaves, and his advocating separation of Illinois from Indiana Territory impaired his influence and is said to have defeated him for election as a territorial delegate in Congress. He moved a second time to Kaskaskia in 1808, where he continued to practice law for two years.

On coming to Louisiana (Missouri) Territory in 1810, he prospered in partnership with Moses Austin in the lead business. They built the first reverberatory furnace in America, erected shot-towers, were forerunners in depth lead mining, and founded Potosi as a countyseat. Jones also was one of the incorporators of Potosi Academy, the second academy in Missouri.

In Missouri he successfully devoted himself to politics and business. In 1821 he wrote that he had not "been in the practice of the law for some time." His rise in public life was immediate and equaled his phenomenal success in business. He moved in the best circles in Potosi, St. Louis and Ste. Genevieve, and other Missouri towns south of the Missouri River. His ties were close with the lawyers and prominent businessmen of that day.

In the Missouri constitutional convention of 1820, when he represented Washington County as a delegate, John Rice Jones was made chairman of the legislative committee and then was given the most important assignment in the convention — chairman of the select committee to consolidate the reports, which were never printed or read on the floor, of the four committees appointed to frame a constitution. The select committee reported within twenty-four hours and this report became the groundwork of Missouri's first state constitution.

John Rice Jones had now reached the high plateau of his political influence as the trusted associate of the lawyers, traders, and businessmen of St. Louis and the settlements south of the Missouri River, opprobriously called the lawyer junto or St. Louis caucus. This ablest group in the convention also wielded power in Missouri's first two General Assemblies of 1820, 1821, and 1822. Its first slate which put Jones down for United States Senator and later possibly for chancellor did not go through as planned. He received nine votes in the First General Assembly for United States Senator or October 2, 1820, running fifth and preceded by Barton, Benton,

*(continued on next page)*

## Judge Jones *(cont. from page 9)*

Lucas, and Elliott and just ahead of Nathaniel Cook. On October 31 he was appointed clerk *pro tempore* of the House and on November 8 he was elected chief clerk of the House, which offices he resigned on December 1. He was confirmed by the Senate as a member of the Supreme Court on November 27, 1820, and although the last person nominated by Governor McNair was alone in receiving unanimous confirmation by the Senate. He was not, however, among the first three choices of the Governor, as has often been reported. Governor McNair submitted a total of six names before the three Supreme Court judges were filled by the Senate.

The high minimum salary provisions of \$2,000 for judges and the chancellor in the first constitution were unpopular and amendments to reduce the salaries and abolish the office of chancellor were introduced in 1821 and adopted by the Second General Assembly in 1822. As the constitution prohibited a reduction of salaries of the judges during their term of office a constitutional amendment was adopted to vacate the higher judicial positions. Lower salaries were then adopted and the positions were filled by Governor McNair reappointing and the Senate confirming the former occupants on November 20, 1822, among whom was Judge Jones. There was some criticism of the reappointment of Judge Jones on account of his age, he being charged with being over the constitutional limit of sixty-five years. The charge was ignored and he with the other appointees was unanimously confirmed by the Senate. Although the new salary for judges was only about one-half the former salary, it is probable that the economic depression and the importance of the position made even \$1,100 acceptable. He was a member of the Court until his death.

During these years Judge Jones was the dissenting judge of his day, according to L.C. Krauthoff of the Kansas City bar in his article "The Supreme Court of Missouri" in the *Green Bag* of April 1891. He participated in the decision of one hundred and forty cases. Eleven dissenting opinions by him are so reported, and four more lacked his concurrence. In thirty of one hundred and forty cases mentioned, he delivered the opinion of the Court. Krauthoff was unable to explain the low score of Judge Jones on delivering the opinions of the Court and his high number of dissenting opinions but suggested that proneness to elaborate dissent might clog a judge in writing opinions. He also mentioned Judge Jones' ill health toward the close of his career and his former inactivity in legal practice at the beginning of his service on the bench. Three-fourths of his dissenting opinions were delivered at his first term of court in April 1821.

He was an independent and combative thinker and came into sharp conflict with his associates on the bench over questions involving correct interpretation and application of legal principles and the provisions of

existing statutes to cases before the Court. The most consequential case was his position supporting the constitutionality of Missouri's "stay" law of 1821-1822, suspending executions for debt for two and a half years, following Circuit Judge Nathaniel Beverly Tucker's decision pronouncing the "stay" law unconstitutional in *Glasscock vs. Steen* in March 1822 in the St. Louis Circuit Court. The one case favorable to the "stay" law came from an appeal of Steen to Judge Jones for a writ to free him from debtor's prison. In a detailed opinion Judge Jones declared the "stay" law valid and ordered Steen's release from prison. Judge Jones based his argument mostly upon grounds of expediency of the law rather than upon definite constitutional proofs.

The panic of 1819 and the resulting depression had forced land values down from 50% to 95%. Men considered wealthy became bankrupt if in debt and even Moses Austin was put in jail as a debtor. The General Assembly passed a series of relief laws in 1821-1822 among which was a "stay" law, favored by farmers and landowners. Missouri was divided into two camps with Judge Jones one of the leaders of those wanting relief.

(Missouri's relief legislation has been carefully considered by James M. Primm in Harvard University Press, W.J. Hamilton in the *Missouri Historical Review*, and Elmer W. Williams in a term paper — unpublished — in the history department of the University of Missouri.)

Whether Judge Jones' sympathies for the debtor, his own self-interest, or his English training inclined him to support legislative supremacy *vs.* judicial interpretation is not clear. It brought criticism on him by the members of the bench. Judge Tucker at once made a vicious attack on Judge Jones in the contemporary press, accusing him of having worked for the passage of the "stay" law and with other landowners of having hoped to benefit from it.

The "stay" law was declared unconstitutional by the State Supreme Court in a case from Cooper County, Judge Jones dissenting. On recommendation of Governor McNair the law was repealed with other relief laws by the General Assembly in 1822 in clarification of conflicting opinions and decisions. But the legislature refused to admit the right of the courts to declare the law unconstitutional by rejecting a statement that the "stay" law was to be repealed because the Supreme Court had declared it unconstitutional. The pioneer and his leaders resented the interference of the United States Constitution in keeping him from securing relief from debt.

The historical importance of the Missouri relief laws of 1821-1822, including the "stay" or property law, lies in their interpretation under the United States Constitution. The laws were declared unconstitutional, null and void, and marked the first disagreement of its kind of Missouri with the Supreme Court of the United States.

Judge Jones died intestate, leaving no will settling his estate in Washington County, according to Attorney-at-Law Larry J. Casey of Potosi, who furnished me a facsimile copy of the entries in the probate court records of Washington County relating to the estate. While no





Judge Henry V. Westheus, swearing in Commisioners of the Supreme Court in 1959. Left to right, the commissioners are Lawrence Holman, Cullen Coil, Norwin Houser, Paul Barrett, Alden Stockard and Walter Boling.

final settlement case to light, several itemized appraisements of the court and invoices of sale were found which throw light on the economic and cultural position of Judge Jones. I regret the lack of similar data on his estate in St. Louis and other counties and have no knowledge of recorded property settlement on Mrs. Jones and the children.

The real estate appraisement ordered by the probate court of Washington County listed parcels appraised at \$6,950 including one parcel (Lot #6 in the Old Mines concession) valued at \$833 and appraised by the court in 1837, fourteen years after death of the deceased. The property was situated as follows:

1	Lot #6 in Old Mines concession	\$ 833.00
2	Lots in Caledonia	20.00
1	Lot in Potosi	5.00
1	Lot and House in Mine `a Burton	900.00
8	Lots in the "Handkerchief Tract"	2,742.00
50	Acres of land called "Jones Shaft"	400.00
200	Arpens land, near Old Mines	800.00
380	Acres, on Breton's Creek	<u>1,250.00</u>
		\$6,950.00

The personal property sold under order of the Court, April 17, 1824, brought \$708.63 and was almost equally divided between household furnishings, including a \$62 clock and a \$55 gold watch (the two highest priced

articles), and books. Listed in a separate court appraisement was "Sally a negro woman about 23 years \$250," who was not listed under invoice of sale, but her services of six months were listed at \$5.25 per month — \$31.50.

The recorded proof of the high educational equipment of Judge Jones is revealed in his library, comprising 238 items that sold for \$308.50. While books on law and legal procedure predominated, one is impressed with the collection of works on history, philosophy, chemistry, foreign language dictionaries, and English, French, Greek, and Latin literature. Belle lettres included such highlights of four great cultural nations as Bunyan, Cicero, Lucan, Ovid, Pindar, Plutarch, and French essayists.

Judge John Rice Jones was the educated man with the tastes of the student, a politician and lawyer who commanded the respect of the leaders of the bar and of business, a meticulous writer on the opinions of the court, and one not afraid to express himself fully and to the point. The territorial bar of Missouri was one of many eminent lawyers and John Rice Jones was primus inter pares. Your John Rice Jones Luncheon is worthy of the Bar of Washington County and the State of Missouri and an invaluable revelation of the inception of the Supreme Court of Missouri.

# Rhineland's Historical Site

By  
Judge Roy L. Richter  
Montgomery County Circuit court



I was recently a member of a small group who visited the burial plot of Missouri's first Supreme Court Judge Mathias McGirk, his wife and daughter. Some of McGirk's slaves are buried in the same plot. As a result of the efforts of the Missouri Judicial Body, McGirk's grave is now one of Missouri's historical sights.

The graves lie on a high knoll on the Missouri River bluffs near Rhineland, Missouri. The site commands a full view of a large area of bottom land, including the

original McGirk Island, which was owned by the judge.

Before settling here, McGirk had been a young lawyer in St. Louis. He practiced law only a few years before becoming a member of the territorial legislature. In 1816 he was the author of the bill to introduce common law into that body. In 1821, he became the first judge of the Missouri Supreme Court, a position he held until 1841. For most of his term on the court he served as Presiding Judge.

Judge McGirk held court in various parts of the new state of Missouri and during his travels he discovered the spot on which he later built his home. In 1827, he moved to the Rhineland neighborhood and in 1840, started building the large brick home on the hill just east of Rhineland. He lived just long enough to finish the home, dying in 1842. His wife died two years later. His only daughter at the age of five preceded him in death. All are buried on the site of the home which has since been torn down. Bricks from the home, which were made on-site by slaves, have been reused on a home in Montgomery City, now owned by Mr. and Mrs. Martin Fuller. One of the bricks from the original McGirk home has been presented to the Missouri Supreme Court Historical Society.

## The Missouri Supreme Court Historical Journal

Published periodically by The Missouri Supreme Court Society

P.O. Box 448 Jefferson City, MO 65102

Editor — E.A. Richter  
Associate Editor — D.A. Divilbiss

### Officers

Chairman of the Board ..... William H. Leedy  
President ..... Thomas A. Vetter  
First Vice President ..... Mrs. Sinclair S. Gottlieb  
Second Vice President ..... William A.R. Dalton  
Secretary-Treasurer ..... David Brydon  
Asst. Secretary-Treasurer ..... Mrs. D.A. Divilbiss

### Trustees

Warren D. Welliver  
Richard S. Brownlee III  
David E. Blanton  
William G. Guerri  
Ilus W. Davis  
Ronald K. Barker  
John S. Black  
Avis G. Tucker  
Senator Emory Melton  
June P. Morgan  
Stuart Symington, Jr.  
Robert G. Russell

Nonprofit Org.  
U.S. Postage

**PAID**

Jefferson City, Mo.  
PERMIT NO. 181