

P117

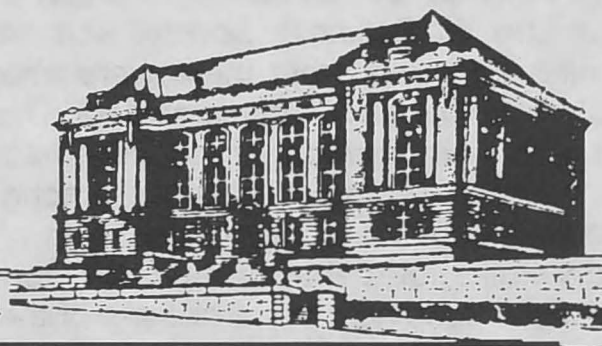
# The Missouri Supreme Court Historical Journal

Published by the Missouri Supreme Court Historical Society

Vol. 5, No. 3

OFFICE OF SECRETARY OF STATE  
MISSOURI STATE ARCHIVES

December, 1994



## A Conversation With Rush H. Limbaugh, Sr.

By E. A. Richter

The year is 1897, one year before the Spanish-American War. A six-year-old boy listens as his father and other members of the school board discuss problems of violence in the one-room rural school which he attends. Their discussion impresses the boy so much that he can't forget it, pondering what could be done to bring order out of the chaos which the violence is creating in his school. Eventually, he decides that "law" is the only solution and decides to become a lawyer so he can help bring order to society.

The young boy was Rush H. Limbaugh, Sr., who found his dream of becoming a lawyer fulfilled in 1916 when he was admitted to The Missouri Bar. Seventy-eight years later, I had the pleasure of two visits with him on which the following interview is based. At that time, Mr. Limbaugh, at the age of 102, was completing 77 years of active law practice and is believed to be the oldest lawyer in the United States still in the active practice of law.

Rush H. Limbaugh, Sr., who, at the time of this publication is now 103, is the senior partner in the law firm of Limbaugh, Russell, Syler and Payne in Cape Girardeau, Missouri. At the time of my first visit, in March, 1993, he was still working five eight-hour days every week. When I returned for a second visit in January, 1994, he had, on the advice of his doctor, cut back a bit

on the eight-hour day. He was now taking two hours for lunch followed by a short nap! However, he was still putting in his five days a week.

The following interview is based on more than six hours of discussions with Mr. Limbaugh. The first of the two interviews ran from 10 a.m. to approximately 2:30 p.m. As we approached the noon hour on this day, I suggested we break for lunch so he could rest a bit. Instead, he suggested that we work through the lunch hour, which we did after he ordered lunch sent in. The second interview lasted about two hours.

It should be explained that editorial license has been exercised in condensing the six hours into this printed interview and in translating oral into written transcripts.

For this interview, R refers to E. A. Richter and L refers to Mr. Rush H. Limbaugh, Sr.

R: When and where were you born?

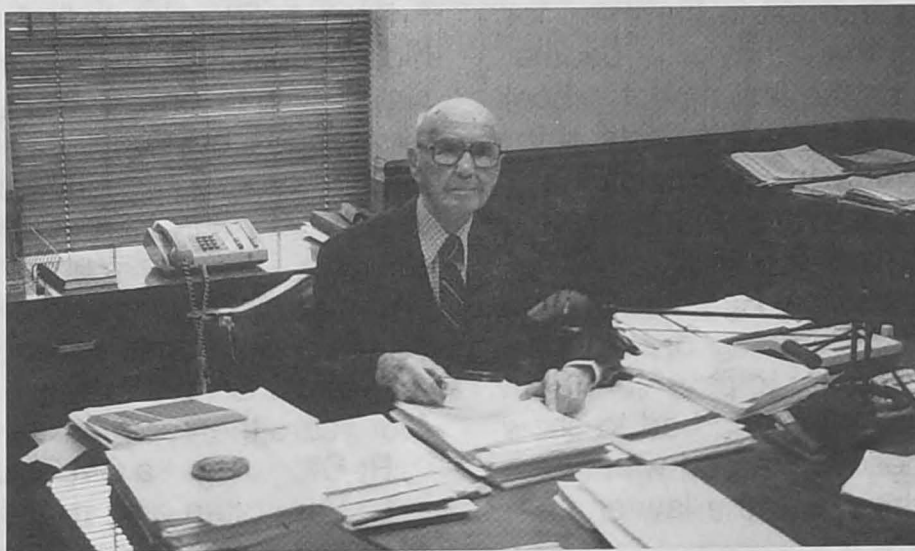
L: I was born on September 27, 1891 on a farm in Bollinger County, Missouri near Millersville.

R: Were any of your relatives attorneys?

L: I had a half-uncle, my father's half-brother, who was a lawyer but I had no particular contact with him and he in no way exerted any influence on me to become a lawyer.

R: When did you decide to become a lawyer?

L: Actually, my interest in law began when I was six years of age. I had started school at that



Mr. Limbaugh at his desk.

age in a one-room rural school about a mile from our farm in Bollinger County. The school was built for 40 pupils but there were about 75 enrolled so we were very crowded. The teacher, who was not from our community, had a terrible time trying to maintain order among the students. There were many infractions of the ordinary rules of behavior and the teacher had difficulty keeping the inclinations of the students from doing the wrong thing instead of the right thing. The school board, of which my father was a member, was very disturbed by the violence and the inability of the teacher to control it. Other members of the school board came to our house to meet with my father, who was then dying of consumption. As a curious child of six, I wanted to know what was going on so, even though I had no business there, I stayed in the room and listened. I remember they discussed the violence which was occurring in the school and the problem of the teacher not being able to maintain order. I remember my father making a comment which I never forgot: "If he can't keep order, he can't teach school!"

As a result of that conversation, I knew there had to be something done to keep order anywhere there was a collection of people. I saw that the teacher was the one responsible for keeping order in the school. Several similar experiences increased my interest in the need for laws – rules – to govern the behavior of people. One of these occurred on the last day of school when people from several school districts gathered together to celebrate. In various of these other districts they were having similar problems with violent behavior. It was a time like that described by the author of *The Hoosier Schoolmaster* who had difficulty keeping order in his school and found it necessary to physically fight some students to control them. He had to show them that he was the fellow charged with keeping order, the fellow who made the law and enforced it.

At this particular gathering on the last day of school, which I recall, a fight started early in the day. Everyone was scared that some other fight would break out, so they contacted the constable. I remember his appearance when he came to the picnic and said: "I came here to keep order. I am the law and I command peace. Anyone who wants to fight will have to fight me first." This ended the violence. I asked my par-

ents what authority he had to do that. They said he was the constable and it was his business to keep order, to represent the law.

Well, that idea grew upon me throughout my boyhood years and it never left me: the importance of law to maintain order, or "law and order" as it was called in those days. And that's why I decided at a very early age to become a lawyer.

**R:** Tell me about the one-room school you attended.

**L:** Well, it was typical of the times. We had school for six months, from September to March. Usually we had a teacher who had some experience with teaching beyond the ordinary home school such as we were attending but occasionally we had a teacher who only had completed the six years in the one-room school.

We studied the basics: reading, writing and arithmetic, but we had additional studies in geography and physiology. I was always very interested in geography because it showed the rest of the world that I didn't know. We were supposed to take reading in every year of our schooling: from the First up through the Sixth Reader. That was as far as the Readers went. If you went to school beyond that, as many students did, because they were farmers and didn't have much to do in the winter, they just repeated what they had studied before.

Now, I didn't have that experience. I went to high school in Millerville where I lived with my sister. It was only a two-year high school, just two grades beyond the sixth grade. We called that high school in those days. Our library had about 100 volumes, but many were merely pamphlets or booklets. Yet they gave us knowledge and information beyond what we had been used to in the old home school. Following that I went to Normal School in Cape Girardeau and spent four years there.

**R:** Did you get a Bachelor's degree?

**L:** I am often embarrassed about that. I never received a high school degree. I went to Normal School for four years and I didn't receive a college degree. I didn't receive a degree from the law school either. But I did have a lot of formal education.

The Normal School at that time was to prepare teachers for the teaching profession. In fact, I quit for one year to teach at a rural one-room school but soon realized that at the salary I was getting, I would never be able to save



enough to go to law school. So. I came back and completed Normal School.

I knew that I was going to be a lawyer and not a teacher, so I took courses that would help me at the University. After completing the courses here, I enrolled at the University in Columbia and had to complete two more years of undergraduate school because they only gave one year of college credit for Normal School. I then enrolled in law school. I then married a girl I had fallen in love with at the age of 17, which was also her age at the time. We were 23 when we married during my first year in law school and our first child, a daughter, was born a year later. She only lived ten-and-a-half years, dying from an infection. Our second child, Rush, Jr., was born after I had completed school and we were living in Cape Girardeau.

**R:** How did you support yourself while in law school?

**L:** The first year that I was in the University I received almost enough from insurance my father had to get me through. Then I had various jobs. I had a position with a church in which I was assistant to the pastor. Then I just managed with any work I could get to pay my way. I took care of a horse for a lady and did construction work

**R:** Did your wife work?

**L:** No, I worked and continued to work the same way after I was married. It was difficult for women in those days to get a well paying job.

In those days, that was 1916, one could take the Bar examination after completing two years in law school. I, along with a number of other students at Law School, decided to take the examination and all of us who took it passed it. When I came home at the end of the second year of law school, I had not made up my mind whether or not to go back to school since I had my license and could begin to practice if I so desired.

I knew a man in Cape Girardeau who was a member of a law firm; his name was Hardesty. I had correspondence with him as to whether or not he had room for me to spend summer in his office. He was a partner of Judge Benjamin F. Davis, of the firm of Davis and Hardesty. Hardesty agreed that I could come and work in their office for a fee of \$50.00 for the summer.

**R:** You mean you started practice for a salary of \$50.00 for the summer?

**L:** No, I paid them \$50.00 for the right to work that summer in their office! They were very good to me and they agreed in the beginning to give me collections to make for them for their clients. I earned enough from this so I was able to pay them the \$50.00 for the summer. This was in 1916. Their firm represented the First National Bank and a large part of their business was contracts, business, real estate and things like



*Mr. Limbaugh seated at his desk, which was typical of that of a busy lawyer, covered with legal papers but in a very orderly manner. The only concession to age visible was a large magnifying glass, probably necessary for reading the "fine print" for which legal documents are so famous.*

that. So that's one way I learned to practice law.

**R:** I understand that this was the year you cast your first vote and it was for Teddy Roosevelt of the Bull Moose Party?

**L:** Yes. When I was in school at the University there was a national movement in politics known as the Insurgent Movement and it was led by Teddy Roosevelt. Charles Evens Hughes, Gov. Herbert S. Hadley of Missouri, Senator Myles Poindexter, from Washington, Hiram Johnson of California, and Albert Beverage from Indiana . . . all men of importance. It was a movement to reform politics at that time. There were too many things happening in politics that were not the best for the country and we decided we needed a different kind of politics. This resulted in a split in the Republican Convention in Chicago in 1912 when Taft became the nominee of the Republican party. Roosevelt and his supporters formed a new party because they were opposed to Taft. This was the insurgent group whose

members called themselves the Progressives but the close friends to Teddy called it the Bull Moose Party.

**R:** What were some of the things you were for?

**L:** Among the things that we advocated, was the initiative, referendum and recall. This was something in the nature of a populace movement to give the people the chance to have more party organizations to initiate legislation. If something was being proposed in Congress that didn't suit them, it was their purpose to start a different method of handling that problem and that method was the initiative, then there was the referendum and, if it was not successful, the recall.

**R:** Do you think there is any comparison between what Ross Perot is doing today and what Teddy Roosevelt was doing then?

**L:** I would like to think there was a little more intelligence and information in the hands of Roosevelt and the Insurgents and more experience than in Ross Perot. I think their approach was a little more realistic.

That was the first election in which I voted and I did vote for Roosevelt and so did many of my Republican friends.

At the end of that summer I decided that I would not go back to school. Judge Davis owned a lot of real estate and he hired me to bring a suit to quiet title on land he had purchased. He gave me \$25.00 for filing the suit for him. That was one of the first cases I had.

**R:** What was the practice of law like when you started. Did you go beyond Cape Girardeau?

**L:** Yes, of course. Every county had its own courts and there was the Circuit Court. There was one office that was the Justice of the Peace. When I began, I tried cases before Justices of the Peace in other countries such as Bollinger. I was representing people at that time who didn't have a great deal of wealth and that kept them in the Justice of the Peace courts.

**R:** How did you travel?

**L:** I had a horse and buggy in the beginning. The first automobile that I owned was in 1922. That was six years after I started practice. It was a Model T. The roads were mud roads, mostly. There was what was called the Jackson Gravel which was the only gravel road in the whole area. In 1920 the Road Act was passed, I think it was called the Centennial Road Act, which pro-

vided for expansion of the road system, just 100 years after the state was admitted to the Union.

There was also quite a bit of criminal practice. One of the first cases I participated in was a case against a man at Millerville who had been in a fight with one of his relatives and had cut his throat. The altercation was a very serious matter and I had been hired by the defendant to assist an older lawyer. So I worked with him and learned how to try criminal cases. After that, I drifted into cases in the Justice of the Peace Courts. These courts had quite a bit of litigation since they had jurisdiction of civil actions involving up to \$250.00. They also had criminal jurisdiction in what we call misdemeanors and they held preliminary hearings in felony cases. I practiced in this court in other countries nearby too.

**R:** Did you find your first years of work as a lawyer satisfying?

**L:** Oh, very! I was pleased that I had gone into the law. I was never displeased that I had gone into it. It was very exciting for me. However, I think it is more difficult to practice law now than at any time in my experience because of the many changes that have been made in our social world. We have so many different things to contend with now which cause disputes among people that I wonder how people in business can get along without lawyers. It seems to me it is more important than ever now for a person to be able to counsel with a lawyer to know what to do to comply with the law.

**R:** Do you think the public, especially the middle class, has any trouble getting needed legal advice?

**L:** I know this is a problem that has to be solved, but I have to view it from the standpoint of the people I represent. I know that the public feels that lawyers' fees are too high and that it is too expensive for them to litigate, but they are forced to. My clients frequently remind me that lawyers charge too much. Lawyers charge by the hour now and my clients wonder how it is that a lawyer can charge so much an hour; they wonder why a lawyer has to charge so much to represent them.

There is also a feeling among the public that lawyers are to be avoided rather than to be sought as counselors. As I look back on it, this has always been the attitude of people in America. In fact, the early immigrants didn't want to have lawyers, there was much opposition to law-



yers, it has always existed, but the public has found that it is necessary to have lawyers. I think the anti-lawyer feeling is one which has always existed and one we will always have to contend with.

**R:** Do you think the public has less respect for lawyers today than when you started to practice?

**L:** I doubt if they do. When I was a boy I would go with my parents to Marble Hill or Jackson where there were lawyers. I found there was a respect for lawyers on the part of many people. However, it was respect for the individual lawyer and not for lawyers in general. I think a large part of the feeling against lawyers arises from persons who don't abide by the law and get lawyers to help them. They don't care whether the lawyer is respectable or not but are satisfied if the lawyer helps them with an undertaking that is beyond the law. They don't like to associate with the lawyer of high repute. This hurts the reputation of all lawyers.

**R:** Do you agree with the comment we hear so much today that the law has become a business instead of a profession?

**L:** Yes and I'm sorry to see that. I think it is a tendency which is wrong. We, who are lawyers, ought to maintain a position that we can help the public abide by the law and that we can do it within reason!

**R:** What do you think of the quality of legal service today? Is it as good and of as high a quality as it was 50 years ago?

**L:** I think it is. I know that lawyers coming out of law school today are better prepared to practice. There was an old saying when I began practice that a lawyer starved for five years to establish a practice. That was true. I went through five years when I didn't make a living. But the fact that I did not graduate from law school and missed that one year of schooling was not responsible for that!

**R:** Keeping clients informed seems to be a big problem for lawyers in spite of the great strides made in the field of communications. When you started practice what was your primary means of communication? Did you have good telephone service or did you do everything by letter?

**L:** Telephone service was getting better but it was nothing like it is today. But we managed. What you say about communications and what a client has a right to expect in being kept in-



*Mr. Limbaugh during his term as state representative in 1931-1932.*

formed is so important. I believe that if a lawyer knows of a situation concerning his client which can cause a problem, he has an obligation to inform him of it so the client will know what is the right thing to do.

When I became a lawyer there was not the same feeling of responsibility by the lawyer to the client which exists today. There wasn't the client-attorney relationship which exists today. A client would go to one lawyer for one problem and to another for another problem. Today a client selects a lawyer and goes to him or her for everything that affects him. This places the lawyer in a position of great responsibility which we sometimes avoid. One of the reasons for our avoidance is that lawyers sometime wonder if they are exceeding their authority in going to a client, or a former client, and saying "I feel that I ought to do this for you."

I have a situation right now, where tomorrow I expect to see a client for whom I prepared a number of documents of whose need he was not aware until I discussed it with him. I hesitated to do this because I did not want him to feel that I was pressing him to get new business. But all these documents are now necessary to his business and I felt he should know about the need for them.

Let me give you another instance of what arises frequently these days. I prepared a power of attorney for clients as a method to be used by them to carry on their business if they become incompetent. In the past few years, we have come to understand through court cases that powers of attorney did not continue in effect if the person who gave the power of attorney became incompetent. The power of attorney no longer continued to operate. The person who had relied on the person to whom he had given power of attorney could no longer represent him after he became incompetent. Instead a guardian would need to be appointed.

In 1989, there was an act passed to correct the situation. It is the Durable Power of Attorney Act. Now I can't begin to inform all the people that I have prepared power of attorney for of this change, but all of them should be aware of it. How do I inform them of the need to have these documents changed?

**R:** Now that lawyer advertising is permitted, you could inform them through ads. What do you think of lawyer advertising? Is it degrading to the profession?

**L:** I have always been of the opinion that a lawyer should not advertise. That position may not be sound anymore and we know that lawyers are advertising. To what extent they should, I just can't say.

**R:** When you started to practice, there were no rules against lawyer advertising. Did any of the lawyers in this area advertise?

**L:** Yes, they did! I hadn't thought about that until you mentioned it but I remember as a boy the Marble Hill Press carried ads. There were three or four lawyers practicing in Marble Hill and all of them ran ads in the local newspaper.

**R:** You did some practice in admiralty law. Admiralty lawyers have always been permitted to advertise. Did you?

**L:** I never did any advertising. I have always had a kind of abhorrence of advertising in the practice of law.

**R:** Do you think we now have a problem of too many lawyers?

**L:** The number of people that have become interested in the practice of law has become a revolution since I entered practice. That situation is just one of the natural developments; you have more business, you have additional lawyers filing more business and you have a

greater variety of business to attend to. These days, surrounded and governed by all of the laws we have, you can't get along without knowledge of how to handle your affairs as provided for by those laws. Although there is a cry that we have too many lawyers, we have a situation that calls for more and more lawyers. I'm not at all afraid of the fact that we have too many lawyers.

**R:** Why is it that the law of supply and demand hasn't brought down legal fees if we do, in fact, have too many lawyers?

**L:** That's right. And that is one of the problems of the legal profession: the fees that are charged in so many cases. I think that there are adjustments necessary to be made in order for us to have a clear understanding between the lawyers and the citizens in order for us to have more respect. And, by the way, isn't that one of the things that The Missouri Bar is designed to help with: to adjust fees between citizens and lawyers so that the lawyers will not be able to take advantage of the client and so the client can get what he needs without having to be imposed upon. I think it is proper for The Missouri Bar to be busy about this.

**R:** What do you think of women coming into the profession?

**L:** I think that we will have to learn that it is inevitable. When I began practice, very few women were in practice. Now, in our firm, for illustration, we have eleven lawyers, three of which are women. Three out of eleven; that's getting close to the national average of women to men in the profession. I find that women can try cases before a jury the same as a man.

**R:** Some consider women especially good in the area of family law.

**L:** I don't have any doubt of that. I think that when we come to specialization, family law will be an area of specialization.

**R:** Do you believe the Bar will come to recognize specialization?

**L:** I think it is inevitable that to some extent you will have specialization. Now that is contrary to the way I lived and practiced from the time I was a member of the bar. Our own situation here has completely changed in our law firm. We have a lawyer here now who is the most highly specialized lawyer in estate planning in this part of the state. After he received his law school education, he had been working for us



during the summers, and he came to me and said that he would have to go another year to school. I was amazed at that because we had so much work to do, but he said that he really wasn't quite ready. He wanted to go to a large law school in New York to learn more about taxation and estate administration. And he went there for a year, obtained a masters degree in taxation, and now has a reputation that he knows how to handle that part of practice and is very successful in that field. Incidentally, he is also a certified public accountant.

**R:** Do you think lawyers are less professional today than they used to be?

**L:** I'm not sure about that. I think there is more of a social feeling of friendship that prevails among lawyers that did not prevail in earlier years. I like to see this. I like to see lawyers continue their friendship. Let me give you an example. Several years ago, I was in the hospital after an operation. One of my lawyer friends, one against who I had tried more cases than any other lawyer (there were time when we were not friends at all!) came to visit me. I was at the point where I could walk about and he and I walked through the hall together. I remember hearing someone say, as we walked by, "There are two lawyers that fight like dogs, but look how friendly they are when something happens to one of them!" I don't think hard feeling are as rampant among lawyers today as they used to be. I will tell you one reason why I think that is. That is because of the activity of the organized bar. I think the people that work in the organized bar have helped lawyers be helpful to each other through bar organizational work. That has been my experience.

We are too commercialized in the law business. You find a lot of people who don't want to spend a great deal of time socializing or visiting because they can't charge a particular client. They want to use every hour of the day; to charge somebody billable hours! I hope this is not something I should not say, but I think that lawyers are criticized for their zeal to put time on the books. I think that type of criticism is justified. I think many lawyers have become too commercialized in that respect!

**R:** Is this a part of the problem of "professionalism?"

**L:** I do think it is a part of the problem. I am not sold on the idea that we should charge our

clients according to the time we spend. I discussed this matter with a member of one of the oldest firms in New York, in fact, in the United States. He said there are three things his firm takes into consideration in fixing a fee. One is the extent of the responsibility that is undertaken; the second is the time required and the third, the result obtained. I am interested in that method of charging. I am not sold on the idea of charging solely according to the time spent, when the lawyer fixes that time.

Let me tell you of an experience I had with billable hours. When I began to practice we knew nothing of keeping time records for representing clients. I had a case in Houston, Texas in 1928 and asked a banker here to recommend a law firm there to assist me. As a result of working with that firm, I first encountered billable hours. I asked the manager of the firm how they could serve me in the case that had arisen there. He said he could give me a choice of three different lawyers: a lawyer who had practiced five years or less, who would charge \$50.00 per day; a lawyer who had practiced five to 15 years, who would charge \$75.00 a day or a lawyer who had worked 15 years or more who would charge \$100.00 a day. That was keeping time by the day, instead of by the hour.

When I encountered the young man that I hired at \$50.00 a day (that was all my client wanted to pay) he did keep a record of his time and he did show me that record, which I appreciated. Imagine that they get \$150.00 to \$250.00 an hour now. I started a method of keeping time for different clients after that, but I have never felt satisfied that the charge by the hour, as fixed by the lawyer himself, is the proper way for a lawyer to do it. I think it influences the way the public thinks about whether the lawyer is doing the right thing by the client.

**R:** There is much questioning of legal fees by corporate clients; some have even started to audit the bills from law firms. What do you think of that?

**L:** I think in that respect the practice of law has become a business . . . a business more than a profession. Business is probably the overriding purpose of the firm and the lawyers in the firm. I am just not satisfied with the idea of billable hours and I think that something has to be done about it by the lawyers. I think that lawyers too frequently take advantage of clients in

determining where he should go, what he should do, what time he should limit himself to. When a lawyer takes this responsibility himself, he could cheat his client and I think that is frequently done – over done! The insurance companies and corporations that have been responsible for hiring lawyers and paying them according to their schedules are the ones who are going to have to wrestle with this problem. I think lawyers must examine their conscience and determine whether the client has been properly served for the fee he or she is being charged.

**R:** Do you have any suggestions as to what The Missouri Bar or the American Bar Association should be doing about this problem?

**L:** No, I'm sorry that I don't have. In the past few years I haven't been as active with either of them though I have kept up my association with them. I think it is a problem they ought to work on and look at from the stand-point of public service because that is what we are suppose to be doing . . . serving the public. We ought not to be doing to particular clients what is not best for the public generally. If one person is being cheated by a lawyer, the entire public suffers because of it!

**R:** You've practiced for 75 years?

**L:** Seventy-seven years.

**R:** You practiced before the Missouri Court Plan was adopted and you probably were actively involved in bringing about its adoption.

**L:** Yes, I was an active supporter of the Plan.

**R:** Much of the "push" for the Plan came from the cities. Did you practice in St. Louis?

**L:** Yes, I tried cases in the circuit courts in St. Louis and many of the court of appeals there.

**R:** I interviewed Judge Paul Barrett some years ago: a great supporter of the Plan. He said that prior to its adoption, when he tried cases in Kansas City, he would be told who he must use as local counsel. Did you ever encounter this in St. Louis?

**L:** No, I didn't. I did use a number of St. Louis lawyers as local counsel, but I never had pressure from the judges as to the selection of local counsel.

**R:** What was the quality of the judges in St. Louis when they were chosen on a political basis?

**L:** I always felt that the members of the Bar in St. Louis were of very high class. The firms I encountered proved themselves, over the years,

by the results they had obtained for their clients. One of the things I remember that hastened adoption of the Court Plan in St. Louis took place in the 1930's. In former years, St. Louis was Republican. That was the party in power in those days. In 1932, when Roosevelt was first elected, there was still a lot of interest among Republican lawyers to become judges because of the trend of politics. However, Democratic lawyers hesitated to run for judgeships. In 1936, when the City of St. Louis went heavily Democratic, the Democratic Committee had not been able to, or neglected to, get good lawyers to run for judgeships on the Democratic ticket. The result was that the men who were elected were of a very low type from the standpoint of competence. For instance, I remember it was widely circulated that one who was elected as a circuit judge was a grocer, who read law on the side; was admitted to the Bar but had never practiced. He went from being a grocer to being a judge!

There were other examples where judges were elected who knew little about the law and had no experience in the law. The lawyers from both political parties in St. Louis began to realize the situation and to call upon us people from the country to help solve the problem. The result was the idea of taking the courts out of politics. The idea had been developing through the years before this and was hastened by the results of the 1936 election.

I remember another thing that was used at the time we were working for the plan. I say "we" because I had some connection with it; I favored it and worked on committees that helped get it adopted. Judge Fred L. Williams was elected for filling out a short term on the Supreme Court. When he ran for election in 1916 he ran on the Democratic ticket and was elected. Then he ran again, in 1920, because he had just filled out four years of the balance of a term. This time he was badly beaten. At a meeting of the Bar at which he spoke he said: "I was elected to the Supreme Court of Missouri in 1916 because Woodrow Wilson kept us out of war. I was defeated in 1920 because he didn't." It was true! It was a change of national policy that had nothing to do with the competency of the candidates that defeated him!

**R:** Do you recall the Douglas-Billings contest for election to the Missouri Supreme Court?

**L:** Yes, I remember it very well. It was a very



vicious fight. I knew Judge James M. Billings well; we had been in law school together. He was a circuit judge in Kennett and, of course, James M. Douglas was a judge in St. Louis. This was a primary battle in the days of Pendergast who was at his highest level of domination in politics at that time in Kansas City.

*(Note: At this point in the interview, I suggested to Mr. Limbaugh that he might like to stop for a rest and rest over the noon hour. However, he suggested that we continue to work during the noon hour and have lunch sent in, which he did. "The girls have been bringing me something in for lunch for the last several months, since I had an attack of pneumonia," he said. "That was in December, 1991, and I haven't been able to get my strength back. It took a lot out of me." After casual conversation during lunch, we returned to discussion of the legal profession.)*

**R:** Have your hopes for the Non-Partisan Plan been fulfilled? Has it done the job it was supposed to do?

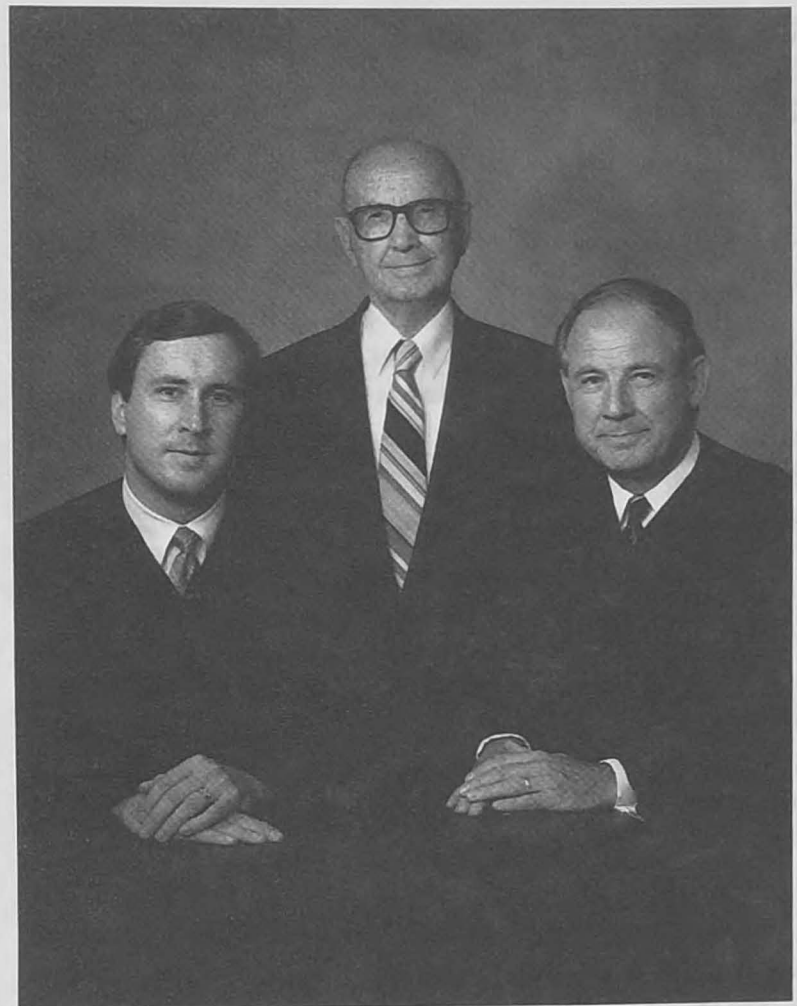
**L:** I think to a large extent, it has. But, of course, it is difficult to keep political activities from involving important officers like appellate judges. However, under the Plan there have been two judges appointed to the Supreme Court at a time when the party in power was different from the party to which the judges belonged. One of them was Judge James A. Finch, Jr., a Republican, who was appointed by a Democratic governor and the other was Judge Lawrence M. Hyde, a Republican who was prominent in attending meetings of his party, who was also appointed by a Democratic governor. Then there was the instance where Governor Donnelly, who had a panel of nominees presented to him which was so blatantly partisan that he refused to appoint anyone on the panel!

**R:** How about the nominating commissions? Do you think politics have been eliminated in the selection of their members?

**L:** I really don't know. I haven't followed it at that level. I hope that it has but I know that instances arise from time to time that give the appearance that partisanship did govern what was done in the selection and that is unfortunate.

**R:** Do you think the Plan has generally improved the quality of the judges selected?

**L:** I believe that it has. I don't know if my judgment about that is worthy of consideration be-



**Mr. Limbaugh with his son, Federal District Judge Stephen N. Limbaugh, and his grandson, Missouri Supreme Court Judge Stephen N. Limbaugh, Jr.**

cause I haven't kept up with what has been done . . . where a vacancy was filled . . . but I like to think that the Plan generally succeeded and I would not want to see it abandoned! Of course, sometimes you have people appointed that do not turn out to be as good as judges as they were as lawyers. There are instances of that kind and I think that lawyers, generally, are aware of that. But I imagine that would happen under any method of selection; judges don't always turn out to be what you expected of them. On the whole, however, I believe that we have a higher degree of competency in our appellate judges, especially on the Supreme Court, than we did before.

**R:** Do you think the move to provide educational facilities for judges, such as the National College for Trial Judges and the Missouri College for Trial Judges has helped improve the judiciary?

**L:** I believe that the American Judicature Society has had a great impact on the judicial system. I think it has helped us weather the storm over the incompetency of the judicial system of

the country. It, as you know, founded the National College for Trial Judges and has, over the years, provided many other educational programs for judges. Of course, there are problems that arise in the judicial and legal system as in any other things we are connected with.

I had the experience of going to India in 1958 and had the privilege of lecturing to judges, lawyers, college students and others in government and I had the opportunity to see how far behind they were in most respects. Most of the judges and lawyers there looked on our system as one they would like to emulate. I would like to think that we are doing a good job of handling our judicial and legal system, but it's like everything else in society. There are so many different things that rapidly change our status. Take communication, for instance. We now get a decision the minute it is handed down, and the law has changed! That causes problems.

I remember when I was a boy, our neighbor had a daughter who lived in Galveston in 1900 at the time of the Galveston Flood. They were just beside themselves to get information of what had happened to their daughter. But it was ten days before they learned that she had survived! It took that time before a national disaster like that became known generally.

And take the automobile and changes it has made. The Ford automobile . . . the Model T . . . that became accessible to anyone who could afford credit or cash of \$500.00. They could now get over the country in a day which before had taken a week or more.

All kinds of things, all kinds of changes, create different situations and it's inevitable that the law has to be governed by these changes. The law is governed by the people and their changing condition; it's continually under fire to keep order in a changing society. That is its business!

**R:** In the Chief Justice's address to the Legislature she mentioned the need to consolidate the court system in Missouri. What is your reaction to that suggestion?

**L:** I had never given it any thought so I don't know how it might be handled. I remember when we had school consolidation. There was so much resistance to what was done and I sometimes wonder if, in working out our problems that we might have gone too far. But these are problems of the times that the law is confronted with

as well as the business man, the banker, the farmer, as problems arise we just simply have to deal with them by cooperating with each other, arrive at a solution that is acceptable to people generally.

Let me resort to the problem that I face tomorrow with my clients and the durable power of attorney I mentioned previously. Two years after the durable power of attorney was adopted it was found that it wasn't adequate, so now, instead of having one durable power of attorney to take care of the business of the party who wants to give the power of attorney, we find that it doesn't cover the matter of health; it only covers the matter of business. The health problem is so complicated that a new additional power of attorney was created by an act in 1991, and now instead of having the old fashioned power of attorney, we have a durable power of attorney and a power of attorney for health care. The law is a living thing and it has to meet problems as they arise!

**R:** I recall that when we first met you were active on the American Bar committee that had to do with individual rights. Presently we hear so much about individual rights that there seems to be a constant controversy with one or another aspect of our constitutional guarantees. Do you think we may be going too far in this matter?

**L:** The problem of the expansion of the law and the redrafting of the law to meet the social and political problems as they arise is one that we can expect. The law must be responsive to the will of the people because it is the will of the people that will ultimately control. The law has to keep up with and satisfy and meet the conditions that the people are striving with, and it must do it adequately. I have often thought about the changes in our attitude about the position of government generally as it is involved in all of our activities. For instance, when I was a boy on the farm, it was generally conceived that the farmers were the people hit hardest by the depression. At that time, we were rapidly going from one period of depression to another. The people were seeking answers to how this could be controlled. During that time of depression there developed a social trend toward socialism as the way of satisfying ourselves as a nation and people. Socialism was considered as the only way out. Government should take charge of property, business, real estate! Socialism was



considered as the only way it could be done.

But, eventually, Capitalism won the fight. Capitalism defended itself on the ground that you had to let the spirit of the people rule. Well under Capitalism, the idea developed that the government, instead of owning everything, should, instead have the power to regulate society. So we have since that time in the 80's and 90s adopted the idea of government regulation. We have had to create agencies to issue these regulations: the public service commissions and other government agencies dealing with different things such as transportation, railroads, utilities and other things we use in connection with our lives. So we have had government by regulation since that time

Now we have reached the point where government regulation is such an immense responsibility that we don't know exactly how to handle it. We are now wondering whether we should not limit the regulation of government by law instead of by agencies which don't always look at the different classifications of people and their problems. We see that government has gotten too big; it is regulating everything that people do. So we have the problem of how far can we allow the power of government regulation to go. The problems that are arising are so immense in contemplation that they are difficult to foresee, but we are going to have to face them through law. The big problem is how to regulate the regulators, and do it lawfully, and this is where the legal profession becomes involved!

**R:** Do you have any suggestions? Do you visualize how it might be done?

**L:** I wish I could. I wonder about it a lot. We have just recently gone through a political campaign where these ideas were discussed and we wonder now about the change in administration. We know that it is good to change things because the two parties have different programs and it is just exciting to live these days to see how it's going to come out!

**R:** Getting back to the Courts, do you think that over the years the Missouri Supreme Court has followed a non-political course in making its decisions?

**L:** I think in a lot of respects it has. Generally we can rely upon the ultimate judgment of the judiciary. While we have had some judges more competent than others, the leadership of the great judges has been splendid and I have been

very well pleased with the position of the Supreme Court as the head of the judiciary. From time to time you can reflect if it could have been different from the way it was, but, on the whole, I like to look upon the Supreme Court and the Appellate Courts as institutions entitled to respect because of their competence and because of their ability.

It has been observed that the United States Supreme Court follows the election returns. I believe that the judiciary and the law is subject to the will of the people. If the state of the courts decline, the people would be the first to notice it and, certainly, the legal profession should notice it and do something about it and I believe that has been the history of the courts in Missouri.

I remember the first case I tried before the Missouri Supreme Court in 1921. I was thrilled to have the chance to argue before the Supreme Court so soon after I got out of law school. I look upon the judges as men of dignity and have always had respect and honor for them. Of course, there have been occasions as we all know when things have happened in the Supreme Court that we would rather had not happened, but I think the legal profession, supported by public sentiment and the courts, responsive to the public will, have made the system work well through the years. While we have had things that have been disappointing in the law and the judiciary, I think that on the whole we have done well in appointing judges to maintain the position the judiciary ought to hold in society.

**R:** Do you think "putting on the robe" changes a lawyer? As judges, do they "become their own man," or, now, "their own women?"

**L:** Yes sir. Yes sir. I like to look at it that way. That's the way it ought to be. We often think about what happens to lawyers when they go on the court; their position changes, their responsibility changes. They not only represents one side of the controversy, they represents the whole. It is their business to represent the whole aspect of controversies that might have arisen.

**R:** As a practicing lawyer, have you seen any improvements in the way the local courts operate as a result of the input from the State Court Administrator's Office?

**L:** Yes, I think that the appellate courts and the Supreme Court both have accepted responsibility of handling the business before them properly so

as to arrive at what is just in all cases. I think the judges are able to solve their own problems in regard to the administration of the courts and their own personal administrative problems. They have the same kinds of problems that society has. The way things come to them have changed. This is one of the reasons why the courts have taken the responsibility of their own rules and regulations and it's been my observation that in late years the courts have taken a greater responsibility in that respect than the courts did in former years. I recognize the problems they have in administering the system to make it work and I think the courts themselves -

**R:** You mean the local courts?

**L:** The local courts, the appellate courts and the supreme court. In the old days we didn't have, as we do today, pleadings of different judges of different courts. Today we have better communications between the different style of courts; we have judicial conferences, judges who have similar problems getting together, determining by rule how to solve those problems. I like what has happened in that respect in late years in which the courts have adopted rules and regulations of their own. I figure a judicial problem is not a problem to be solved by the legislature. It's the judiciary which is responsible for its own activities. It's accepting that responsibility now by setting rules while in former years it did not. Then there were no extensive rules by which the appellate courts and supreme court attended to their business. Now there are such rules and I think the court has adopted the right policy of fixing their own rules and regulations and in doing it by calling on members of the bar in conferences and through committees to help them arrive at the right rule or regulation for a particular problem.

**R:** There's been some talk about the lack of uniformity in Circuit court rules. . .

**L:** I think that is always a problem because the different courts work under different circumstances and different jurisdictions do different things. What the appellate court might do may not be in line with what the supreme court might do with that particular problem. That's why we need to have the rules and regulations by the different courts.

**R:** What do you think of the mandatory retirement age for judges?

**L:** I had that problem to deal with when I was

president of The Missouri Bar in 1955-56. At that time there was a Supreme Court judge who had reached old age before the number of years and he wasn't doing his business as a judge of the court. Of course, he had lost his mentality early in his life and it was unfortunate for him. But he was stubborn, like old people frequently are, and he maintained that he was still able to perform just like he always had. He would not retire. We had a conference of the Board of Governors to discuss how to handle the problem. We finally selected a committee to go and counsel with the judge and although it caused bitterness and ill feeling among some of the people, and the way it was handled was criticized, but the judge did get off the bench. We are not all of the same mentality.

Where you draw the line is when the judge lacks competence to perform his duty as a judge and it isn't always the same. I don't know if 70 is the right age. I think sometimes it is unfortunate that judges that are competent have to get off the court, but it is one of those things we have to deal with. I remember Judge Medina of the Southern District of New York who had a very trying case about the time he was 70. He wrote a letter to the president saying that he understood he had the option of retiring or continuing on the bench. He said he was now retiring because he was afraid that after the age of 70 he would become so incapacitated that he wouldn't be able to tell him self he should retire, and therefore, while he still had his mental faculties, he was retiring. I had occasion some time ago to review some appellate work I had done in the course of my practice because of things that had arisen because of my health, particularly my vision and because, physically, I wasn't able to continue to do certain things. During this review I determined I had briefed and argued 25 cases in the Missouri Supreme Court and about the same number in the Court of Appeals. My appellate experience lasted from 1921, when I argued my first case before the Supreme Court, and 1920 when I first appeared before the St. Louis Court of Appeals, until 1970. Since then I have declined to indulge in personal appearances before the Supreme Court. Now I limit my practice to office work.

**R:** In those 50 appellate cases, does any one stand out in your mind? Did you have any which were a disappointment?



**L:** Well, I remember a case in which I was deeply interested. It was a will contest and the jury found against me and a motion for a new trial was filed. While that motion was pending, I found that an attorney for the other side went to the judge, who had expressed himself in open court that he thought the verdict should be set aside. But the adversarial lawyer told the judge that he was so deeply in the case financially that it would be a blow to him if he got into a new trial. The judge then declined to grant the motion for a new trial. We appealed, of course, and I think that was the best argument I ever made, but we lost in the Supreme Court. I didn't blame the Court for it. They had the whole record before then and the judges decided against me. It was just one of those things that I was so deeply interested in, I thought I should have won. But I didn't, and I didn't hold it against the Court.

**R:** You mentioned that you were a charter member of Time Magazine and that at one time it had done an article on you.

**L:** Oh yes. That was a case that I heard for the St. Louis Court of Appeals in 1935. I was called by the judge of the St. Louis Court of Appeals, who said to me when I identified myself in my answer to him, "Are you alone?" I said "Yes, I am." He said, "I want to talk to you about a matter that must not have any further comment between anybody but you and me at the present time. You have just been named by the three judges of the court to serve as a special commissioner to hear a case that this court won't have time to handle. This is a case that requires the taking of much testimony that will last a couple of weeks and must be heard immediately. We are calling you because it affects some people in St. Louis that are prominent and well known and we are afraid that there is no one in St. Louis who has not already formed an opinion about the matter before us. We are calling you to ask if you know anything about the case." I told him that I didn't. Then he said, "We have appointed you and expect you to serve." I told the judge that I did not have any experience. He said to me, "Don't talk to me about experience. We are satisfied with your qualifications."

So I did take the case and it did involve quite prominent people in St. Louis and instead of lasting two weeks, it lasted two months! It involved witnesses and I heard between 85 and 90 different people and watched a lot of demon-

strations. As a result, the case was written up in Time. I had forgotten all about it until recently, when my grandson reminded me of it.

**R:** Did you ever imagine that the Limbaugh family would be featured on the cover of Time as well as the inside story about you?

**L:** No, I didn't.

**R:** The Limbaugh family has attained such prominence in the legal profession with a son who is a U. S. Federal District judge, a grandson who is a Missouri Supreme Court judge, three other grandson attorneys, one of whom is an attorney in your firm, and of course, another grandson who is probably the most famous and best known person in the United States. Doesn't this sort of overwhelm you at times?

**L:** Well, the one who contributed the most to any success we have achieved isn't here.

**R:** You mean your wife?

**L:** Yes. She was one of the most wonderful people I have ever known: her influence and her help and all the things she did for me. I've been able to do a lot more largely because of her. I mention this because it touches my heart. She is responsible for all of this and she didn't live to see how it developed. She died when she was 86, in 1977.

**R:** Do you listen to the Rush Limbaugh Show?

**L:** No, I'm afraid I don't. I listened to him once, but it was an accident. My regular hours of work, before last year, prevented it. You know, last year was a very difficult year for me. I had to change my way of life almost completely as a result of having pneumonia. Because of the medication I take for my heart, I don't get to the office as early as I used to. The doctor tells me I must rest my heart.

**R:** Do you live by yourself?

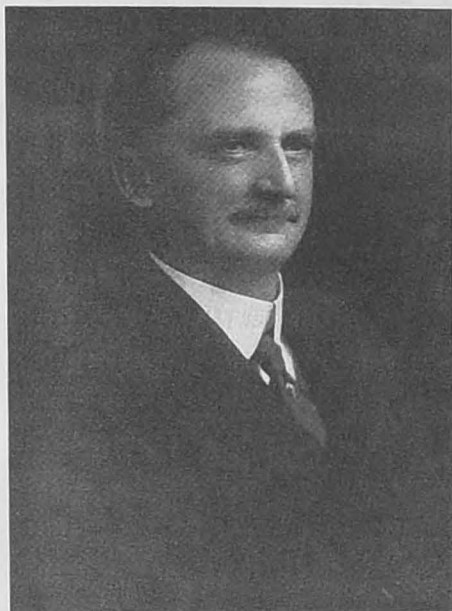
**L:** Yes, and in my own home. I have help that comes in to do my cleaning and cooking and housekeeping. I guess that I stir around more than I should, because that is one of the reasons they now keep what they call a sitter. Did you ever have a sitter? I never knew what a sitter was before, but now, on the advice of the doctor, they say that I should have a sitter with me all the time to help with the medication and to prevent a problem if something should happen.

**R:** Looking back on your life, have you ever regretted becoming a lawyer?

(See LIMBAUGH, Page 14)

# Looking Backward:

## Problems of the Legal and Judicial System in 1916



Frank M. McDavid  
President  
Missouri Bar Association  
1915-1916

In 1916, when Rush H. Limbaugh, Sr. was admitted to the bar, it was customary for all speeches given at the annual meeting of The Missouri Bar Association to be recorded verbatim and so published in a hard-bound volume at the conclusion of the meeting each year. Most speeches were extremely long, delivered in oratorical style and couched in

elegant language. Featured among the many speeches in 1916 was that of the president of the association, Frank M. McDavid, Springfield, in which he reported on the status of the profession and the courts, pointing out matters of principle concern to the profession.

Comparing Mr. McDavid's comments with the recollections and comments of Mr. Limbaugh, and with current problems facing the courts and the legal profession, provides an interesting perspective. It is to provide such a perspective of the law and the courts in Missouri, that we include the following excerpts from Mr. David's address to members of the Missouri Bar Association at its annual meeting held in St. Louis, September, 1916 more than three-quarters of a century ago.

### Public Opinion

"There is, and for some time has been, abroad in the land a feeling, shared by some lawyers

with whom I have talked, . . . that the relations between the Lawyer and the Public are not so close and cordial as they once were, nor as they ought to be. It is the opinion in many quarters . . . that lawyers as a class have not made progress with the times, nor kept up the high and exalted standard in the discharge of their duties as lawyers, formerly by them maintained and enjoyed.

"If this be true, . . . then it becomes of first importance that we should ascertain the cause, locate the difficulty, fix responsibility, and apply the remedy. It would not do to say that we are indifferent to public opinion, for this would not be true . . . we owe it to the public and to ourselves to meet in the open forum the rising tide of criticism and correct it, if we may, certain false impressions, certain fallacious theories, and if at any point in such consideration and discussion we find that there is merit in any of the criticism offered as to the methods by us employed, forms of practice which now prevail, or as to professional conduct, we should be willing, even glad, to lead in an effort to set things right. If the law is to be respected, and by the respect shown to the law a people may be judged, then it is the duty of all good citizens, and especially that of lawyers, to do their full share in seeing to it that the law shall represent and be responsive, not to the whims and caprices of an inflamed judgment, but to the present needs and desires of a sober and thoughtful people. It is true, now as always, that the law must meet the needs of our people and be responsive to their ideals or its power is lost.

"Changing conditions of the present time bring forward new questions which are constantly arising and not hitherto dreamed of. These questions must be answered. These conditions must be met. They cannot be met by denying that they exist, but they must be met by the sober, serious thought of men able to grasp the propositions in-

---

(LIMBAUGH, from Page 13)

L: No! My zeal for the law is as great now as it ever was during the time that I was in more active practice. I think that regardless of the various changes that have been made since I began, and which continue to be made, in spite of all these changes, I have become more inter-

ested in knowing what is going to happen with the law.

You know, you reach the point where you contemplate death, but there are so many things occurring you wish you could live through ten more years of it, but you're afraid you aren't going to!



volved, and to apply the doctrines of the law as it now exists and applicable thereto, or if there be no law to meet the situation, then it must be created or amended so that at all times and under all circumstances the law shall keep step with the progress of our day and time.

"The spirit of the age is one of progress. In every department of human endeavor we find it so, and the rules of the law and its methods of administration, aside from substantive law, which remains essentially the same, should keep step with the progress of the world."

### **What Ought A Lawyer To Be?**

"He (a lawyer) should be courteous to the court, but not fawning; considerate and fair with his brethren of the bar, but never to the injury of his client's case. He should charge and collect, where his client can pay, a reasonable fee for services rendered . . . . He should assume full responsibility for his client's cause, and be in full control thereof in the courtroom and outside. He should not allow his client to make of himself the 'wicked partner,' on whose shoulders blame can be conveniently laid for the doing of things in the progress of a cause of which the lawyer in person would not be guilty. In other words, he should not so conduct himself as to give the idea that the game may be bagged in any way, no matter how, and yet the hunter escape. He must at all times and under all circumstances be true to the high standard of ethics which we profess, and which for the most part we practice, never allowing good fellowship to blind him to violations of our rules, nor allowing good nature and consideration for his brethren of the bar to condone a serious infraction thereof, and he should work and work and work. Having done these things, all others will be added unto him, and he may enter the ranks of the ideal lawyer. If, in following these lines, criticism comes, he must suffer it, for the man, who in a professional career escapes all criticism, goes not far.

"We read much and talk much about the ethics of the profession. After all, these rules and canons are but the consensus of healthy opinion, and a brief of the actual conduct of true lawyers at the bar and at their work. We lay down certain rules for our guidance . . . . It should ever be remembered that the law is a profession not a trade. Our profession, one of the oldest known to civilization and one of the most honorable, must not surrender its high ideals to the commercial spirit of the times. It must

not be subsidized by wealth, nor torn from its ancient mooring by the onward rush of a money mad public. It should readjust and reform its rules and methods of procedure, that it may be progressive but without being radical. Its success is not to be measured in the rules of the counting house, but personal interest should be submerged in the interest due to the client's cause. The integrity of the individual must be the basis upon which the security of our profession rests, and the rules which guide us, whether written or unwritten, must be based not on policy but upon principle, and our conduct must be measured by the unvarying standard of right."

### **Reasons for Criticisms of Lawyers**

"One of the possible reasons for some of the criticisms leveled by the public at lawyers is the unfamiliarity which the people as a whole have with the law and with its procedure. Not a large portion of our people ever see the inside of a court room, and not a large percentage are ever in a lawyer's office or seek a lawyer's advice. Public judgment of us and of our work, therefore, is based not only on what we actually do and say, but on what we are reported as having done and said. In this field, as in all others, the Press of our country is a very powerful factor in molding public sentiment, and I have thought sometimes that the Press has been unfair in that it has not given to the public the lawyers' side of the case, and has overlooked the environment under which he works, and the further fact that the machines and instrumentalities by which courts are operated and the law is enforced are largely made by statute or by constitutional provision, for which the people, and not the lawyers or judges, are responsible.

"What are some of the counts in the indictment presented by the public, and what is our plea? And do we deny generally or do we confess and avoid?

"There be those, not a few, and they are not limited to thoughtless people, and the feeling is shared by some lawyers, that as a profession we have not maintained that high standard of integrity which formerly prevailed within our ranks. The charge is not general. No one claims that all lawyers are lacking in honesty or integrity, or even that many of them are lacking, but the intimation is that some lawyers do not observe the high standards of ethics which we promulgate,



and for which our profession stands. The complaint, bluntly stated, is that we either do not know how to clean house, or else that we lack the disposition or courage to do so. The charge is, that there are those within our ranks who consistently and persistently do things which are unprofessional and which we brand as being so, and that by our silence and inaction we make ourselves parties thereto, not as participating therein, but as being willing to suffer from the effects of such conduct rather than give ourselves the trouble and annoyance of clearing our skirts by ousting the offending brother.

"It is true that though a very small percent of lawyers disregard the rules which should control our conduct, it affects, and particularly among those who do not discriminate, the whole membership of the bar. There is just ground for this complaint. We have not been as active as we should have been in providing the means whereby we could relieve ourselves of this embarrassing situation. Lawyers in their bearing and attitude toward each other are most considerate. By training and through experience they come to have confidence in and respect each other. They are careful always and considerate of the feelings of a brother lawyer, and are disposed to treat with leniency the faults of a brother. Little by little this attitude of mind has become characteristic, and probably has made it easy for us to consider too lightly those faults and that conduct which reflects upon the profession. While all of this is true, and while we are not without fault, up to this time the means of correcting this condition has either not existed, or was so cumbersome and difficult of application as to make it next to impossible to correct conditions. We have our local Bar associations, our State Bar Association and our general committees, but as yet we have not laid the ax to the root of the difficulty. Up to this time we have had no practical or effective law to relieve the profession of those whose conduct brought reproach. It seems strange that this would be true, and yet it is a fact. Various Local bar Associations have made occasional efforts to punish offenders, but the result has only proved that the machinery provided to that end is wholly impractical in its use and in its effectiveness.

"The Special Committee on Legislation and Remedial Procedure has recommended to this body a bill which, if enacted into law, would constitute a vast improvement over present condi-

tions, and I favor it as the best thing in sight. Yet I fear that so long as you depend on local members of the bar to initiate proceedings, and especially since in only a few circuits are there Local Bar Associations, that we shall not obtain the best results. I can conceive of no reason why the lawyers of the state should be less able to control a difficulty of this kind than the members of other professions. Our brethren of the medical profession have accomplished a great work in clearing that profession of unworthy men. So also have the members of other professions in this state. Why can we not do the same thing along the same lines? Is there any reason why a law should not be passed enlarging the powers of the Board of State Bar Examiners, giving authority to initiate proceedings, to receive petitions, to hear testimony and to suspend lawyers from the practice of the profession in this state, subject to appeal to the courts? A Board of this kind, composed of good men drawn from various sections of the state, would be much more effective as a deterrent to evil doers than is the prospect of a possible investigation by the local bar, where so many influences may be exercised and set in motion to prevent a full and complete examination of the facts. It is not pleasant for any member of a Local Bar Association to act on a committee of investigation as to the conduct of one of the fellow members of his bar. It is not pleasant to the judge of that court to order such an investigation or hear it, and considered from any and every angle, it seems to me, to be a wiser and more effective plan if the whole matter can be made of statewide importance, so that the investigation assumes a broader and a bigger aspect, as if the whole state and not merely a local bar was interested in and intent upon the enforcement of reasonable rules and regulations in the practice of law."

#### **On the Law's Delays**

"... the lawyers of this state cannot possibly escape responsibility in some degree for the congested condition of the dockets of our courts of last resort, and the long drawn out course which it is necessary for litigation to take before final determination in this state. . . . Ours is a sin of omission, possibly, more than a sin of commission, for it seems to me that, as officers of the court, engaged actively in the trial of cases and in the making of the very records which have clogged the dockets of our courts, that



we ought long since have devised and submitted to the Legislature a plan whereby this unhappy condition might be avoided. . . . The lawyers of this state . . . two years ago made certain recommendations along this line. The recommendations assumed the form of various bills introduced into the Legislature, and while defeated by a small vote, yet in fact the vote which they did receive and the support which came to these bills throughout the state, and especially from the press, would in and of itself be sufficient justification for us to continue actively our support of at least the most important of these measures. We cannot let this matter alone. It comes before us constantly. The knowledge that it requires so long a time to get a case through the Supreme Court of this state shocks our sense of justice. . . . I am not intending to criticize in the least degree the judges of our Supreme Court. The fault is not, in my opinion, to be lodged with them. . . . The fault goes deeper, and is fundamental and lies, among other things, in the character of records which are sent to that court, the character of cases in which appeals are allowed, the methods by which our cases are tried, and the requirements which we make by constitution of our judges in respect of writing opinions.

"Can we afford longer to stand for such a condition? Will we devise a remedy? Shall we continue to allow the cases to drag as they are now, or shall we rise to the occasion and devise a way whereby business may be expeditiously handled? There is small trouble in the country circuits, and in fact there is not much trouble among the trial courts . . . . Nearly every litigant can have a trial there whenever he wants it, and the delays in these courts are but incidental and sporadic. It is the Supreme Court of the state and the St. Louis Court of Appeals where the chief delay exists. . . .

"There is another cause for the crowded condition of our Supreme Court docket . . . it is the ever present question of excessive legislation . . . . During the session of the Missouri Legislature for the years 1905 to 1915 inclusive . . . there were introduced for consideration 9,665 bills. In the same period, 1496 laws were enacted.

"What is the result of all this? Many of these statutes thus hastily thrown together come up for construction in the courts. This requires time. Just about the moment when the law is

settled by the courts . . . along comes a legislative amendment and the whole process is again gone over. This necessary construction of new laws passed and old and new laws amended and again amended contribute largely to the crowded condition, particularly of the docket of our Supreme Court.

". . . . the fault of our present system of legislation and the veils which are found therein is not all, or even largely, to be laid at the door of the members of the Legislature. The public pays to each member of the Legislature the beggarly sum of \$5.00 per day. This is to cover all expenses including those of campaign and those at Jefferson City, the latter being always as high as the traffic will bear. The regular session is 70 days. The clerical force employed by that body is of necessity untrained and must be organized. Much time is lost in these preliminary matters, and these men have left for actual work about forty or fifty days, and in that time they must read, consider and vote upon from 1,200 to 1,500 bills. Conceding that their training fits them for the labor of doing so, what time have they for comparing the proposed with the existing law? How can they iron out the discrepancies, the contradictions and the overlapping statutes? It is a physical impossibility!

"No class of servants in this state are so poorly paid, and yet no class of men are engaged in more important service. So long as the public insists in limiting members of the law-making body to \$5.00 per day (practically nothing when expenses are paid), so long it may expect the amount of service."

### **Syndicated Law Practice**

"There has grown up in some sections of this state in the last few years what I term 'syndicated Law Practice'. That is to say, a lawyer who makes a specialty of damage suits, establishes branch offices hard by railroad centers and factories and other industrial plants and puts into these offices, under salary and with a good expense account, a man, sometimes a lawyer and sometimes not, whose duty is to be present as soon as possible after the accident or death, and present in glowing terms . . . the ability of his chief and recount the large verdicts procured and favorable settlements made by him. In some instances these agents have no offices but are under pay and with an expense account, and

float about in the community with their ears to the ground for a possible case. In many instances they go further, and as an inducement to securing the case they agree to advance all costs and expenses of every character, and assume full charge and control, relieving the bereaved ones of all care and responsibility in connection with the preparation for the trial of the case.

"... the method as above detailed of procuring these cases seems to me to violate every rule of ethics, written or unwritten, of which I have knowledge... If we have no present statute, and I question whether we have one which is effective through which this system can be broken up, then it is high time that this Association shall propose and vigorously advocate a remedy."

## Supreme Court Of Missouri Historical Society Treasurer's Report Oct. 1994

### Balance On Hand: Oct. 15, 1993

Checking Account	2,753.11
Money Market Account	63,460.99
	<u>66,214.10</u>

### Income, Oct. 15, 1993-Sept, 1994

Membership dues	6,630.25
Royalties from sale of Book	714.40
Interest on Money Market Account	<u>1,731.96</u>
	9,076.61

### Expenses, Oct. 1993 To Oct. 1994

James J. Fisher, Mileage and Honorarium	575.00
Brown Printing, Letterhead	100.00
Holiday Inn, Annual Meeting	1,189.56
U. S. Postmaster, Postage and Bulk Mail Permit	305.47
University of MO. Press: Books sold at Bar meeting and four books given as gifts to the four law schools	283.05
Jane Vetter, Flowers for D.A.'s retirement reception	27.97
Colonial Printing, Printing envelopes for D.A.'s retirement reception	36.50
Jefferson City Country Club, D.A's retirement reception	389.00
Modern Litho, Printing Journal, Vol. 5 #2 and Annual Meeting invitations	1,369.99
Secretary of State, Registration Fee	1.00
Sidney Larson, Repair portrait of Judge John C. Brown	1,400.00
Madison Cafe, Lunch meeting - Tom, Wally and D. A.	25.00
D.A., Reimbursement for printers ribbon	11.67
D. A., Expenses for attending Trustees' Meeting in K.C.	<u>184.84</u>
	5,899.05

### Balance On Hand, Oct., 1994

Checking Account	2,803.57
Money Market Account	67,358.63
	<u>70,162.20</u>

### Allocation of Funds on Hand

Herman Huber Memorial Fund	525.00
Unrestricted Funds	<u>69,637.20</u>
	70,162.20



**Proceedings at the Twenty-Fourth Annual Meeting of the Missouri Bar Association, held at the Commercial Club Rooms, St. Joseph, Missouri, September 28 and 29, 1906**

Your committee is of the opinion that this association could render no service that would be of greater moment and import to the proper administration of the law than to procure a revision of the statutes regulating the compensation paid the judges of the courts from the Supreme Court to the circuit courts and that paid to the State Officers. Your committee submits herewith some data, comparisons and facts bearing upon this question (Exhibit A) which show the salaries now paid, the inequalities therein. Your committee is of opinion that this condition exists solely because of the fact that the State officers from a supersensitive delicacy have refrained from calling the attention of the lawmakers to the existing conditions.

**Exhibit A: Facts, Comparisons and Data Explanatory of Proposed Readjustment of the Salaries of Officers of State and Judges**

Under the present statutes of the State, the officers of State and judges receive the following annual salaries:

Governor	\$5,000
Lieutenant Governor	\$7.00 per day while Legislature is in session, and 1,000 Members of the Legislature, \$5.00 per day while Legislature is in session for first 70 days; \$1.00 per day thereafter.
Judges of Supreme Court	each \$4,000
Judges of the St. Louis Court of Appeals and Circuit Court in St. Louis	each \$5,500
Judges of Kansas City Court of Appeals	each \$3,500
Judges of Circuit Court outside of St. Louis, Kansas City and Buchanan County, with \$100 per month for expenses	\$2,000
Secretary of State	\$2,500
State Treasurer	\$3,000
State Auditor	\$3,000
Attorney-General	\$3,000
Superintendent Public Schools	\$3,000
Superintendent Insurance	\$3,000
Governor's Clerk	\$2,000

This has been the compensation paid the several officers ever since 1865, or since such offices were created, except that in 1870, the salary of the judges of the Supreme Court was increased from three thousand to forty-five hundred dollars a year.

During that forty years Missouri has advanced from the eighth to the fifth State in the Union, her population has increased from about 1,182,012 to 3,106,665, and the assessed valuation of her property has increased from about \$239,343,643 to \$1,004,469,071; or otherwise stated, she has increased more than three times in population and nearly five times in wealth. It needs no argument to convince any unprejudiced mind that the labors and responsibilities of her State officers and judges have increased in the same ratio. Since 1870 the business of the Supreme Court alone has increased so much that in 1885 the court was over five years behind its docket, which necessitated the establishment of the Kansas City Court of Appeals, thereby relieving the Supreme Court of nearly a thousand cases. But since 1885, the business of the court has increased from about three hundred and eighty four cases in 1887 to five hundred and forty-four cases in 1904, and it is increasing in a greater ratio every year.

# The Missouri Supreme Court Historical Journal

Published periodically by the Missouri Supreme Court Historical Society

P.O. Box 448

Jefferson City, MO 65102

Editor: E.A. Richter

Associate Editor: Mrs. 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

William D. Welliver  
David E. Blanton  
Ilus W. Davis  
John S. Black  
Senator Emory Melton  
Stuart Symington, Jr.

Richard S. Brownlee III  
William G. Guerri  
Ronald K. Barker  
Avis G. Tucker  
June P. Morgan  
Robert G. Russell

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