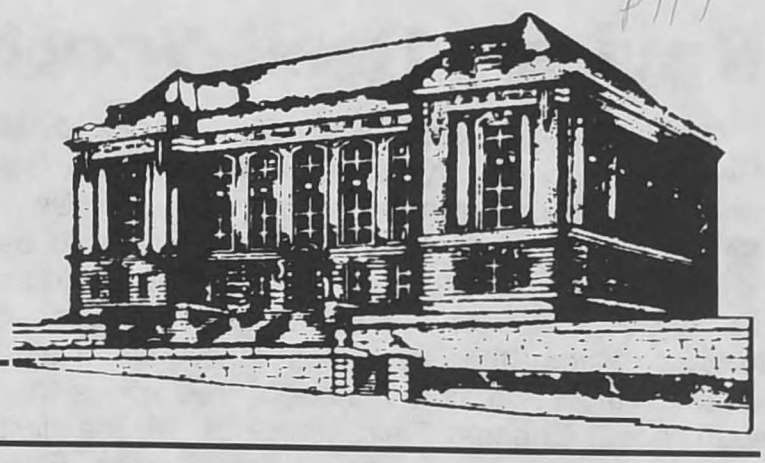
The Missouri Supreme Court
# Historical Journal
*Published by the Missouri Supreme Court Historical Society*





Vol. 6, No. 2 March, 1997

# Society Co-Hosts Court Records Exhibit

## Law, Politics, and Dueling in Early Missouri History

Lawyers, of course, should have a vested interest in litigation rather than violence and conflict. Yet, your legal forefathers in this state believed both means (peaceful and violent) of resolving problems were efficacious. Furthermore, those in the legal profession believed that they and they alone would determine when each type of resolution was appropriate. If violence was the appropriate action, then the institution of the code duello became the route to achieve personal satisfaction.

From the 1803 Louisiana Purchase through the next 30 years, lawyers journeyed to the dueling grounds more often than did any other profession in Missouri. There were many explanations. First of all, they perceived the law of honor to be greater than any of the laws of man. None other than one of the country's most famous presidents declared the right to defend his own honor rather than to depend upon the courts. Andrew Jackson asserted that "the great can protect themselves, but the poor and humble require the arm and shield of the law." Jackson's mother also weighed in. "Never tell a lie," she cautioned her son, "nor take what is not your own, nor sue anybody for slander or assault and battery. Always settle them (sic) cases yourself."

Second, the code of honor was a way of defining social hierarchy. Lawyers were Missouri's elite. Alexis De Tocqueville called them "America's natural aristocracy." Only gentlemen could employ the code to seek satisfaction and no gentleman was ever forced to fight below his social rank. On the Missouri frontier, where social status was difficult to define, a duel helped to solidify oneself in the upper class. Lawyers were, of course, very conscious of rank and class.

A third factor which led lawyers to the dueling grounds was their legal training. Missouri's lawyers

*(See LAW, Page 12)*

## Court Records to Missouri Archives

Much of history is involved with records of military battles, legislation, exploration, migration and economics. However, a truer and much more interesting history of the people of a country is to be found in the records of its courts where the everyday life of its citizens – marriages, deaths, births, wills, land transfers, personal conflicts and controversies, and stories of crimes of greed and passion – are recorded. It is here where the joys and sorrows, loves and hates, successes and failures of its citizens are laid bare, often in minute detail, that the true history of Missouri and its people is to be found.

The public was given a glimpse of this history of Missouri on Tuesday, February 25 when the Missouri State Archives in Jefferson City presented a new exhibit of Missouri court records which it is gathering from courthouses throughout the state and transferred to its vaults in Jefferson City. The Missouri Supreme Court Historical Society sponsored a reception in connection with the exhibit originally scheduled for January 15 but canceled due to bad weather. Kenneth C. Kaufman, author of a recently

*(See EXHIBIT, Page 12)*

*Missouri State Archives Director Ken Winn and Missouri Supreme Court Historical Society President Thomas Vetter view probate court records from St. Francois County which are a part of the massive collection of court records being gathered by the Archives from courthouses throughout the state.*

# Review: Dred Scott's Advocate

*Dred Scott's Advocate: a Biography of Roswell M. Field, by Kenneth C. Kaufman, published by the University of Missouri Press, reviewed by D. A. Divilbiss.*

It is doubtful many St. Louis lawyers would be able to identify the name of Roswell M. Field as the advocate of one of the most famous cases in Missouri history, the Dred Scott case. Few, if any, would connect him as the father of the famous Missouri poet, Eugene Field, in spite of the fact that Field's home, now called the Eugene Field House and Toy Museum, is the oldest residential building in St. Louis and one of the city's leading tourist attraction.

To correct this problem, Kenneth C. Kaufman has written a book titled **Dred Scott's Advocate, A Biography of Roswell M. Field**. In the book, Kaufman points out that it is not surprising that Mr. Field is not as well remembered as other well known St. Louis lawyers during the early 1800s since, even in his lifetime, he was a shy, private man, a sole practitioner who, for most of his professional life, shunned publicity.

Kaufman traces Field's life from his birth on February 22, 1807 in Vermont. Roswell's father was an attorney. Mrs. Field "gained prominence and influence in the Congregational church." Both could trace their heritage back to prominent English ancestors who had come to America in the early 1600s.

Roswell Field's education was a top priority with his family. At nine he was placed under the tutelage of a Congregational pastor, with whom he studied Greek and Latin. At 11, he was sent to Middlebury College, graduating in 1822. After graduation, he studied law for three years with his mother's brother and was admitted to the Vermont bar in 1825 at the age of 18. He then joined his father's law firm. From 1832 to 1835 he served as state's attorney for Windham County and was elected as a representative to the General Assembly of Vermont in 1835 and again in 1836.

After 15 years as a successful practicing attorney in Vermont, it is surprising that Field would leave it all behind in 1839 for an uncertain future in Missouri. Kaufman speculates that the most likely explanation is what he describes in the book as "the unhappy incident" in which Roswell and a young lady named Mary Almira Phelps were married only to have her family refuse to acknowledge the ceremony ever took place. Roswell struggled for eight years to have the marriage declared valid, even taking the case to the Vermont Supreme Court, but in July, 1839, the court declared his marriage null and void. As a result he developed a deep depression that took several years to overcome. He remained a bachelor until 1848 when he married Francis Marie Reed, a young women he met in St. Louis who was originally from his home town of Newframe.

By the time of his marriage, Field had established himself as the "first and foremost" real estate lawyer

*(See REVIEW, Page 11)*

# The Cost of Justice in a J.P. Court

An interesting glimpse of Missouri's Justice of the Peace Courts in the post-Civil War era is provided by a ledger of the Justice of the Peace Court of Femme Osage Township presided over by the Honorable Conrad Mallinkrodt of Augusta for the years 1866-1868. The 130-year-old rare document was recently 'rediscovered' in the files of the St. Charles County Historical Society. Of particular interest are the types of cases and the monies involved in the litigation as well as the fees and court costs. The Augusta Neighborhood News, in an artide on the ledger, cites the following examples:

"For instance, there are the cases of Louis Schmidt bringing suit against Henry Stiegemeier for $3.00 owed him for road work in 1867, the old $2.00 debt Rudolph Tiemann wanted Robert Ewich to pay, or the $22.45 wages Herman Limberg owed Carl Lowenhaupt for stone work . . . .

"Dozens of cases were about money owed, especially when notes were overdue (with interest averaging 10%). . . . . In 1868 storekeeper John F. Schroer wanted the money John Silvey had borrowed in 1864. For rendering judgment of balance due ($17.70), the Justice received .25 cents, the Constable .95 cents for serving the summons, and the paper work of collection cost another .75 cents.

" . . . . In addition to the sum of the claim, there are the court costs, e.g., .05 cents to the Justice for swearing in a witness and .50 cents to the witness for his appearance . . . .

". . . . other cases filed with the Justice of the Peace concerned theft charges against a vagrant, unpaid school tuition, denied uses of a roadway, and . . . . assault and battery cases."

An exact transcription of the 184 *Justices Ledger*, in easy-to-read type, is available for $12. Contact Anita Mallinkrodt, Augusta Historic Museum, Augusta, MO. 63332.

# The Judicial System of Missouri: 1952-1996

## Conclusion of article by Charles B. Blackmar, Former Chief Justice, Supreme Court of Missouri

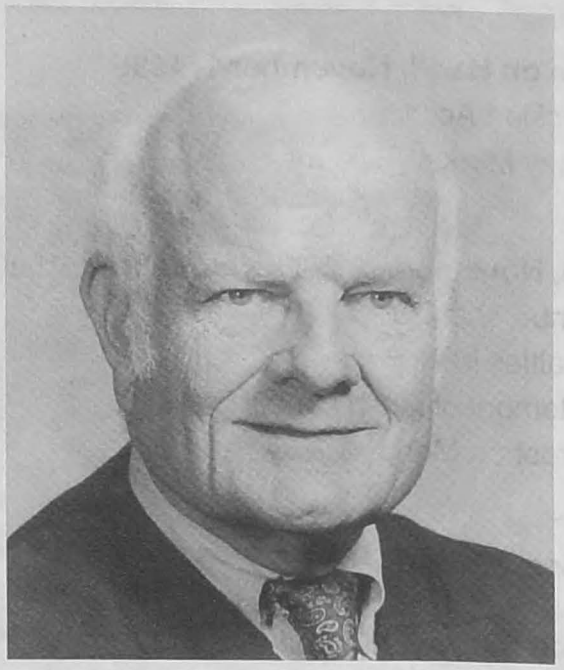
### Inherent Powers and Discipline

The Supreme Court has always asserted inherent power to govern the bar of the state. In the early 1940s it adopted rules for the establishment of The Missouri Bar as the official organization of all Missouri lawyers. All lawyers must belong to and must pay an annual fee to this organization. The rules provide for the election of members of the board of governors from the several districts into which the state is divided, and for the election of officers by the board of governors.

The Missouri Bar, however, has no disciplinary authority. The Supreme Court has adopted a series of revisions to its Rule 4, presently entitled "Rules of Professional Conduct," which sets forth the ethical standards to which lawyers must adhere. Rule 5, which was the subject of major revisions in 1991 and 1995, prescribes the procedure for disciplining lawyers. The Court appoints a Chief Disciplinary Counsel, who is in charge of investigation and prosecuting complaints. This Officer is assisted by a bar committee in each of the judicial circuits, appointed by the Court, which also have the authority to investigate complaints and institute proceedings referred by the Chief Disciplinary Counsel.

The 1991 revision sought to establish a clear distinction between the prosecutorial function and the quasi-judicial function in the processing of charges against lawyers. The Court also appoints an Advisory Committee, composed of lawyers and lay members, which establishes panels for the hearing of complaints prosecuted by the Chief Disciplinary Counsel and the bar committees and issues formal opinions regarding the Rules of Professional Conduct. The Supreme Court has the ultimate authority to determine whether violations of the rules of professional conduct has occurred, and to determine the sanctions to be imposed, which may include admonition, reprimand, suspension, or disbarment. The tendency over the years has been to rely more and more on paid attorneys and investigators in the disciplinary process, rather than making use of volunteers. Charges against attorneys are carefully investigated. Suspensions and disbarments are not infrequent. (In 1994, according to the report of the Chief Disciplinary Counsel, there were 21 disbarments and 10 suspensions.)

The Court has also claimed inherent authority over admission to the bar and has adopted Rule 8 for that



*Judge Charles B. Blackmar*

purpose. Candidates for admission must be graduates of law schools accredited by the American Bar Association. In 1985 the Court, after briefing and oral argument, declined to afford state accreditation to a law school that did not meet A.B.A. standards and gave no indication that it would do so in the foreseeable future. *Matter of Laclede Law School, 700 S.W. 2d. 81 (Mo. banc 1986).*

The examinations are administered by a Board of Law Examiners consisting of five members. Under present practice the examination consumes two days. On the second day the Multistate Bar Examination is administered, while the first day is devoted to an examination prepared by the members of the board, which may include questions from the Multistate essay examination and a performance-based question. The Board of Law Examiners also has authority to investigate questions about character and fitness of applicants and to hold hearings on applicants whose eligibility to sit for the examination or to be admitted to the bar has been questioned. Decisions on these matters are subject to Supreme Court review.

The Court, in the exercise of its authority for governing the bar, has Adopted Rule 4-1.15, requiring the devotion of interest earned on lawyers' trust accounts (IOLTA) to public uses; Rule 13, governing legal assistance by law students; Rule 15, requiring continuing legal education for lawyers; and Rule 16, relating to lawyers having problems of substance abuse.

*(See JUDICIAL, Page 8)*

# Supreme Court of Missouri Historical Society
# Treasurer's Report, November, 1996

| | | |
|---|---|---|
| **Balance on Hand, November 1, 1995** | | |
| Checking Account | | $ 618.57 |
| Money Market Account | | 73,125.01 |
| | | **$ 73,743,58** |
| **Income, November 1, 1995-October 28, 1996** | | |
| Membership Dues | $ 6,772.50 | |
| Royalties from Book | 228.52 | |
| In Memory of Rush Limbaugh, Sr. | 100.00 | |
| Interest on Money Market Account | 2,897.44 | |
| | **$ 9,998.46** | |
| **Expenses, November 1, 1995-October 28, 1996** | | |
| Professor Leslie Anders – Honorarium and Expenses for Speaking at 10th Annual Meeting | $ 631.21 | |
| Jefferson City Country Club – Dinner 10th Annual Meeting | 436.25 | |
| Jane Vetter – Flowers for 9th Annual Meeting | 68.00 | |
| U.S. Postmaster – Postage and Bulk Mailing permit | 212.76 | |
| Janet Musick – Preparing camera-ready copy for the JOURNAL | 210.00 | |
| Jane Vetter – Painting and Frame for Portrait of Hamilton Gamble and Eexpenses for Trips to Churchill Memorial, Sid Larson and St. Louis | 1,251.00 | |
| Capitol Projects – Mailing copies of the JOURNAL | 15.65 | |
| Modern-Litho Print Co. – Printing Journal and Invitations | 1,595.39 | |
| Flower House – Flowers for Spring Induction Ceremony | 100.00 | |
| Secretary of State – Registration Fee | 15.00 | |
| Additional Deposit Slips | 29.81 | |
| Madison Cafe – Lunch with Members of Secretary of State's Office | 41.17 | |
| Precision Art – Historical Society Nameplate to Appear with Flowers at Induction Ceremony | 33.30 | |
| D.A. Divilbiss – Expenses for September 19th Trustees' Meeting in Kansas City | 193.72 | |
| Jeanie Bryant - Flowers for Fall Induction Ceremony | 90.00 | |
| | $ 4,923.26 | |
| **Balance on Hand October 28, 1996** | | |
| Checking Account | | $ 4,296.33 |
| Money Market Account | | 75,021.45 |
| | | **$ 79,317.78** |
| **Allocation of Funds on Hand** | | |
| Herman Huber Memorial Fund | | $ 525.00 |
| Unrestricted Funds | | 73,218.58 |
| | | $ 79,317.78 |

# Missouri Supreme Court Historical Society Holds 11th Annual Meeting

The 11th Annual Meeting of the Missouri Supreme Court Historical Society was held November 2, 1996 at the Jefferson City Country Club in Jefferson City, Mo. Attending the meeting were 26 members along with guests of the Society, Dr. and Mrs. Ken Winn, Missouri State Archivist and Dr. and Mrs. Dick Steward, speaker for the evening.

Following dinner, President Thomas Vetter called the meeting to order. He directed members' attention to the portrait of Hamilton Gamble painted by Mr. Fred Stolts with funds provided by the Society. The portrait is now located in the office of Chief Justice John Holstein in the Supreme Court Building.

A short business meeting followed with the approval by the members for the election of the following officers and trustees:

Chairman of the Board. . . . . William H. Leedy
President . . . . . Thomas A. Vetter
1st Vice President . . . . . Mrs. Sinclair S. Gottlieb
2nd Vice President. . . . . William A. R. Dalton
Secretary-Treasurer. . . . . David Brydon
Asst. Secretary/Treasurer . . . . . D. A. Divilbiss
Trustee . . . . . Richard Brownlee III
Trustee . . . . . Robert G. Russell
Trustee . . . . . Honorable J. P. Morgan
Trustee . . . . . Stuart Symington, Jr.

Copies of the treasurer's report that had been distributed to the members was also approved.

President Vetter then introduced Dr. Winn, who invited the members to a reception to be held at the State Information Center in Jefferson City starting at 5:30 p.m. January 15, 1997. The reception was held in connection with an exhibit of court records, documents and pictures of famous Missouri cases. The Missouri Supreme Court Historical Society will sponsor the reception. Dr. Winn hopes to have the exhibit available to travel around the state and provide speakers to accompany it. The Society will underwrite a portion of the expenses for the traveling exhibit when it is organized.

*Portrait of the Honorable Hamilton Gamble as displayed at the annual meeting.*

President Vetter then introduced Speaker Dr. Dick Steward, a Professor of History at Lincoln University and the author of a book on John Smith T. Dr. Steward's topic for the evening was "Missouri Law, Politics and Dueling."

*Dr. Dick Steward, Professor of History, Lincoln University, spoke about his book, "Missouri Law, Politics and Dueling" at the annual meeting.*

# Judge Henry I. Eager Remembers

*(Editor's Note: The following is based on an interview with the Honorable Henry I. Eager, at the time a retired judge of the Missouri Supreme Court, in December 1984 by D.A. Divilbiss, then Librarian of the Supreme Court. Judge Eager died February 10, 1989 at the age of 93.)*

I was born just outside of Hopkinsville, Ky. My father was an early day Kentucky doctor, my mother was a teacher. My father died in 1907 when I was 12. My early education was in the public schools. I graduated from high school and promptly went to the State of Washington where we had a very close family friend living at Mt. Vernon, Washington. I worked on their farm during the summer and attended the University of Washington for the next two years.

Then I entered the University of Michigan Law School. I continued there with two long breaks, one while I worked for a year as my finances were not good and then I spent over two years in the army. I had a regular army commission, served both in this country and France and was tempted for awhile to stay in the army, but finally went back and graduated from Michigan law school in 1920.

I then came to Kansas City and joined a firm where I stayed for 35 years. The firm had various name changes, but when I left it became Blackmar, Swanson and Midgley. I did a lot of trial work. I was a member of the Board of Law Examiners for eight years; that was the most tedious work that I ever did. We had no standardized procedures, no standard questions and I recall many summer nights that I stayed home grading papers. We got up all of our own questions, and graded all of our own papers. We had certain subjects assigned each term that were rotated so that you didn't get the same subject twice.

I was also on the Board of Governors of the Missouri Bar for a short time before I was appointed to the court in April, 1955 by Governor Donnelly. The procedure then was much the same as it is now. There was an Appellate Judicial Commission of seven members consisting of the Chief Justice, three lawyers and three laymen. There were two vacancies. Judge Ernest Moss Tipton had died and Judge George Robb Ellison had retired. Both were from Division Two. I was sworn in on April 29, 1955.

I never had ambition to hold any other position except as a judge of the Supreme Court. That grew on me as the pressure of trying cases began to affect me. I knew that the work at the Supreme Court would be hard, but there wouldn't be the clamor and pressure

*Judge Henry I. Eager*

from people wanting to know why you hadn't done this or that so I put in my name and was appointed.

In the meantime, I had to try a case that was already set for the week before I was sworn in. I didn't finish it until Thursday afternoon. So I came to Jefferson City Thursday night and was sworn in. I remember that I came back home and spent practically all Saturday and Sunday writing memos about the work I had been handling and began active service at the court on Monday morning. Judge Clem F. Storckman was appointed at the same time.

The Missouri Court Plan was the reason I applied. I would not have applied if the election had been on a regular ballot. I had no inclination whatever to run for any political office.

As for my family, my son was practicing law in the same firm as I as a junior partner. He had no particular objection, of course, to my coming down here and proudly approved of it. Incidentally he died in 1972 at a comparatively early age and at the height of his law practice. That was an enormous blow to me. He was our only child.

My wife was not particularly happy about the move, but she said "do whatever you think you ought to do." She was a member of the School Board of Kansas City at that time and wanted to finish her term, so she stayed there and finished her term while I came down here and lived in the Supreme Court building for 14 months. Judge Leedy was living there also and Judge Storckman lived there for a short time. There was some financial sacrifice but money was not so much a factor then as it would be now. I

think lawyers are now making a good deal more money than they did then. I don't remember how many lawyers applied at the time I applied, but there were plenty and a good deal more than there would be now.

My general impression of my days as a judge is that they were happy and hard working. We had a very congenial group of judges. Incidentally, I think this is historical; of the seven judges on the court when I went on, there was not a change for eight years. I think that to be a record.

The Judges were Laurence M. Hyde, C.A. Leedy, Jr., Frank Hollingsworth, S.P. Dalton, Henry J. Westhues, Storckman and myself. After eight years, Judge Westhues retired.

During my 15 years as a judge, there was really no dissension on the court except for a little controversy about wearing robes. For a good part of the first eight years I served, we did not wear robes. When the subject came up there was some opposition. Judge Dalton was particularly opposed and wrote as very bitter letter on the subject. I think that the bar promoted the idea of wearing robes and since most judges were in favor, we finally began to wear robes, which I think was the thing to do.

During the 15 years I was on the bench, I don't recall any earth-shaking decisions. We did decide a lot of highly important matters: big bond issues, big annexations, a lot of them in St. Louis County. I wrote an opinion of an annexation in St. Joseph in which we approved annexation of an enormous area of land east of the city. We also decided one contest on the governorship. This was in Governor Christopher Bond's first term. Now as far as the U.S. Supreme Court decisions were concerned, they were mostly in criminal cases. The Miranda doctrine made considerable problems for the state courts and did result in a good many reversals.

As to news coverage, it was routine, nothing outstanding that excited the newspapers particularly. The Gantt case was over and forgotten for the most part. Judge Tipton and Judge Ellison were gone; I believe Judge Hyde and Judge Leedy were the only two on the court who had been on the court during the Gantt problem. There was no reverberation of it at that time by the news media; they didn't raise it so news coverage was more or less routine.

The big problem of the court during my years as a judge was that we got all felony cases and all civil cases in which the jurisdiction was $1,500.00 or above. That resulted in an enormous docket. During my latter years as a judge the jurisdiction changed. The court could and did make its own rules but the jurisdiction had to be changed by the legislature.

**"My general impression of my days as a judge is that they were happy and hard working. We had a very congenial group of judges. Incidentally, I think this is historical; of the seven judges on the court when I went on, there was not a change for eight years. I think that to be a record."**

Now concerning the office of the clerk, it had a small staff. The clerk prepared the docket, set the record, but didn't furnish any analysis of the cases such as is now done. We had no help on cases or motions, and I recall that I figured I spent about a week a month working on the writs and motions that came to the court and, of course, during that time I couldn't be writing opinions.

We had no law clerks, whatever; in fact, we had no outside help. We finally got a court administrator, but it was just one man and his secretary. We had no help from that source and we had no help from the clerk's office. The Judicial Conference was on paper but had little effect.

I was Chief Justice from 1963-1965. That operated in rotation much as it does now. Electing the Chief Justice is pretty much a formality. The next judge in line gets the job. The next in line is determined by the way you came on the court.

Since Judge Storckman and I came on the court at the same time, that presented a problem. Judge Leedy said that only way he could decide that was to give preference to who had been admitted to the bar first. I had been admitted first so I took preference over Judge Storckman.

At that time, the position of Chief Justice was not the public office that it is now. They didn't run around making speeches, and they didn't always talk at public gatherings. They just tended to business and that was about all. I think they did make a semi-annual address to the legislature when it convened. I recall making one talk to the legislature. It didn't focus so much on the budget as it does now. It was more or less concerned with the situation of the court and what recommendations you had for changes in law that affected the court.

We didn't come right out and ask so boldly for more money. That has changed a good deal, too. I recall that in the end of 1968 (at that time you had to retire at 75), I still had a year and a half to go, but I thought it would be inadvisable to be elected for 12 years and only serve a year and a half.

*(See EAGER Page 8)*

(JUDICIAL, from Page 3)

Although the Appellate Judicial Commission and the Circuit Judicial Commissions are independent bodies established by the Constitution, the Supreme Court has enacted procedural rules governing their proceedings. In 1954 Governor Donnelly refused to make appointments from panels for three circuit court vacancies in Jackson County, alleging that the commission had used political considerations in arranging the names on the several panels. The Commission declined to reconsider the panels. The Supreme Court then adopted a rule permitting the commission to rearrange the names on panels when panels are named for more than one vacancy on the same court. The commission then rearranged the panels, and the governor made the appointments. One of the original panelists asked that his name be removed but, with this exception, no person was named to the revised panels who was not on the initial panel, and the three appointees had all been named on one of the initial panels. There is no case in which a governor has rejected a panel and has then received a panel containing different names.

By constitutional amendment, the commission now has the power to make an appointment from a panel it has named if 60 days have expired from the time the governor received the panel and the governor has made no appointment. No governor has ever allowed that time to elapse.

The Commission on Retirement, Removal and Discipline is also a constitutional body, but the Court is the ultimate reviewing authority in disciplinary cases and has prescribed procedural rules for the commission. No member of the Supreme Court serves on this commission, and the Court does not appoint any member of the commission.

For many years the court rules prohibited the recording or photographing of any judicial proceedings. This rule drew increasingly strong protests from representatives of the media as other states allowed "cameras in the courtroom," and, in 1991, the Supreme Court authorized an experimental use of cameras in courtrooms. Following a test period, a permanent rule was adopted. There are safeguards designed to protect the rights of litigants. It is of interest that the electronic media, after having pursued the issue so avidly, have made little use of the privilege of photographing court proceedings. Even when trials are highly publicized, only a few excerpts usually make their way into news broadcasts

The Court has also adopted rules governing enrollment of attorneys, practice by nonresident attorneys, temporary transfer of judicial personnel (a very important part of the administration of the judicial system), certified court reporters, voluntary early dispute resolution, and continuing education of lawyers and judges, including municipal judges. The Court, indeed, may adopt rules to deal with any perceived problem in the administration of justice. The rule-making function consumes a considerable portion of the working time of Supreme Court judges. The Court has had the assistance of Committees of lawyers and judges, some continuing and some selected ad hoc for particular tasks.

## Original and Special Jurisdiction

The constitution of 1875 conferred upon the Supreme Court the authority to issue "original remedial writs," and this authority was continued in the Constitution of 1945. Although there is no limitation in the text of the constitution, this authority has been construed to authorize the issuance of the extraordinary common law writs of mandamus, prohibition, quo warranto and certiorari. The Supreme Court also has the constitutional authority to issue writs of habeas corpus.

The authority to issue writs is shared with the court of appeals and the circuit courts. The Supreme Court has now specified that it will not issue an original writ if adequate relief can be obtained in the court of appeals or a circuit court, and the petition must either state that relief has been sought in a lower court or that there are reasons why application to a lower court would be inadequate. In at least one case, the Supreme Court has issued a writ against a court of appeals. *State ex rel. McMullin v. Satz, 759 S.W. 2d. 839 (Mo. banc 1988).* The Court received hundreds of applications for original writs each year. The great majority are denied, but some are granted and ultimately determined by the Court in the manner of an appeal.

There are relatively few cases in which original writs present factual questions. In those cases the court customarily appoints a master, who hears evidence and reports to the Court with recommended findings of fact and conclusions of law. In one case, involving the constitutional qualifications of a candidate for governor, the Court issued a preliminary rule in prohibition and heard evidence in open court. *State ex rel King v. Walsh, 484 S.W. 641 (Mo. banc 1972).*

The Constitution of 1945 changed the procedure for impeachment by providing that trial of charges proffered by the House of Representatives should be held in the Supreme Court, (except when one of the members of the Court is impeached, in which event the trial is before seven "eminent jurists" appointed by the Senate). Two circuit judges were impeached by the House, but each resigned before trial could be held in the Supreme Court. In 1994, however, the

House impeached Secretary of State Judith Moriarty, and a trial lasting several days was held in the Supreme Court, resulting in her removal from office. *In the Matter of the Impeachment of Judith K. Moriarty, 902 S.W. 2d. 273 (Mo. banc 1994)*

The Court also hears appeals from the Board of Law Examiners and the Judicial Finance Commission and has exclusive jurisdiction over court matters involving lawyer discipline.

## Unified Court System

The Constitution of 1945 gave the Supreme Court the means for exercising supervisory authority over all courts of the state. The power thereby conferred was exercised hesitantly for many years. There was a seeming reluctance to "interfere" with the affairs of the lower courts and also a lack of resources for the effective exercise of supervisory authority.

The potential for a unified judicial system was greatly enhanced by the establishment, in 1971, of the Office of State Courts Administrator. The administrator's office can keep in touch with the several courts of the state to determine where dockets are falling behind and where additional judicial help can be obtained. For many years the transfer of a judge from one court to another was thought to be a matter of asking for a favor. In recent years, however, the Supreme Court has made it clear that judges have the duty of accepting assignments to other courts. Experience has shown that some judges can discharge their primary responsibilities while still having time for special assignments. Other circuits do not have sufficient judicial personnel to keep their dockets current. The assignment of judges where needed is an essential component of a unified judicial system.

**"The Constitution of 1945 gave the Supreme Court the means for exercising supervisory authority over all courts of the state. The power thereby conferred was exercised hesitantly for many years."**

There is wide sentiment for reorganization of judicial circuits to distribute the workload more evenly, but practical problems are present in the political complexion of the state's 114 counties. In a few instances counties have been transferred from one circuit to another, but there has been no comprehensive program. It is the writer's opinion that circuit realignment can be effective only if all of the circuit and associate judges of the state are placed under an appointive system along the general lines of the Missouri Plan.

The 1970 amendments also authorized retired judges to serve on special assignments under the supervision of the Supreme Court. Quite a few retired judges served on special assignments without compensation. In 1989 the General Assembly authorized compensation to retired judges for time spent on judicial assignments, based on the difference between the judge's retirement compensation and the salary of the position from which the judge retired. Retired judges are not eligible for judicial assignment if they engage in the practice of law and, undoubtedly, the availability of compensation may persuade some to accept judicial assignment in preference to returning to law practice. It is unfortunate, however, that the General Assembly has never appropriated sufficient monies to pay all compensation due to senior judges and has taken no steps to enact supplemental legislation for judges whose compensation for services rendered has fallen short of the statutory requirement. The courts administrator allocates the money appropriated for senior judge compensation on a quarterly basis and pays those who have served during the quarter a portion of the compensation due them, based on the time served and money appropriated.

The supervisory authority often requires the Court to put out brush fires. There was a bitter dispute during the 1980s between the circuit judges and the associate circuit judges in the 21st Judicial Circuit, comprising St. Louis County. The dispute resulted in arguments before the Court, and did not die easily. It seems to have quieted in recent years, but some tensions remain. There have been disagreements among the judges of other circuits, but these have not consumed a great deal of the time of the judges of the Supreme Court.

In 1992, under the guidance of Chief Justice Edward D. Robertson, Jr., the docket problems of the 21st Judicial Circuit prompted the Supreme Court to establish a "megacircuit" composed of counties in northeast Missouri. Judges from all over the circuit were regularly assigned to sit in Clayton. Within two years these efforts bore fruit, so that the dockets in the circuit were reasonably current, and the regular assignment of outstate judges was no longer required. Several retired circuit judges from St. Louis and St. Louis County have been sitting regularly in Clayton and have assisted in keeping the docket current.

In 1993, when Ann K. Covington was Chief Justice, an appropriation was obtained from the General Assembly for the development of a statewide "automated court system," making use of the latest computer technology, over a ten-year period. When this project is complete, papers may be filed electroni-

*(See JUDICIAL, Page 10)*

*(JUDICIAL, from Page 9)*

cally, record information will be immediately available, and the chief justice will have instant access to data about the operation of the entire judicial system.

Judge Hyde commented on the extra burdens borne by the chief justice, and strongly recommended that the position of court administrator be established. Even though the court administrator and the clerk have been very helpful to successive chief justices in the performance of administrative duties, and other members of the court have aided the chief justice by assuming supervision over particular areas of the court's administrative work, the chief justice has many demands on time in addition to regular judicial duties. Some students of court administration have recommended that a permanent chief justice be selected. The writer, on the basis of his experience, does not agree with this recommendation. The chief justice is required to do many things that do not relate to the decision of cases. The burden of administrative work, indeed, tends to make the chief justice less effective in writing opinions and discussing problems presented by the cases with colleagues. There is also a "burnout" factor, and positive benefit in having a constant flow of new ideas and approaches.

## Conclusion

In his article, Judge Hyde reminded us that "improving the administration of justice must be a constant process" and that it is our task to keep the lamps of justice bright, even though they may grow dim elsewhere. These words are as applicable today as they were when he wrote them. The intervening years have demonstrated much progress as a result of the diligent efforts of many persons. Yet we can never rest in confidence that all has been done that could possibly be. There is the need for eternal vigilance. With these cautions, I submit that men and women composing the judiciary, and the employees of the judicial branch have done excellent work over the years and have given the State of Missouri a Judicial System it can be proud of.

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*(EAGER, from Page 7)*

One point I want to make is that for six or seven years after I retired, I sat actively as a special commissioner with Division Two and wrote many opinions. As a matter of fact, I did all the work a regular commissioner did except vote. This was after I retired in 1968. I sat every term the Court met. The first year after I retired I got 12 cases and wrote the opinions in them.

There were then five judges: Lawrence Holman, Robert E. Seiler, James A. Finch, Jr., J. P. Morgan, and Fred L. Henley. At that time there were no clashes of personality. It was a pretty agreeing court. But I think during that period, dissension began growing a bit. I know Judge Seiler wrote a lot of dissents in criminal cases.

If I may interject here a personal item, my wife died in 1969. I eventually remarried. My second wife was Lorene Newton, from my home community in Kentucky. She has been a very great help to me, particularly recently in my declining health. She has done everything that needs to be done that I should have been doing. Incidentally, she owns the farm on which my grandfather and great-grandfather and grandmother and great-grandmother are buried.

I look back on my 15 years as a judge as a time of hard work with no help from clerks, law clerks, clerks of the court or court administrators. I look on these years as a period of very crowded dockets. I remember one commissioner received as many as 13 cases in one term. But the court kept up reasonably well considering all these handicaps. It was a peaceful, very proud period and I feel that it contributed considerably to the stability of the judicial system. The terms of the court were longer and, of course, there were more cases, so we didn't have as much time in between terms to do our research. There was no help on motions and writs and in those days we had many writs from the penitentiary and many motions for transfer and other sorts.

The time spent on that made the time you could spend on cases very limited. Was the court at this time trying to get the jurisdiction changed? I can't tell you exactly when that started. It probably started in the early years after my retirement and while I was sitting as special commissioner. But I don't recall that it accomplished very much until later.

Concerning the use of the term "Justice" instead of "Judge," it seems to me to be used indiscriminately. The term in the constitution, as I recall, is "Judge." I don't know how that Justice business started. I never used it myself.

I appointed the first Missouri Approved Instruction Committee and I selected the people who would serve on it from the Kansas City district. They had various meetings with the court and the one thing I remember that caused a little interest, and perhaps a little controversy, was after the tentative inception, some of the judges thought that the proposed rules had to be submitted to the bar before they were even tentatively approved.

The Instruction Committee violently opposed that and I agreed with them. In a meeting we finally convinced the rest of the court that the thing to do was

to approve them, which we did. Any suggested changes were considered later.

Looking back, that is one of the greatest things that the court has ever done. It adopted those rules as compulsory not just as voluntary. Formerly, lawyers would submit instructions in a case which were one, maybe two, legal pages long. One case that I recall was reversed solely on the length of the instructions on the ground that it would have been impossible for the jury to understand them. Every attorney wrote his own, but of course the court had to approve them. The court couldn't sit down and write a new instruction, so they more or less had to take them or leave them, and it was just a horrible mess. Every lawyer writing the instruction tried to gain some advantage in it, so that they could argue that to the jury. One judge said that the adoption of Missouri Instructions was the greatest invention since the wheel. I highly approved of it and it has worked out wonderfully.

I think that the office of the Court Administrator largely came about as a result of the heavy work load of the court. It took a long time to convince the legislature to make appropriations for it. I think the load on the court was the primary reason, but there was also the need to create some supervision for the circuit courts, which were more or less running wild themselves, some being way behind in their dockets, some ahead. There was a great diversity in the operation of the circuit courts. The Supreme Court had very little means of overseeing the circuit courts. In the first place, it didn't have the staff and, while it had the jurisdiction to do it, it didn't have the means.

The clerk of the court then was Marion Spicer. I don't believe that he was a registered a lobbyist like Tom Simon is today. He just ran the clerk's office; that's all that he did.

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*(REVIEW, from Page 2)*

attracted some of the more outstanding lawyers in the city. Field established a professional relationship with Hamilton Gamble, Abiel Leonard and Henry S. Geyer.

Kaufman describes Dred Scott's 11-year struggle to gain freedom for himself, his wife and their two children. He outlines all of the various court procedures from the time the case is filed in St. Louis Circuit Court in April, 1846 until the United States Supreme Court decision is handed down in 1857. Roswell Field is not involved in the state court cases; another man, Alexander P. Field, who some historians have confused with Roswell Field, handled these cases.

Kaufman points out how during the years from 1846 to 1851 the attitude in Missouri on slavery changed. Court records show that 25 suits were filed by slaves for freedom but only one was granted. He also states two important political events during the same time period had a profound impact on the 1852 Missouri Supreme Court decision. They were the passage of the Jackson Resolutions in 1848 by the General Assembly promising Missouri's cooperation with the slave states, and the defeat of Senator Thomas Hart Benton for the U.S. Senate by pro-slavery candidate Henry S. Geyer. Kaufman quotes from the court's majority opinion written by Judge William Scott "times are not now as they were when former decisions on the subject were made."

Kaufman also points out that Judge Gamble's minority opinion citing eight Missouri cases granting slaves freedom, under the same circumstances, were ignored. It is here that Roswell Field enters the case. In November, 1853 he files the case in the U.S. Circuit Court under "common law," not statutory law, with increased damages from $10 to $9,000. The issue is: can freedom, once gained on free soil, be retained upon return to slave territory.

In May, 1854, the jury finds against the Scotts. Field then files a bill of exception and the case is on its way to the U.S. Supreme Court. The costs of the case are underwritten by two local lawyers and the editor of an anti-slavery publication in Washington., D.C.

At this point, Field asks Montgomery Blair, who resides in Washington and formerly practiced law in the office of Senator Thomas Hart Benton, to be co-counsel. Their opponents are the "superior team" of Henry S. Geyer and Reverdy Johnson. Kaufman says that in filing this brief "slavery itself" becomes the defendant. In February, 1856, Montgomery Blair makes the oral arguments before the court. Field stays in St. Louis dealing with the tragic deaths of his wife, three boys and one daughter all in that same year.

In March, 1857, the final decision comes down from the U.S. Supreme Court. Kaufman states that the historic status of the case is based not on "the uniqueness of legal issues, but the court's departure from well established, well settled principals of law and willingness to be drawn into national political scene."

During the time the case is under submission to the court, Dred Scott worked in Roswell Field's law office. In 1857, Field is able to arrange for the family to be set free through the process of "manumission." Dred is then hired as a porter at Barnum's Hotel in St. Louis where, for the first time, he is able to keep the wages he earns. Unfortunately, his freedom does not last long as he dies in September, 1858.

*(EXHIBIT, from Page 1)*

published biography of Roswell M. Field, attorney in the historic Dred Scott case and appeal to the U. S. Supreme Court, spoke at the event.

The new exhibit provides glimpses of French colonial life in Missouri, stagecoach travel and its hazards, the Civil War and Reconstruction, the rise of big business and the beginning of the Anti-Trust movement, the Pendergast Machine and famous murders.

Since 1971 the Archives has been the official repository of all Supreme Court case files with nearly sixteen million pages. Vast as the Supreme Court records are, they represent only a fraction of the legal records that the Archives holds. There are also 26 million pages of Court of Appeals records, 6,000 reels of probate and circuit court microfilmed records and more than 49 million pages of circuit court cases yet to be filmed and filed.

The Archives is now working with 50 Missouri counties to help preserve and make accessible their legal records. While the sheer quantity of records is impressive, their content is even more so, touching on every aspect of what is vital and interesting in Missouri's past. These records include cases involving such names at Daniel Boone, Frank and Jesse James, Harry Truman, George Caleb Bingham, Lewis and Clark and many others.

At the exhibit opening, details regarding the inauguration of the new State Document Preservation Fund to help the Archives in the monumental task of gathering, cataloging, filming and filing these records will be explained. The Fund, created by legislation sponsored by Supreme Court Historical Society Board Member, Senator Emory Melton, allows the Missouri State Archives to retain and use all moneys received from gifts, bequests or contributions to help preserve legal, historical and genealogical materials and to make its holdings available to the public.

To help create an awareness of the work of gathering and preserving Missouri's historical court records, and to explain the Document Preservation Fund, the Missouri Supreme Court Historical Society will also sponsor a Speakers Series based on cases in the exhibit. This series will provide excellent programs for local bar associations, civic clubs, historical and genealogical societies and other groups interested in Missouri's history.

Material of interest to particular areas can be incorporated into the presentations. As any genealogist knows, the most important document in any archive is the one with your ancestor in it. Many Missourians will find interesting and sometimes shocking information concerning their ancestors in the court records filed in the Missouri Archives. Learning about them is one of the reasons that since 1991 visitation to the Archives has doubled.

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*(LAW, from Page 1)*

and judges were influenced by William Blackstone's Commentaries on the Laws of England, which emphasized the following: (1) local autonomy and common law as a buffer vs. royal authority; and 2) local community sanctions (which on the Missouri frontier included an obsession with the code duello) that reinforced violent traditions.

Another reason for the propensity of lawyers to take to the field of honor was that lawyers, judges, and their clients tended to personalize their courtroom battles. These bitter recriminations could lead to a demand for personal satisfaction outside judicial parameters. In 1811, in a Ste. Genevieve courtroom, for example, Thomas Crittenden impugned the integrity of the Fenwick family, prompting Dr. Walter Fenwick to challenge him to a duel. Fenwick died in the encounter. In 1823, Joshua Barton was killed by Thomas Rector over legal issues. This in turn led to the December 1824 challenge of David Barton, the senior U.S. senator from Missouri, to Alexander McNair, the first governor of the state. In St. Louis Circuit Court, October 1816, Thomas Hart Benton and Charles Lucas accused each other of lying. This led to their two duels on Bloody Island.

A fifth explanation for the code's utility was its role in maintaining court civility. This rationale has been labeled by legal historians as "the functionalization of dueling." Judge John W. Henry, an early member of the Missouri bench, wrote: "Fifty years ago, lawyers were more courteous to each other and the court because an insult forced one to go to a retired place and look into the mouth of a dueling pistol or hide himself away in shame and disgrace." Dueling, wrote Missouri General William Harney, provided "the certainty of personal responsibility and closed the lips of the slanderer in social intercourse and checked the impulse of dishonesty in business transactions." Although today's members of the bench and bar would reject the efficacy of violence to deter insults, cheating and lying, elite in the early nineteenth century had a very different social perspective.

Perhaps the most important reasons for having a duel in one's resume had to do with the fact that duelists had no fear of prosecution and could parley their affairs of honor into political gain. Many of the lethal duels were fought on islands in the Mississippi where disputes over sovereignty kept the states from prosecuting the offenders. These islands of impunity

*(See LAW, Page 13)*

*(LAW, from Page 12)*

included Cypress, Wolf, Smith, and Bloody Island. It should also be noted that only the charge of murder was leveled against the duelist, as the charge of manslaughter had not yet been systematically employed in Missouri courts. Since murder called for the death penalty, there was a reluctance to prosecute a gentleman of courage for the death of another in a duel. No Missouri duelist was ever hanged or even served time for his offense. Furthermore, juries were sympathetic to dueling and widened the definition of self-defense to include these hostile re-encounters. Law enforcement officials likewise did not vigorously enforce the laws.

Many of the judges of the territorial and early statehood years also believed in the code. John Smith T, a judge of the Court of Common Pleas and Quarter Sessions in Ste. Genevieve, killed Lionell Browne, the sheriff of Washington County, in a duel. Judge J.B.C. Lucas, appointed by Thomas Jefferson, issued a series of challenges to members of the faction which he believed had forced his son, Charles, to fight two duels against Thomas Hart Benton. Other judges such as J.B. Colt (an ex-duelist) found it difficult to enforce the anti-dueling codes when accused duelists appeared in their courtroom.

Finally, it must be noted that in a frontier society which condoned an inordinate amount of violence, dueling abetted a political career. Historian Philip Jordan wrote, "A new country bleeding from the cutting edge of the frontier, was a grim place for the symbolic lady who held aloft the scales of justice." His words had been echoed long before by Governor W.C.C. Claiborne, of the Louisiana Territory, who wrote to President James Madison: "The state in which I found the jurisprudence of the country embarrasses me extremely."

It was in just such a hostile environment that Thomas Hart Benton, after the clash in 1813 with Andrew Jackson, wrote: "I am in the middle of hell . . . .and nothing but a decisive duel can save me or even give me chance for my own existence." Benton achieved his fame when in 1816 he killed his most hated political rival, Charles Lucas, on Bloody Island. Within a half a decade, Benton would become a U.S. senator.

Another lawyer to achieve fame and fortune from a duel was Abiel Leonard. After being horsewhipped at the Fayette courthouse in 1823 by Major Taylor Berry, this frail and diminutive Yankee challenged Berry to mortal combat. They dueled on Wolf Island and the major died at the hands of his antagonist. Under an 1824 law, he was disenfranchised and disbarred for his actions. The people of the Boonslick, however, successfully petitioned the General Assembly to restore his rights. Leonard went on to serve in the state legislature, to amass 60,000 acres of land, to build a stately mansion, Oakwood, and finally, in 1855, to serve on the Missouri Supreme Court. His career, like that of Benton's and a host of other lawyers and judges, confirms the causal relationship between law, politics, and dueling in early Missouri history.

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