

The Missouri Supreme Court Historical Society Journal

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Supreme Court Building Centennial Committee Appointed

A committee to plan for observance of the 100th anniversary of the Missouri Supreme Court Building has been named by Missouri Supreme Court Historical Society president Thomas A. Vefter. The committee will be headed by Bobbie Lou Nailling-Files, former Executive Director of the Kansas City Metropolitan Bar Association, now Executive Director of its Foundation. Centennial activities will begin in 2004, the 100th anniversary of the start of construction of the building and conclude in 2007, the 100th anniversary of its completion.

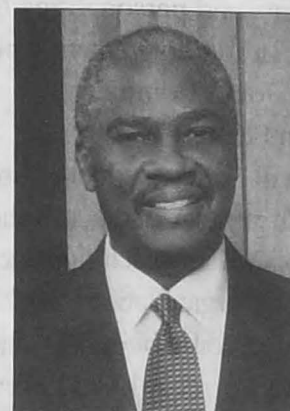
The planning committee was established following a meeting of members of the Supreme Court Historical Society with representatives of the Missouri Bar and the foundations of both the St. Louis and Kansas City Metropolitan Bar Associations and others. Named to serve on the Planning Committee, in addition to Ms. Nailling-Files, its Chairs were: Francis X. Duda, of the St. Louis Bar Foundation, Keith Birkes, Executive Director of the Missouri Bar, Thomas Simon, Clerk of the Missouri Supreme Court, Joseph Benson, Supreme Court Archivist, D.A. Divilbiss, Secretary-Treasurer of the Supreme Court Historical Society and Assistant Editor of the Supreme Court Historical Society Journal, and E.A. Richter, its Editor.

The Kansas City law firm of Shook, Hardy and Bacon has contributed \$25,000 to the Kansas City Bar Foundation to assist in funding the work of the committee in planning for the centennial observance and in conducting a membership drive for the Supreme Court Historical Society.

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New Chief Justice For Missouri Supreme Court

On Tuesday, July 1, 2003, Judge Ronnie White assumed the position of Chief Justice of the Missouri Supreme Court. Governor Mel Carnahan appointed White to the court in 1995. Following tradition, the court rotates the position of Chief Justice every two years to the senior judge at that time. White is the first African-American to be Missouri's Chief Justice.



Justice White was born May 31, 1953 in St. Louis. He graduated from Beaumont High School in 1971. He obtained an associate degree from St. Louis Community College in 1977, a bachelor's degree from St. Louis University in 1979 and a law degree from the University of Missouri, Kansas City, in 1983.

In 1989, White was elected as a member of the Missouri House. He resigned in May 1993 to become City Counselor to St. Louis Mayor Freeman Bosley, Jr. In 1994 he was appointed by Governor Mel Carnahan to the St. Louis Court of Appeals, E.D.

White says he has three goals as Chief Justice. First, he would like to add more minority employees to the court system. He would like to see more circuit courts have appointed rather than elected judges because he thinks political campaigns are not healthy for the judicial system. Thirdly, he hopes to expand the automated filing system to all the courts so cases could be accessed electronically from anywhere in the state.

Centennial Committee Appointed

(continued from page 1)

Patrick McLarney, managing partner of Shook, Hardy and Bacon, in commenting on the firm's extra-ordinary support of the historical preservation efforts of the Supreme Court Historical Society - in the year 2004, the nation will celebrate the 200th anniversary of the start of the Lewis and Clark expedition. The same year, we in Missouri will celebrate the 100th anniversary of our Supreme Court building. As we observe these two anniversaries attention will turn to events and personalities of the intervening years. Much of this attention will focus on Missouri Courts and the important role they have played in the growth of our state and our nation. Shook, Hardy and Bacon feel privileged to be able to contribute to the work of the Missouri Supreme Court Historical Society in collecting and preserving a tangible record of these events and personalities for future generations."

In addition to laying plans for the Centennial celebration, the Joint Committee, for the next year, will conduct a membership drive for the Supreme Court Historical Society. It will solicit support, through membership in the Society, from the bar and the judiciary as well as from the general public. Bar associations, legal and corporate foundations and public organizations will be asked to join in the effort to restore court buildings and to collect and preserve judicial artifacts, records and memorabilia which tell the story of Missouri's rich and important judicial history.

During the membership drive, the committee will meet with local bar associations and public groups and organizations throughout the state to promote interest and participation in historical restorative work of the Society.

For most of the past two decades, the Society, which was organized in 1984, has been actively engaged in restoring and maintaining court records, memorabilia and portraits of former Supreme Court judges, which are now on display in the Supreme Court building. It has also funded grants for interns and fellows to assist the Missouri Archives in its work of preserving and indexing court records. Funds to support these activities have come from memorial grants to the Society and from membership dues.

Chief Justice Limbaugh has urged local bar associations and individual members of the judiciary and legal profession to assist in the work of preserving Missouri's rich judicial history.

Every individual lawyer and judge can play a personal and important role in preserving Missouri's rich judicial history and in making the public aware of the important contribution Missouri courts have made to the

development of our state and our nation. Lawyers and judges especially carry a heavy responsibility in preserving for future generations the history of the courts and the profession in which they have played an important role.



Bobby Lou Nailling-Files

Former Supreme Court Justice Warren Welliver, founding member of the Society, has urged every member of the bench and bar to hold membership in the organization.

"I feel every Missouri lawyer and judge should be a member," he said. "The very small amount of membership dues, multiplied by the membership of the bar and the judiciary, will assure that records, buildings and other artifacts and memorabilia of Missouri's legal and judicial history will be preserved and that important and interesting historical events and personalities will be known and recognized."

The Supreme Court Historical Society, serves as a depository for gifts and memorials needed for historical restorative research and work and can make such funds readily available for historical projects without the need for legislative action.

The Society is anxious to complete this restorative work before the Centennial celebration if funds become available. One conference room has already been beautifully restored with historical accuracy. The Morgan Family Foundation, as a memorial to the late Supreme Court Judge J.P. Morgan, has contributed period furnishings for this room. The opportunity for additional memorials will become available as the historical work progresses.

While the historical efforts of the Society have been limited to the Supreme Court building and its records in the Missouri Archives, it is hoped that through its work with local bar associations and the public, many county courthouses in cash-strapped counties can be included in future efforts. Many of these judicial structures are of great historical interest and importance. A number of Missouri's county courthouses predate the Supreme Court building and have been the sites for cases of great historical significance and interest. Records of these courts are being gathered and microfilmed by the Missouri Archives and will provide valuable research material for historians and authors for centuries to come. The Society has played an important role in this work through its grants to interns and fellows at the archives.

Richard B. Teitelman Appointed to the Missouri Supreme Court

On Friday, February 22, 2002 Governor Bob Holden appointed Richard Teitelman to the Missouri Supreme Court. He will replace Judge John Holstein whose resignation from the court is effective March 1.

A native of Philadelphia, Teitelman received his undergraduate degree from the University of Pennsylvania with a bachelor's degree in mathematics. In 1973 he received his law degree from Washington University in St. Louis. After graduation he opened his own law practice in St. Louis. In 1975 he joined the staff of the Legal Services for

Eastern Missouri. He eventually became director of the agency and stayed there for 22 years. He said that experience "has helped me to see that every case is an individual, a person, a family or families involved (and) you have to look at the heart of a situation as well as the law in making your decisions." In 1998 Governor Mel Carnahan appointed him to the St. Louis Court of Appeals, E.D. He is believed to be the first legally blind judge to sit on both the appellate and the Supreme Court. He uses a computer with a large screen and programs that help enlarge the characters on it.

He described himself as a "hard working judge who is going to do the best I can to decide the cases before me."



Judge John Holstein Resigns from Missouri Supreme Court



Judge John Holstein announced today, January 4, 2002, that he was resigning from the Missouri Supreme Court effective March 1, 2002 to enter private law practice in his hometown of Springfield, Missouri.

Holstein began practicing law in 1970 in West Plains and taught business law at Southwest Missouri State University in 1974-75. He served as City Attorney for Mountain View from 1972-75. He was appointed Probate Magistrate in

1975 and was elected Probate Judge in 1976. In 1978 he was elected as Associate Circuit Judge of Howard County. In 1982 he was elected as a Circuit Judge and served as Presiding Judge for the 37th Judicial Circuit.

Judge Holstein was appointed to the Missouri Court of Appeals, S. D. in April 1987 by then Gov. John Ashcroft and became Chief Judge of that court the next year. In 1989 he was appointed to the Missouri Supreme Court. He served as Chief Justice from July, 1995 to June, 1997. His current term expired on December 21, 2002. He is the only person to have served at every level of the Missouri's judiciary.

During his tenure as an appellate judge, Holstein wrote more than 300 opinions and had been involved in about 1,500 cases. While on the Supreme Court he was instrumental in bringing cameras into the courtrooms, developing guidelines for child support cases and the speedy disposition of all cases.

New Conference Room in The Supreme Court Building

Through the generosity of the June P. Morgan family, the court has been able to refurbish a first floor office into a much-needed new conference room. The new conference room has been decorated to reflect the colors and décor popular when the building was built 100 years ago. The walls are divided by a wainscoting. The upper part is painted in a deep maroon that compliments the

-muted grayed green on the lower part of the wall. The room will still house the huge safe that was placed in the room when the building was originally built. Its massive door looking very Victorian with a single pink rose painted on it.

The \$30,000 gift from the Morgan family was primarily used to provide funds for the regulation sized walnut conference table complete with 12 chairs. The table has a beautifully carved leaf trim all around the edge. The chairs are upholstered in a warm shade of lapis blue leather held in place with brass studs. The furniture was made in Italy.

Judge Morgan served on the court from 1969 - 1982. He died in 1998.



Seventeenth Annual Meeting of the Supreme Court of Missouri Historical Society

October 12, 2002

The seventeenth annual meeting of the Supreme Court of Missouri Historical Society was held Saturday October 12, 2002 at the Country Club in Jefferson City.

Following the dinner, President Vetter opened the meeting by introducing Missouri Supreme Court Chief Justice Stephen N. Limbaugh, Jr. Other Supreme Court Judges attending the meeting were Michael Wolff, Duane Benton, Ray Price and former Judges Andrew Jackson Higgins, Charles Blackmar and Edward "Chip" Robertson.

Copies of the Treasurers' report that had been distributed to each member were reviewed. A motion was made and seconded that the report be accepted. All agreed.

President Vetter continued to give a summary of the year's activities. He mentioned that the book cases to house the valuable old law books and Dred Scott papers had been received and installed on the second floor of the Supreme Court Building. Pictures of the cases were displayed. President Vetter told the members that the family of former judge J. P. Morgan had donated \$30,000 in memory of the judge. The money was used for the purchase of a conference table and chairs to grace a conference room being restored on the first floor of the building. The President also announced that a gift of furniture from the home of Sterling Price, the first mayor of Jefferson City, had been installed in the building on permanent loan from the Charles L. Turner family. The Price mansion was demolished in order to build the Supreme Court building.

The President informed the members that at the trustee meeting in Kansas City in October, it was agreed that the State Archives Intern program would be renewed again at \$9,000 for another year. At that same meeting the trustees agreed that the Society should participate in the Supreme Court Centennial Celebration to commemorate the 100th year anniversary of the Supreme Court building.

President Vetter announced that he was retiring from the office of president after serving 12 years in that capacity. He also announced the retirement of the 1st Vice president, Mrs. Virginia H. Gottlieb due to ill health. Mrs. Gottlieb had served in that office for 17 years and was one of the original founders of the Society.

President Vetter then turned the meeting over to Chief Justice Stephen N. Limbaugh who explained that the Centennial Celebration would help make people aware of the rich heritage of the judiciary. He mentioned that he

had appointed Bobby Lou Nailing-Files as Chairman of the Centennial Committee to oversee the project. He thanked the Society for funding the book cases so that these valuable books and documents would be on display for the 20,000 visitors that annually visit the building. He also thanked Tom and his wife Jane for arranging the transfer of furniture from the Price mansion to the court.

President Vetter asked former Judge Andrew Jackson Higgins to read the names of officers suggested by the Executive Committee (not a Nominating Committee) composed of President Vetter, (now) 1st Vice President William A. R. Dalton and Secretary/Treasurer D. A. Divilbiss. Those names offered by the Executive Committee are as follows:

President	Francis X. Duda
1st Vice President	Ann K. Covington (ED. NOTE: Ann K. Covington subsequently declined to serve.)
2nd Vice President	William A R. Dalton
Secretary-Treasurer	D. A. Divilbiss



Senator Henry Wiggins and the Supreme Court of Missouri Historical Society President Francis X. Duda

The motion was made and seconded that the slate of officers be accepted. All approved.

President Vetter then asked that he be approved as a trustee to fill the un-expired two year term of Francis X. Duda. The motion was made and seconded. All approved. (See attached letter from President Vetter dated October 7, 2002 to the Trustees on "provisional election" for lack of a quorum.)

Vetter then turned the meeting over to the speaker of the evening Dr. Lea VanderVelde, Professor at the University of Iowa School of Law, who spoke on

"Researching Dred and Harriett Scott."

Following the speaker, Vetter called on incoming President Francis Duda who thanked the members for their vote of confidence in selecting him as their president. He said he looked forward to working with the committee on the Centennial Celebration.

Former Supreme Court Judge Andrew J. Higgins then presented a plaque from the Trustees and Members to the retiring President Vetter.

The meeting was then adjourned.

2nd Vice President Andrew Dalton

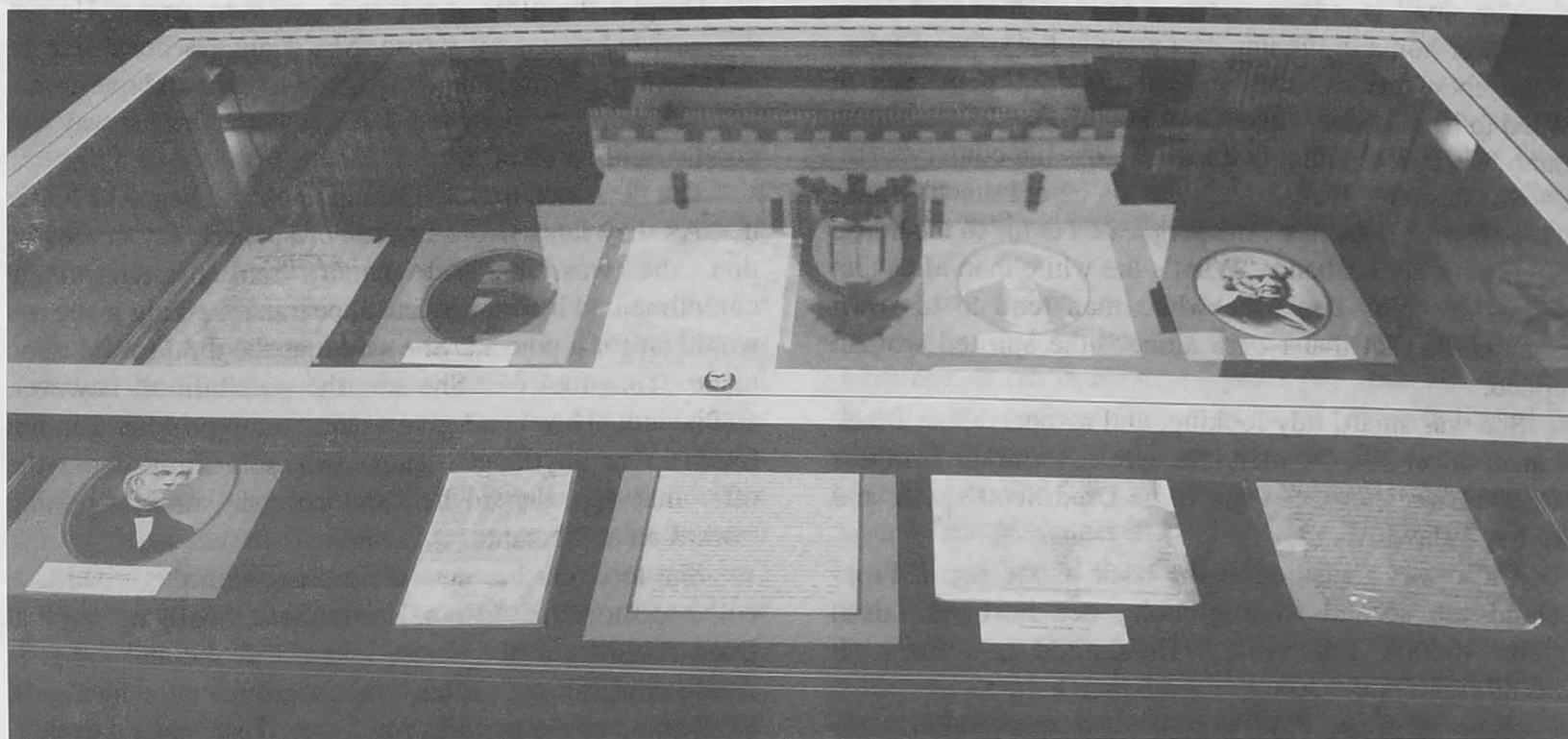
Secretary-Treasurer D. A. Divilbiss

A motion was made and seconded that the slate of officers be accepted. All approved.

Since there was no more business to be transacted the meeting was adjourned.

Searching for the Truth about Dred and Harriet Scott

Lea VanderVelde', Josephine Witte Professor of Law, University of Iowa College of Law (copyright retained by author.)



Missouri Supreme Court decisions for the Dred Scott Case on display in the Missouri Supreme Court Library.

Most Americans have heard of Dred Scott, but if they place the name at all, they imagine the man as the protagonist in *Uncle Tom's Cabin*. This confusion is understandable because Harriet Beecher Stowe's famous novel was published just before the case came into American public attention. The popularity of Stowe's novel spread a particular image of slavery that has followed the facts of the *Dred Scott* case ever since.

Even after reading the standard historical accounts or the case's stipulated facts questions persist in the reader's mind. If a former slave like Dred was fortunate enough to find himself in free territory, why did he ever return to a slave state? Why did he go back? The protagonists in *Uncle Tom's Cabin* wouldn't have returned. If he was there in St. Louis, why didn't he just swim across the river? The

Mississippi River line looks pretty narrow to a schoolchild looking at a map of the United States. Residents of St. Louis well know that the river is as wide as a lake, so couldn't he just get a boat, a skiff, a log, any floating vessel that could carry him the distance? The slave man Joe did so in *Huckleberry Finn*. With these popularly held, fictional preconceptions about slavery and freedom, Dred's circumstances seem foolish. The *Dred Scott* case has never made intuitive sense. There is a disparity between the popular image of slavery and freedom and the facts in official accounts. It doesn't seem to ring true. But upon closer examination, reality often has its own logic and reality is often even more remarkable than fiction.

I've been on a 5 year odyssey in search of the truth about Dred and Harriet Scott. With the generosity of the

Missouri Supreme Court and the St. Louis local records project, my odyssey has come nearer its destination. I began with the only two texts that were initially available, a newspaper account and the Supreme Court's official account, the stipulated statement of facts. In this short essay, I put these two texts in the context of the extraordinary local record collection that Missouri has to offer. New meanings arise by placing these two texts in the broader context of other Missouri freedom cases.

One summer day in St. Louis, 1857, as a freedwoman was ironing in her own front room, she saw a pair of white men approach. Her daughters were busy keeping the fire stoked and exchanging the handles of heavy irons over the stove fire so they would be hot enough to smooth the wrinkles from the freshly laundered piles of clothes. Behind another ironing board at the back of the room, her husband, much older than she, was asleep taking his noonday nap.

The small laundress watched as the white men came nearer her home in the unpaved alley at the edge of town. When they reached the wooden porch, the gentlemen called to her, "Is this where Dred Scott lives?" The famous name was now commonly known across the country.

She hesitated. "Yes," she said. "Is he at home?"

This wasn't the first time people had come to the house looking for her husband. "What's the white man after that Negro for? Why don't the white man tend to his own business, and let that Negro alone?" the spirited woman replied.

She was smart, tidy looking, and respectable, a Black woman in her 30s, the men later wrote. From the firmness of her answer they knew her to be Dred Scott's wife and nobody's slave.

There was a rustling at the back of the room. From behind the second ironing table, her husband raised himself to look at the visitors. He assured the woman, "It was all right." He'd seen the gentlemen before.

"One of these days they'll steal that Negro," she continued, but she yielded as the white men entered the house encouraged by Dred's recognition.

The men were from *Frank Leslie's Illustrated Newspaper*, and their account of Harriet is the only existing contemporary first person description of her by anyone who ever met her in person. The newspapermen had approached her husband at the fairgrounds a few days before and asked to interview him and have his portrait taken. When he hadn't shown up at the photographers, they had pursued him through his lawyer, tracking down his address and obtaining a letter of introduction.

Dred deflected the question by remarking that it would just bring him bad luck. The white men pulled out the lawyer's letter to show the Scotts. Although neither could read, they had come to recognize their lawyer's signature seen on many of the court's documents. Dred then told the gentlemen that he would do whatever Mr. Crane suggested

because the lawyer "was my friend and knows best what I should do."

Harriet listened to everything attentively, but she wasn't impressed with the newspapermen. She had seen other strangers react to her husband's celebrity. She repeated, "What do white men come after that Negro for? One of these days they'll steal that Negro." She warned "that the devil was at the bottom of it."

The men insisted that they only wanted a portrait and meant no harm. Though Harriet didn't fear taking a picture, she knew there were white men who did want Dred, and were trying to get him to come away with them. There had been recent incidents in which freedmen were kidnapped and sold down the river into slavery. There were also men who had promised to give her husband \$1,000 a month if he would travel through the North. They said that the American people wanted to see him.

Despite the offer of a fortune as inducement, Harriet had insisted that they refuse. She'd always been able to earn her own living, thank God, and to earn an honest one.

She didn't want money that was gotten in that way. No good would come of it.

The newsmen took a different tack and began to flatter her. As they later wrote in the newspaper, they could see that she was the old man's "real master." They complimented her on her fine appearance, asking if she too would sit for a portrait. She said that she didn't want to be made "Tom fool of." She saw the possibilities, however, and added, "How can I give a daguerreotype when I'm not fixed up or anything?" There was something about the offer that appealed to her, and now she was bargaining toward an agreement.

She took out her new plaid dress with the broad lace collar to show the visitors. Harriet Scott finally agreed that Dred could have his picture taken, and she and the girls would come along and have theirs, provided the men gave Dred some of the pictures for themselves. It was a deal.

The next day each member of the family sat very stiffly before the lights of the photogravure to have their portraits taken: Dred and Harriet, each individually and the girls together.

That single photo subsequently engraved for the newspaper is the only one that remains of Harriet. It shows a very dark-skinned, dark-eyed woman with high cheekbones. Her thick, curly hair was pulled neatly back and she wore gold hoop earrings. She bears a pleasant, but slightly apprehensive expression in the picture. Her eyes focused on the camera. Dred's eyes stare off as if he had shifted his attention; during the long sitting that the photograph required.

Pictures of the entire family appeared on the front page of the nation's leading weekly. After that moment of national fame, Harriet and her daughters faded again from public view. That was all right with Harriet. All she wanted

was to be left alone to live in peace, to earn her own living, and raise her daughters. She had lived a lifetime of adventure already and she welcomed being able to return to the quiet respectable work of doing laundry and attending church.

This ordinary, low-born woman had taken her claim to the highest Court in the land. It appears that it was her idea to bring suit, and her determination carried her family through. Harriet hadn't set out to change the world. She was only looking to free her family and herself from slavery. She was 28 years old when she filed suit, the mother of two young children, desperately poor and illiterate. She was black and hence, perceived as different in the racial caste system of the times.

But when that high court took up her case and spit her claim of freedom out again, it convulsed the entire system of law and justice. She and her husband had filed, pursued, and ultimately lost the most important, the most dramatic lawsuit in the history of the U.S. Supreme Court. Their case prompted a constitutional crisis. Their refusal to surrender their claimed freedom raised the issue that changed the course of American history. Harriet and Dred's lawsuit prompted the Civil War and made it necessary to change the fundamental charter of freedom contained in the American Constitution.

And despite her circumstances, she challenged the claim that she and her family were slaves. The lawsuit, in turn, pit the Scott family against one of the most powerful families in private business in America: the financial power broker, John F.A. Sanford, of the American Fur Company. Who could have imagined that this lawsuit would change the nature of human freedom, not by winning the day, but actually by focusing national attention on the losing claim? Their loss at the Supreme Court gave the struggle for freedom its object lesson. Upon her husband's life story, the U.S. Supreme Court rendered its bitter ruling and the nation learned its lesson about the importance of human dignity and freedom.

At the beginning of my research, all that was known of Harriet came from the stipulated facts in the U.S. Supreme Court opinion. When I began this project, I started with the assumption that the stipulated facts were basically truthful. Now five years later, I enjoy reading the paragraphs of the official account aloud to my students, pausing after almost every clause to point out that the true facts were not at all as they were stipulated.

The opinion states first, that "In 1835, Harriet, was the Negro slave of Major Taliaferro, who belonged to the army of the United States." Actually, Major Taliaferro did not belong to the Army. He was a civilian Indian Agent, most assuredly not part of the Army. He took the name "Major" merely as an honorific title, just as some took the title of "Colonel" as a distinguished sounding moniker without a military connection.

Second, the opinion maintains "In that year, Major Taliaferro took Harriet to Fort Snelling, a military post, situated near the headwaters of the Mississippi." Actually, since he was not military, he did not report to the military post. He took Harriet to his own post and home, the Indian Agency near the fort. The official postal address for his location was "Lawrence Taliaferro, Agent to the Sioux nation, Indian Territory."

Third, the opinion states that "her master kept her there as a slave until 1836, and then sold her as a slave at Fort Snelling to Dr. Emerson. Dr. Emerson held Harriet in slavery at Fort Snelling until 1838. In the year 1836, Dred and Harriet at Fort Snelling, with the consent of Dr. Emerson, who claimed to be their master and owner, married, taking each other for husband and wife." The truth is that Harriet's owner and master, Agent Lawrence Taliaferro recorded that he gave Harriet to Dred in marriage, in a wedding ceremony he conducted before he left for the winter for his own home back in Pennsylvania. Setting off before the winter set in and not wishing to pay the expense of transporting Harriet along with him, he maintained later that he gave her in marriage to Dred. There was no deed of sale recorded in Taliaferro's diary, although he was usually meticulous about recording his expenses.

Fourth, the official record describes the Scott children, indicating that "Eliza and Lizzie are the fruit of that marriage. Eliza is about 14 years old, and was born on board the steamboat Gipsy, north of the north line of the State of Missouri, and upon the river Mississippi." This claim is true and Eliza's birth was attested to independently by a fellow passenger in his diary. The stipulated facts also correctly indicated that Lizzie was about 7 years old, and was born in Missouri, at Jefferson Barracks.

Fifth, "In 1838, Dr. Emerson removed Dred, Harriet and their daughter Eliza, from Fort Snelling to Missouri, **where they have ever since resided.**" Actually, that year, 1838, Harriet and Dred spent the winter together independent of Dr. Emerson's supervision working for different officers at the fort. They did travel down to St. Louis at the doctor's request, although he had been stationed, at a fort in Louisiana that winter. Harriet was eight or nine months pregnant, and in her pregnant condition she returned north again, so that when their baby was born, she was born aboard the tiny sternwheeler steamboat north of the line of freedom.

Even though the Scotts did eventually return to St. Louis later in 1840, contrary to stipulation, they did not reside in Missouri for the entire intervening duration. I've found evidence that Dred spent 18 months serving an Army captain, stationed with the American army troops waiting for the order to invade Mexico for the Mexican-American war. Harriet, and her two children remained in St. Louis.

The stipulated facts also indicate "Before this suit commenced, Dr. Emerson sold the Scotts to John F. A. Sanford, the defendant, as slaves, and he has claimed them ever since as slaves." However, John F.A. Sanford never owned Harriet and Dred. There is no evidence of any such sale. There is no record of them, even in Sanford's estate, where another slave is named. Instead, in the suit that would bear his name for posterity Sanford was there as the successor administrator to his brother-in-law's estate. Dr. Emerson couldn't have sold them to Sanford. He was dead.

If statements in official documents can have varying degrees of falsity, the final stipulation is the most flagrantly false: "The Defendant, John F A Sanford, claiming to be their owner, laid his hands upon the Scotts and imprisoned them." Sanford probably never even laid eyes on them. He managed the estate by correspondence remotely from the East. By the time Dred's master, Emerson had died, by the time, Dred returned from Corpus Christi, Texas, by the time the lawsuit was filed, John F.A. Sanford had established his home in Manhattan. His base of operations was New York City. His hub of interest was first, the Illinois Central Railroad, second, lobbying Congress for government contracts for his company, and third, exporting furs to the markets of Dresden and the capitals of Europe. He had very little interest in Dred and Harriet Scott.

Why was the Supreme Court's account so wrong? Because the Court relied on the lawyers' stipulation of facts streamlined in an attempt to make the case simpler. The lawyers, who were not being compensated, constructed a factually simple case which they thought would adequately resolve the issue. By the lawyers' agreement, Harriet's case and her situation were merged and then submerged into Dred's case for the lawyers' convenience. Coverture indicated that if only one case was tried, it should be his instead of hers.

The allegation that Sanford had laid his hands on them was necessary under a Missouri statute, in which slaves had to complain of an assault in order to have standing. The likelihood that he never owned them nor even laid eyes on them changes his whole motivation. It changes the whole theory of the case. Why did he bother to defend?

John Sanford was in the suit because he didn't like to lose. He routinely dealt in \$10,000 and \$1,000,000, the value of an aging and ill, former valet, and his family was insignificant to him. But he didn't like to lose, he favored taking claims to the courts, And if they were going to sue him, he would defend. Besides, his mentor and father-in-law was Pierre Chouteau, Jr., who had lost slave freedom suits before, and he was interested in the issue. The larger questions that have always been mysteries. They can be explained with the further research that the local records provide.

Why did the major constitutional case of the 19th century evolve, not out of slave-holding in Virginia, the

Carolinas, Georgia, or Missouri, but from an incident of slave-holding in Wisconsin territory? Why did this case of all the cases reach the United States Supreme Court? There were 4,000,000 slaves in the southern states. Most southern slaves were agricultural slaves, as Harriet and Dred were not. Harriet and Dred Scott had spent most of their adult lives as house servants in the wilderness. Why this couple?

Why their case? They were so near the river barrier to Illinois. Why didn't they escape?

The answers come in two parts: first, because of who Harriet and Dred were.

They were married and had been fortunate enough to keep possession of their children. They wanted to maintain their family tie which slavery threatened to sever. Second, this case could reach the United States Supreme Court because of the unique nature of legal practice in the state of Missouri. The state of Missouri actually recognized legal rights of slaves to sue for their freedom.

In my earlier work, I concluded that it was Harriet's idea to sue rather than Dred's. Additional research has only reinforced my view, given Dred's advancing age, his tuberculosis, his recent return to the city, and his own comments that the lawsuit was simply a lot of trouble.

In addition, evidence indicates that Harriet was willing to independently support the family, she had ties to the church community and to their first lawyer, and she had responsibility for the children while he was away with the army. Furthermore, their daughters' freedom hinged upon her status as their mother, rather than upon their father's. These factors point to Harriet's role as the moving force. The newspapermen wrote that she was in some ways the dominant partner in the marriage, and Dred's real master.

One thing sets the Scotts apart from the 267 other slaves who sued for their freedom. This pair of plaintiffs was a married couple. (Only one other, early in 1820 were a married couple.) The Scotts filed for freedom together in separate suits, but they took the plunge together. Because the circumstances of continued enslavement were likely to become significantly more intolerable and because they had contemplated the decision for a while, the decision to sue for freedom was probably a pragmatic choice for the family.

Freedom in the abstract was probably not their absolute objective; its imperative may instead have been more limited: to be able to stay together. Clearly, from the newspaperman's account, they were companions. Their companionship helped them to maintain their lawsuit even when a single individual might well have given up.

Why didn't they run? Their escape would be slowed down by their children and eventually the dogs of some bounty hunter would find them. How could they move quickly when the youngest daughter, Lizzie, was too big to carry and both girls were too small to run for freedom fast

enough by themselves?

This action was sustained by the Scott family for 11 years. It was made possible because of their mutual support for each other, and was necessary in order for them to stay together. The *Dred Scott* case is not about severing ties to achieve individual freedom at any cost; it is about the strength and importance of family.

From reading the roughly 250 freedom cases, I can describe with some confidence, the norm of freedom suits filed in the St. Louis Courts. The majority were, in fact, initiated by women rather than men, and most of the women were mothers with children. Men could run. They could depend on their own physical stamina and speed to escape even at the risk of capture. The chances of success were better for men, particularly if they traveled alone.

Women had a greater reason to seek justice from the courts because the ever-present danger of sale threatened to separate them from their children. A lawsuit preserved the maternal tie during its proceedings. It stayed any attempt to sell their children away from them. Running with small children was doomed to fail.

The Scotts had ample opportunities to escape at times when they were separated from Dr. Emerson. They were not shackled. Why didn't they seize upon one of these chances and head North? They could even move about in the city somewhat. After all, the Scotts traveled back into slave territory with Emerson twice and by the time they did file suit, Harriet had already resided in Missouri for six years. The constraints that held them in slavery were not chains; they were bonds of affection. Why didn't they sue earlier when they arrived? Harriet waited for Dred to return from the war.

Most historians have focused on Dred's situation alone. However, addressing the question in the isolation of Dred's circumstance misses the importance of Harriet's agency and participation. The ties that bound the couple together determined what they did and when they acted.

The second reason why this case was sufficiently developed to reach the Supreme Court was because until the Missouri Supreme Court ruled against the Scotts in 1851, Missouri law was far more charitable in recognizing the rights of slaves to win their freedom in court than most slave states were. Freedom suits were not permitted in most Southern state courts.

Ironically, this particular case could reach the U.S. Supreme Court, because at one time Missouri had taken seriously the rights of slaves to use the courts. The State of Missouri had a statute, and an entire legal tradition existed of slaves litigating for their freedom in the St. Louis Courts, unlike any other slave state that I've been able to find. The statute approved in January 1835 was entitled "an act to enable persons held in slavery to sue for their freedom." This statute enacted in various versions and borrowed from Virginia. The numbers of Virginia lawyers

settling in this state accepted the notion that individuals wrongfully held in slavery could sue for their freedom. The Missouri statute resembled the Virginia statutes. Many of the intervening slave states had no such provision, however. Virginia, after all, was singularly progressive in having actively debated abolishing slavery by the state legislature.

The Missouri statute required a petitioning slave to allege a specific assault on his or her freedom as a necessary element of the lawsuit. Ironically, such an assault on the slave's freedom was more difficult to prove than one might imagine. After all, a slave's liberty was routinely curtailed every day of every year of their lives by their orders to work. To establish a legal case for freedom, they were required to plead a specific incident. It had to be an incident that stood out in sufficiently stark relief to be legally proven.

For St. Louis slaves, who were often permitted to hire themselves out (provided that their owners received their wages), those incidents were less frequent than one might think. Using a whip against a slave was frowned upon in the city of St. Louis, as too noisy and disruptive of the peace, and a poor reflection on the owner's ability to manage his slaves. Instead of whippings, disobedient slaves were imprisoned, locked in basements, or denied passes to be on the streets and locked up by the patrols. Thus, by the 1830s and 40s, the institution of slavery had become sufficiently advanced in form within the city that it was often difficult to point to a single provable incident of assault, the necessary element to maintaining a case for freedom. Imprisonment was sufficient as the incident of deprivation of liberty, especially if the master had initiated it, and masters sometimes jailed their own slaves merely for safekeeping.

Another dimension of Missouri's surprisingly charitable statute — really quite surprising by modern standards — slaves were entitled to appointed counsel and routinely granted orders that their guaranteed access to their attorneys. Almost every case file includes a court-appointed attorney and the court order that the slave not be retaliated against for having filed for freedom.

Appointed counsel, however, were not compensated, and though some of the litigants went to work for their lawyers, doing their laundry or sweeping up their offices, the litigants could not pay for their attorneys' services. Therefore in cases like Harriet's and Dred's, counsel came and went. Over their first decade of litigation, (even before the case reached U.S. Supreme Court) the Scotts had eight different lawyers, most staying on the case no more than a few months.

When I describe the material that I'm finding in your wonderful collection of records, people all over the country are amazed. They are amazed not just at the fact that Dred and Harriet had the temerity to attempt suit in a slave state, but that out of St. Louis alone, there were 286

separate recognized cases, litigating freedom. Many marvel that the Missouri courts gave slaves this legal right.

Even though there were 286 cases that doesn't necessarily mean 286 different litigants. Many litigants filed suit only to have their cases dismissed. They would wait for another term of court and file another petition for freedom.

Quite often, the master, the defendant in the lawsuit, who retained some loose control over a slave, hired out the enslaved person to a third party and couldn't be found when the sheriff came to call with the summons. The petitioner's suit to establish freedom was consequently dismissed. But the petitioner would wait until someone acted to seize him or her again, and claim freedom against that party as defendant. There is some evidence in one case, that the enslaved petitioner found a cooperative white man the second time, someone who had no real title to her, but who agreed to be sued in order to lose. That was enough to bring the true title owner out of hiding and claim the suit was a sham. Within the corpus of cases, defendants display an amazing degree of ingenuity to avoid suit, and concomitantly there are equal measures of invention and perseverance on petitioners' parts.

Searching for larger patterns in the cases, signs of collective action begin to take shape. Many cases involve members of the same family. By the time that Winny was able to establish her freedom in an early set of legal skirmishes, she had six children and at least three grandchildren. Her freedom led to cases for their freedom as well.

Then, as now, it helped to have a zealous attorney advancing the case along. One of the most successful lawyers in representing slaves' claims was Francis B. Murdoch. He was involved in perhaps a dozen slave cases, including Alsey's case, which he successfully brought to the Missouri Supreme Court. He filed the papers for the Scotts, but some time during the early proceedings, he appears to have lost heart. The Scotts' case, which he abandoned, is the last case in which he appeared in before the St. Louis Courts. Thereafter, he apparently drifted west to California.

What is remarkable then about the series of cases, is not that the Scotts lost in the courts, but that so many slaves won their freedom from the Courts in a slave state. That renders the St. Louis freedom cases truly unique. I estimate that as many as 70 slaves, roughly one-half those who brought suit, gained their freedom from the courts. The court docket book sometimes includes the inspiring phrase: "It is ordered that the petitioner may go free and enjoy his liberty."

Also unlike the courts in other states, the St. Louis Circuit Court was accustomed to processing slaves along the legal path to freedom. During the same time period as

the freedom suits, roughly 1818 until 1857, the Circuit Court processed even more manumission papers. Almost 400 slaves were voluntarily freed by their owners after they had either purchased their freedom or were given the right to be their own men and women.

Other slave states processed nowhere near this number of manumissions. And even then, other Southern states required the people freed by manumission to leave the state, to remove themselves from the state's borders when freedom was sparingly granted. Missouri, by contrast, was a slave state where it was known that manumissions could occur with greater ease and regularity, and where the freed people could remain.

Thus, Milton Duty, an elderly Mississippi man, brought his 26 slaves to Missouri for the purpose of manumitting them. He promised to build them cabins on a tract of land he bought in Souard. Unfortunately, he died before he had completed the legal papers for manumission. His promise which was also written in his will became the basis of one of the largest multi-party freedom suits. He named no heirs in his will other than his slaves. The slave Preston inherited his entire wardrobe. However, his creditors and shirt-tail relatives, who couldn't believe they'd been left out of the will, tied the freedom suits up for almost 30 years.

Why did the Scotts persevere, where others gave up? We can guess that for frontier slaves, like Harriet and Dred Scott, the Northwest Territory was a half-way house to freedom and independence. Life on the frontier gave them not full freedom, but a sufficiently enlarged space of autonomy for them to notice the difference when they returned to a slave state. They had not been so thoroughly inculcated into the machinery of living under the peculiar institution that was American slavery. More importantly, they had each other (and their children) to rely upon in the face of setbacks.

In addition, Missouri provided them the legal terrain in which their suit could be brought, and conceivably could have been won. In Missouri, there was a statute and an accepted tradition of slaves using the courts to establish their freedom.

The last line of the 1857 newspaper account was indeed prophetic: "[Dred Scott's] name will ever be suggestive of the Missouri Compromise and the Supreme Court of the United States, and for a century to come, will be interminably repeated in the political struggles which will agitate the country." The world should also know that the case that shook the country was about something as basic as the ties that bind a family to each other.

For more information, you might like to read Lea VanderVelde & Sandhya Subramanian, *Mrs. Dred Scott*, 106 YALE L. J. 1033 (1997).

Luncheon for Chief Justice Limbaugh

By David Roth

June 27, 2003

Common Pleas Courthouse Lawn, Cape Girardeau, Mo.

The Commons Pleas Courthouse was completed in 1854. Its original appearance was altered by remodeling in 1888, when the building was expanded and the cupola added.

The courthouse was important to the Union force during the Civil War. The provost marshal chose this location for his headquarters, and its dungeon was used to hold Confederate soldiers and southern sympathizers.

During the war, sandstone blocks provided access from Spanish Street to the courthouse. By the turn of the century, weathering and wear necessitated replacement of the steps, with the terraced concrete ones you see today. If you have not yet counted the cascade of steps down the front lawn towards the river, there are 59. The steps, significant not only for their expanse, are the first concrete construction in Missouri outside of St. Louis and Kansas City.

Forty-nine years before the present building was erected, the Court was organized on March 19, 1805, by proclamation of William Henry Harrison, governor of what was then the Missouri Territory, one year after the transfer of the Upper Louisiana Territory from France to the United States.

In October of 1813, Isaac Sheppard was appointed Judge of the Common Pleas Court by territorial governor William Clark (he was the Clark of the Lewis & Clark expedition).

This was eight years before Missouri attained statehood in 1821. The Court, although not the building, is older than the State of Missouri herself.

One of the Court's more colorful persons, was its first clerk, Joseph McFerron, an Irishman, who came to the area before the Louisiana purchase, and taught at the Mt. Tabor school west of what was then the Cape Girardeau trading post.

In 1807 he engaged in a duel with William Ogle. Ogle perished with McFerron's bullet lodged into his brain.

Mr. McFerron later served as clerk of the Court of Quarters Sessions, and of the Circuit Court. During his tenure at the Court of Quarters Sessions, Christopher Hays, who lived north of Jackson, was serving as one of the judges. Judge Hays and his wife, Mrs. Eve Hays, had an adopted daughter, Eve Tyler, to whom Mr. McFerron took a liking. Mrs. Hays was her legal

guardian, so, after a courtship, it was necessary that he ask her for permission to marry the young Miss Tyler.

Mrs. Hays, after receiving his letter asking for the girl's hand in marriage, writes back with her consent, from which I quote a few sentences. Bear in mind that this is Mr. McFerron's future mother-in-law.

My dear Sir, I received your very friendly letter .. By which I find that you have made choice of Miss Eve Tyler and say that you know you will be happy with her.

My dear Sir, [that] is also my opinion, [and had] I thought otherwise I assure you I would tell you so.

I have fixed Tuesday the sixth of February for the wedding day at any hour in the day you may choose

Sincerely yours,

Mrs. Eve Hays.

And it is at this historical site that we gather together. And that is appropriate for it is here that it all began.

It is here, in 1978, that a life of public service began, when the young Stephen N. Limbaugh, Jr. was elected as prosecuting attorney of this County, and served as such for four years. In September 1987, he was appointed as Circuit Judge of this Court and elected in both 1988 and 1990 as judge.

In August of 1992, Judge Limbaugh was appointed to the Supreme Court of Missouri. Cape Girardeau county was again represented on the High Court, her prior sons to serve on the Court being Judge S.P. Dalton, and Judge James A. Finch, Jr. (Both of whom, incidentally, were also prior Prosecuting Attorneys of Cape Girardeau County). Judge Limbaugh has been the Chief Justice of the Supreme Court for the past two years, overseeing the administration of the Court and the entire statewide judicial system, in addition to his duties as a judge.



Chief Justice Stephen L. Limbaugh, Jr. addresses meeting of Cape Girardeau County Bar Association.



MISSOURI SUPREME COURT HISTORICAL SOCIETY TREASURER'S REPORT

October 5, 2002

BALANCE ON HAND — September 30, 2001

Checking Account	\$ 364.43
Money Market Account	<u>75,820.16</u>
	\$ 76,184.59

INCOME — October 1, 2001 — September 30, 2002

Membership dues	\$ 4,400.00
Royalties from Dunne's book	22.91
Memorials — Judge J. P. Morgan	30,000.00
Judge Fred Henley	300.00
Interest on Money Market Account	<u>953.83</u>
	\$ 35,676.74

EXPENSES — October 1, 2001 — September 30, 2002

Brown Printing Co. — Invitations, Brochures, Membership renewal forms	\$ 974.36
Dr. Gregg Andrews — Honorarium for speech At Annual Meeting	500.00
Jefferson City Country Club — Annual Dinner	1,221.00
Cote Sans Dessein — Flowers for Spring and Fall Enrollment Ceremonies	175.00
Master Card — Hotel for Dr. Gregg Andrew In Jefferson City	75.36
D. A. Divilbiss — Mailing membership renewals	80.46
State Archives Intern Program — June, 2002 to August, 2002	
Lea VanderVelde	3,000.00
Emily Strickland	3,000.00
Erin Richter	3,000.00
Secretary of State — Registration Fee	15.00
Freedom Products Co. Inc. — Display cases old rare law books	9,000.00
D. A. Divilbiss — Expenses to Trustees Meeting in K.C.	
Hotel & mileage	250.51
Postage for various mailings	21.44
Mail Box — mailing invitations	46.35
Staples — Office Supplies	27.57
Brussandri — Partial payment for table in conference room	<u>15,000.00</u>
	\$ 36,387.05

BALANCE ON HAND — September 30, 2002

Checking Account	\$ 400.29
Money Market Account	<u>75,857.12</u>
	\$ 76,257.41

ALLOCATION OF FUNDS ON HAND

Herman Huber Memorial Fund	\$ 525.00
J. P. Morgan Memorial Fund	15,000.00
Unrestricted Funds	<u>60,732.41</u>
	\$ 76,257.41

P.O. Box 448
Jefferson City, MO 65102

