

**CELEBRATING 125 YEARS OF JUSTICE:
A History of the Missouri Court of Appeals, Eastern District
1876-2001**

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I. Introduction

The Missouri Court of Appeals, Eastern District, celebrates the occasion of its 125th anniversary in 2001. In the preface to their small but seminal book on appellate courts, Daniel Meador and Jordana Bernstein describe appellate courts as “. . .among the most important institutions of governance in the United States. Through their review of trial court and administrative agency decisions they ensure that those bodies function lawfully and that litigants receive justice under the law. . . . Yet, surprisingly, appellate courts are little understood. . . .” Daniel John Meador and Jordana Simone Bernstein, Appellate Courts in the United States v (1994).

In the view of Meador and Bernstein, appellate courts serve three key purposes. First, they ensure that the law is interpreted and applied correctly and uniformly within its jurisdiction. Second, appellate courts provide a mechanism for the ongoing development and evolution of the law in the common law tradition. Finally, appellate courts heighten the legitimacy and acceptability of judicial decisions. As a result, the public and the parties have assurance that a proceeding was lawfully conducted and was not the result of a single judge’s arbitrary decision. *Id.* at 3-5. They also pose a fourth purpose of providing a means for the institutional sharing of judicial responsibility for decisions.

In the early days of statehood, the appellate mantle was carried alone by a state supreme court. *Id.* at 16. The history of appellate courts within a state has often been a history of the reaction to increasing population, commerce and increasing caseload. As caseload increased, pressure on the supreme court grew. In order to see that the important functions of the appellate court were carried out, intermediate appellate courts were created. *Id.* at 17.

The Eastern District of the Missouri Court of Appeals has been intertwined with the region it serves and has grown along with this area. Over the 125 years, from 1876 to 2001, the Court has seen many changes. When it first opened for business, there were no electric lights in its courtroom and lighting was provided by gas. The heating was provided by oil-burning stoves at first, and then by central steam heating. St. Louis was a horse-driven town and there were no cars. There were no typewriters or computers and all docket entries, briefs and records were handwritten. The Court had three judges and three staff members, the Clerk of the Court, a deputy clerk, and the Marshal. Four of the first eleven judges served in the Civil War, including Judge William H. Biggs, who was the only judge of the Court to serve as a soldier in the Confederate Army. In 1870, the federal census reported St. Louis was the fourth largest city in the United States, even larger than Chicago, with a population of 310,000

people. James Neal Primm, Lion of the Valley 287-288 (1981). Mr. Primm disputes the validity of this census and reports the results were probably inflated. In 1875, the City was still rebuilding after the Civil War, which had created significant commercial problems for St. Louis. The Eads Bridge had just opened, but Union Station had not yet been built. Most of St. Louis as we know it today had yet to be built, and much of the area we now know as the metropolitan St. Louis area was wooded or farmland. Yet, the area was still experiencing growing pains. In two cases within its first fourteen months of existence, the Court of Appeals addressed the legal separation of St. Louis County and St. Louis City. Barnes v. Gottschalk, 3 Mo. App. 111 (St. L. 1876); State ex rel. Beach v. Sutton, 3 Mo. App. 389 (St. L. 1877). See, Primm, *supra* note 5, at 324-325, for an interesting rendition of this story.

Over 125 years later, in the 2000 census, the reported population of St. Louis City is 348,189, while the population of the counties comprising the Eastern District of Missouri is 2,365,237, which is 42 percent of Missouri's population. See, <http://www.census.gov> for the latest census figures. The Court's decisions today continue to affect the area in many ways, including the construction of Kiener Plaza Southern Real Estate and Financial Co. v. City of St. Louis, 758 S.W.2d 75 (Mo. App. E.D. 1988)., the integration of the Martin Luther King Bridge into the area's transportation system Centerre Trust Co. v. Jackson Saw Mill Co., 736 S.W.2d 486 (Mo. App. E.D. 1987)., airport expansion City of Bridgeton v. City of St. Louis, 18 S.W.3d 107 (Mo. App. E.D. 2000)., and the conduct of elections. State ex rel. Bush-Cheney 2000, Inc. v. Hon. Evelyn Baker, 34 S.W.2d 410 (Mo. App. E.D. 2001). Here is the history of the state's first intermediate appellate court and one of the country's oldest.

II. Creation of the St. Louis Court of Appeals

The Missouri Constitution of 1820 created the Missouri Supreme Court and gave it appellate jurisdiction over most matters. Art. V, § 2, Mo. Const. of 1820. The Constitution of 1820 also established the Court of Chancery, which partially functioned as an intermediate appellate court in equity cases for a brief period from 1820-1822. Art. V, § 9, Mo. Const. of 1820. In 1822, the Court of Chancery was abolished. Art. V, Mo. Const. of 1820, as amended in 1822 in § 1. For many years, the Supreme Court operated as the sole appellate court in Missouri and there were no intermediate courts of appeal.

Then, the Constitution of 1865 (also called the "Drake Constitution") provided for the first general intermediate courts known as district courts. Art. VI, § 1, Mo. Const. of 1865. Each district was composed of at least three circuits and the judges of each of the circuits comprised the district court. Art. VI, § 12, Mo. Const. of 1865. Appeals were taken from the circuit court to the district court, and then to the Supreme Court. *Id.* However, cases from the circuit court of St. Louis City were directly appealed to the Supreme Court. *Id.* District courts existed in Jefferson City, Springfield, Cape Girardeau, Macon, St. Joseph, and St. Charles. Hon. Laurance Hyde, Historical Review of the Judicial System of Missouri, in Vernon's Annotated Missouri Statutes Vol. 27, at 13 (1952). These courts were either unable to fulfill their purpose or were unpopular, and they were abolished in 1870 by a constitutional amendment. Art. VI, §§ 1 & 11, Mo. Const. of 1865, as amended in 1870. Therefore, in 1870, the only appellate court in the State was the Supreme Court of Missouri.

When the 1875 Constitutional Convention met, the St. Louis Bar Association, alarmed at the congested docket of the Supreme Court with cases from St. Louis, urged the creation of an intermediate court for St. Louis County, which at that time included St. Louis City. William Hyde & Howard Conard, Encyclopedia of the History of St. Louis, Vol. I 495 (1899). With the Supreme Court's docket more than two years in arrears, appealing for the sole purpose of delay had become a growing source of concern. In the Introduction to the first Missouri Appeal Reports, Reporter A. Moore Berry stated that: "The heavy accumulation on the docket of the Supreme Court, with its increasing accessions from the advancing commerce, population, and wealth of Missouri, demanded an amount of judicial labor which no single tribunal could possibly perform." A. Moore Berry, Reporter, Missouri Appeal Reports, Vol. I, Introduction (1877). St. Louis and its neighboring counties comprised a region containing about one-third of the population, wealth, and commercial interests of the state. *Id.* Many people believed the new appellate court would satisfy the demand for more rapid administration of justice by becoming the court of last resort to the majority of the St. Louis area litigation. Hon. William Dee Becker, St. Louis Court of Appeals Created 1875 to Relieve Supreme Court, St. Louis Daily Record, Oct. 16, 1940, at 2-A. In addition, it was believed the Court would relieve the much overworked Missouri Supreme Court. *Id.* Upon the recommendation of the St. Louis Bar Association (the predecessor to today's Bar Association of Metropolitan St. Louis), the Constitution of 1875 created the St. Louis Court of Appeals. Hyde & Conard, *supra* note 21, at 495; Art. VI, § 12, Mo. Const. of 1875.

Due to the large number of cases in St. Louis, the Missouri Supreme Court traveled to St. Louis and heard cases from 1856 until 1876 in the Old Courthouse. John H. Lindenbusch, Old Courthouse: Historic Structure Report, Part I 243 (1982). When the 1875 Constitution was adopted, all cases pending in the Missouri Supreme Court in St. Louis coming within the appellate jurisdiction of the St. Louis Court of Appeals were certified and transferred to the St. Louis Court. Art. VI, § 19, Mo. Const. of 1875.

Although it appears the Court must have spent some time late in 1875 organizing and preparing for the upcoming session, the Court did not officially open for business until Monday, January 3, 1876. The Court met that day "in the consultation room of the Judges of the Circuit Court." The First Meeting of the New Court Yesterday, St. Louis Globe-Democrat, Jan. 4, 1876, at 8. It is unclear why they met here instead of the courtroom, but the article implies the Supreme Court may have still been using the space. On that day, the Court made its first entry in its handwritten ledger of daily minute entries. Official Records of the Missouri Court of Appeals, Eastern District, Record No. 1 (January 3, 1876 to March 2, 1878), at 1. That entry reads:

Be it Remembered, that a Term of the St. Louis Court of Appeals, begun and held under Section 12, Article VI of the Constitution of the State of Missouri at the City of St. Louis, in said State on the First Monday of January in the year of our Lord Eighteen Hundred and seventy six being the Third day of said month, there were present, The Honorable Thomas T. Gantt, The Honorable Robert A. Bakewell and The Honorable Edward A. Lewis, Judges of said Court and Josiah Thornburgh Clerk of the Court, when the following proceedings were had:

It appearing to the satisfaction of this Court that The Honorable Thomas T. Gantt one of the Judges of this Court holds the oldest of the three licenses to practice law in the Courts of this State, held by

the Judges of this Court, therefore in accordance with the terms of Section 16 of Article VI of the Constitution of this State, he is hereby declared to be the Presiding Judge of this Court. *Id.*

At this time, the three judges presented their commissions from the Governor and they were transcribed into the written record of the Court. *Id.* at 1-3. The Court then appointed five attorneys from the St. Louis bar to serve on the Committee on Rules to draft rules to govern the proceedings of the Court. *Id.* at 3. These rules were submitted and adopted by the Court on January 13, 1876. They included a provision allowing lengthy oral argument. An appellant had a total of 75 minutes to argue, while a respondent had 60 minutes, a total of 2 hours and 15 minutes per case. In October 1970, we reduced the time of oral argument from 40 minutes for each party to 25 minutes for appellant and 20 minutes for respondent, due to an anticipated increase in our workload from jurisdictional changes. Today, in a regular case, each party gets 15 minutes to argue and appellant gets an additional 3 minutes for rebuttal. Local Rule 395(a). The Court then adopted a design for the Seal of the Court: “In the outer circle of said Seal shall appear the words ‘Seal of St. Louis Court of Appeals Mo’; in the center an eagle in transit supporting a pair of scales and in a scroll above the eagle the words ‘Judicis est dicere, non dare jus.’” *Id.* According to Black’s Law Dictionary, the phrase “Judicis est jus dicere, non dare” means “[I]t is the duty of the judge to administer justice and not to make the law.” Black’s Law Dictionary 1649 (7th ed. 1999). Similar words, “Jus dicere non dare,” are inscribed on the outside of the Missouri Supreme Court Building constructed in 1905. Those words mean, “[T]o declare the law (and) not to make it.” *Id.* at 1651.

At that time, John F. Darby, the oldest practitioner of law in St. Louis, St. Louis Globe-Democrat, *supra* note 29, at 8. presented his commission and asked to be enrolled. This was followed by an order permitting all attorneys in the jurisdiction to sign the Court’s roll and be considered attorneys of the Court. Official Records of Missouri Court of Appeals, *supra* note 30, at 1. The Globe-Democrat reports that at this time, “Mr. Darby then made a speech, in which he gave a general history of the St. Louis bar, and paid a high compliment to the gentlemen who had been appointed to the latest formed tribunal of justice under the new Constitution. . . .” St. Louis Globe-Democrat, *supra* note 29, at 8. Finally, the Court made entries of various filings made in pending appeals. Official Records, *supra* note 30, at 3-5.

The Globe Democrat also reports that at the close of Court that day, Judge Gantt stated “that one of the Judges of the newly appointed court had been approached by certain parties who were seeking a position that the court had the power to confer, and he wanted to say, for the information of all persons, that if such an attempt was made again that the court would inflict the most severe penalty it could impose.” St. Louis Globe-Democrat, *supra* note 29, at 8. No further explanation was provided for the unusual comment.

III. The Original Three Judges

When the Court opened for business in January of 1876, it was composed of three judges. Indeed, the Court would consist of only three judges until 1972 after a constitutional amendment. Governor Charles H. Hardin appointed the original three judges on December 14, 1875, for a one-year term beginning on January 1, 1876, and ending on January 1, 1877, during which time elections could be held for the positions. Hyde & Conard, *supra* note 21, at 495- 496;

Art. VI, § 17, Mo. Const. of 1875. The original three judges were Thomas Tasker Gantt and Robert E. Bakewell of the St. Louis Bar, and Edward A. Lewis of the St. Charles Bar.

As noted in the record, the first presiding judge was Judge Gantt, who had the oldest license to practice law of the three men. As provided in Art. VI, §16, Mo. Const. of 1875. Judge Gantt was a respected member of the St. Louis Bar and an important citizen of St. Louis. In 1849, he was active in a citizens' movement to improve sanitation and health conditions in St. Louis after members of the government fled in a panic during a cholera outbreak. Hyde & Conard, *supra* note 21, at 865. He remained at his post until the plague was stayed after claiming over 6,000 victims. *Id.* He helped quell the “Know-Nothing” riot of 1854 and then authored an act to prevent riots and breaches of the peace. *Id.* He was a vocal opponent of secession during the Civil War. *Id.* at 866. He also served as a member of the Constitutional Convention that framed the Constitution of 1875, which created the St. Louis Court of Appeals. *Id.* In 1874, he served as chairman of the first meeting of the St. Louis Bar Association, the predecessor to today's Bar Association of Metropolitan St. Louis. Judson Calkins, Peter Dunne, and Marshall Hier, A Continuing Legacy 14 (2000). He was described in the Encyclopedia of the History of St. Louis as:

Great as were the gifts of his mind, his moral attributes were still more striking. His whole career was distinguished by lofty conduct and a detestation of all that was mean and dishonorable. He did not seek the highest fields of ambition or cultivate any of the arts by which a spurious fame is often won, but in an unostentatious but outspoken and fearless way, his advocacy of the right, his support of reform and cleanness in government, and his intelligent and forceful opposition to corruption and bad systems by which evil government is fostered only made him of inestimable service to the city of St. Louis and the State of Missouri. *Id.*

However, another author has described Judge Gantt as rigid and having an undiplomatic manner, quoting one observer as saying he was “a gallant-looking man, straight and martial, and his conversation rather like that of a general officer” Primm, *supra* note 5, at 320. James Primm also reports that some of the entries in the Encyclopedia of the History of St. Louis, while valuable, should be “approached with caution, since they were written by the principals themselves, or other interested parties.” *Id.* at 530. Even so, it was believed that Gantt's appointment to the St. Louis Court of Appeals was a good omen. Hyde & Conard, *supra* note 21, at 497. Judge Gantt served for his one-year appointment, but did not seek election to the Court. He returned to private practice. He died on June 17, 1889. *Id.* at 496.

Judge Edward Lewis was the only of the first three judges to have previously served on the Missouri Supreme Court. In 1874, Governor Woodson appointed him to fill a brief unexpired term in the Missouri Supreme Court. *Id.* at 497. He was considered a sound lawyer. He was elected to an eight year term to the Court, but his health failed him during his second year, when he became “subject to a disease from which he suffered constant and often the most excruciating pain, which he bore with wonderful courage.” *Id.* He only resigned on March 1, 1888, when his hearing failed completely. *Id.* At that time, he became the reporter of the court, which he held until his death on August 26, 1889. *Id.* at 496 & 497.

Judge Robert Bakewell was born in Edinburgh, Scotland in 1826 and for many years lived in Norwich, England. He was described as “gifted with the indomitable purpose, the rugged but sterling character which is peculiarly Scotch, and the hard, good sense to balance other commendable qualifications. . . .” A.J.D. Stewart, Ed., The

History of the Bench and Bar of Missouri 139 (1898). Judge Bakewell served from December 21, 1875 to January 6, 1885. In 1899, it was stated that “when he retired [he had] the enviable record of having been not only a just and upright jurist but a broad-minded and able administrator of the law.” Hyde & Conard, *supra* note 21, at 68.

After the appointment of these three judges, elections were held for the three positions. Both Judge Lewis and Judge Bakewell were elected, as well as Charles S. Hayden. Pursuant to the Constitution, the three men drew lots to determine the duration of their term of office, which were four, eight, and twelve years. Art. VI, § 16, Mo. Const. of 1875. Judge Lewis was elected to a term of twelve years, while Judge Bakewell was elected for eight years, and Judge Hayden, four years.

IV. The First Opinion?

The Missouri Appeal Reports indicates the St. Louis Court of Appeals issued its first opinion on January 10, 1876, in State v. Foster, 1 Mo. App. 1 (St. L. 1876). However, the original opinion issued by the Court of Appeals on January 10th was never actually published in the Missouri Appeals Reports. The opinion published at “1 Mo. App. 1” is a later opinion written by the Court in June of 1876 denying Foster’s writ to stay his execution. It is possible the original opinion may not have been published because Foster appealed to the Missouri Supreme Court and it unanimously reversed and remanded his case. State v. Foster, 61 Mo. 549 (1876); *See also*, Joseph F. Benson, A History of the St. Louis Court of Appeals, The Early Years – 1875-1910, 30 St. L. Bar J. 59 (Fall 1983). The first decisions of the St. Louis Court of Appeals were not collected and published until over a year later in 1877.

The case of State v. Foster concerned the conviction of William Foster, a white man, for the first degree murder of an unnamed black man. The record filed in the appeal shows Foster shot the man, with whom he was traveling, in the back of the head. Foster confessed to killing the man, because he believed he had stolen his baseball shoes and stockings in St. Louis. Foster then followed the man to Warren County and befriended him, killing him the next day and taking his silver watch. After killing the man, Foster gave his rifle away and traded the watch for a fiddle and a coat. At the trial, Foster did not testify. Missouri State Archives, Case files of the Missouri Court of Appeals, Eastern District, Appeal No. 348.

In the original opinion actually issued on January 10, 1876, the Court affirmed Foster’s conviction and found no error in the use of the abbreviation “Mo.” in the indictment instead of “Missouri.” Judge Edward Lewis, writing for the Court, stated:

Under the circumstances of this case, it cannot be said that the prisoner is sacrificed upon the altar of technical nicety. His trial appears to have been eminently fair in all things. The murder was most brutal – singularly destitute of any palliating incident – and evinced just such an estimate of the value of human life, as might be looked for in a beast of prey. If such malifactors may escape through overstrained legal interpretation in their behalf, no man’s life will be safe, when in near proximity to one of depraved instincts, who can command the means of destroying it. *Id.*

The Supreme Court reversed and remanded in the January term 1876. Foster, 61 Mo. at 549. In that opinion, the Supreme Court did uphold the St. Louis Court of Appeals regarding the abbreviation in the indictment, but found

error in the jury instructions on deliberation and premeditation. *Id.* at 554-555. This error was not raised at the St. Louis Court of Appeals.

After remand, Foster was retried in April of 1876 and again convicted of first degree murder and sentenced to death. Missouri State Archives, Appeal No. 348. At the second trial of his case, Foster testified in his own defense and denied killing the man. He stated he had only confessed because he was threatened with hanging if he did not confess. He stated he was unable to consult with his attorney and became “crazed with fear and strong drink” and was induced to make false statements to save his life. *Id.*

Foster again sought a stay of execution with the St. Louis Court of Appeals. On June 5, 1876, the Court issued a second opinion in Foster’s case, which was written by Judge Robert Bakewell, denying his request for a stay of execution. Although the Court denied Foster’s request, it concluded it could not judicially consider a supplemental motion to set aside the verdict that Foster filed with the Warren County Circuit Court after the appeal had been filed. Foster, 1 Mo. App. at 2. However, the Court noted that it was “expedient to take the opinion of the Supreme Court thereon.” *Id.* The Supreme Court took no further action on the matter (at least none reported in the official reporter). William Foster was hanged on June 10, 1876. This information was obtained from Watt Espy of Headland, Alabama, who has collected information about over 19,000 executions in colonial and U.S. history from court records and newspaper accounts. Mr. Espy’s records show William Foster was hanged on June 10, 1876, although our opinion (dated June 5, 1876) denying the application for stay of execution indicates he was to be hanged on June 19, 1876.

This second opinion denying the stay of execution in the Foster case is the one reported at “1 Mo. App. 1.” The reporter of decisions made an erroneous “correction” to the opinion in the first paragraph, which states: “This cause is brought here by writ of error, and, the defendant being sentenced to be hanged on the 19th of the present month (January, 1876), we are asked to stay the execution.” Foster, 1 Mo. App. at 2. However, in the handwritten opinion in the archived file, the present month was June, 1876. Missouri State Archives, Appeal No. 348. We may never know the reason for the inaccuracy or why the original opinion handed down on January 10, 1876 was never published. It is possible the reporter simply made an error and published the wrong opinion. As a result of the change though, the first opinion reported at “1 Mo. App. 1” was not, in fact, the Court’s official first opinion.

While the Foster case was the first opinion issued by the Court, it was not the first notice of appeal filed with the Court. That honor goes to State v. David Randolph, Appeal No. 1 of the St. Louis Court of Appeals, transferred no doubt from the Missouri Supreme Court in 1875 when the Court of Appeals came into existence. The case is reported in the Missouri Appeals Reports at “1 Mo. App. 15.”

A trial court had convicted Mr. Randolph of possession of three prairie chickens in violation of an act that made it unlawful to possess dead prairie chickens between February 1st and August 15th (out of season). He was sentenced to pay a fine of nine dollars, three dollars per prairie chicken. Mr. Randolph had served the prairie chickens at his restaurant in St. Louis, “The English Kitchen” at 105 N. 5th Street. Missouri State Archives, Case Files of the Missouri Court of Appeals, Eastern District, Appeal No. 1. He contended on appeal that he could not be convicted because the prairie chickens were imported from Kansas. In an opinion written by Judge Bakewell, the Court upheld his conviction, eloquently stating in an early environmental law decision, that “[i]t would be impossible to

show, in most instances, where the game was caught. The State of Missouri has as much right to preserve its game as it has to preserve the health of its citizens . . . [and] is no more . . . illegal . . . than would be a city ordinance against selling oysters in July.” State v. Randolph, 1 Mo. App. 15, 17 (St. L. 1876).

V. Location of the Court

When the St. Louis Court of Appeals was created in 1875, the Missouri Supreme Court vacated its chambers and courtroom in the Old Courthouse in the City of St. Louis. In January of 1876, when the St. Louis Court went into session, it took over the old Supreme Court chambers in the Old Courthouse. Lindenbusch, *supra* note 27, at 128 & 243. These chambers had been set up as living quarters for the Supreme Court, who traveled from Jefferson City. *Id.* at 50. The St. Louis Court of Appeals courtroom and three chambers were located on the second floor in the southwest wing of the Old Courthouse. *Id.* at 47 & 243. Next to them was the law library in the southeast wing. *Id.* From 1903 to 1908, the Clerk’s Office was located across the corridor from the south wing entrance. *Id.* at 243. Initially, the City of St. Louis provided the funds for maintaining the premises. In 1877, the City of St. Louis appropriated about \$900 to provide furniture, carpets, oil cloths, matting and curtains for the Court of Appeals judges. *Id.* at 129. In 1885, the State of Missouri took over responsibility for the Court’s upkeep and improvements. *Id.*

The St. Louis Court of Appeals resided in the Old Courthouse until 1908. *Id.* at 243. After the court and the law library moved, this area of the Old Courthouse was remodeled into two courtrooms. After 1940, the National Park Service remodeled this area to serve as some of its administrative offices. Today, there is little left of the original area other than the outer walls and windows. At the time, however, the courtroom was impressive, and was described as follows:

It was originally divided into two areas: the courtroom proper adjacent to the corridor, and a set of three rooms located behind an interior partition built of brick. * * * The wall behind the bench had an elliptical niche with a curved top. The ceiling had a heavy cornice and a circular dome in its center. All things considered, the proportions were somewhat awkward but the room must have been as impressive as space intended for so important a judicial body should be. *Id.* at 47, 50.

Today, however, the high domed ceiling is covered, as well as all of the other features. The space occupied by the Clerk, however, is today divided into one administrative office and a lounge for the National Park employees. It retains some of the features that it had back in the early 1900s.

In early 1908, the St. Louis Court of Appeals moved to the Pierce Building at 112 N. 4th Street, caddy-corner from the Old Courthouse (now the home of the Adams Mark hotel in 2001). *Id.* at 191. The Court resided there on the 17th floor, again near the law library, which also moved from the Old Courthouse. An interesting sidenote: The City paid for a tunnel to be built underneath the street between the Pierce Building and the Old Courthouse. Inside the tunnel was a book conveyor to provide access for the trial judges to the law library collection without actually walking to the Pierce Building. This conveyor first operated in March of 1908, but proved unreliable and a messenger service was instituted in its place a short time later. *Id.* at 197.

The Court had its offices in the Pierce Building until it moved to the brand new Civil Courts Building, which was dedicated on June 21, 1930. From June of 1930 until 1981, the Eastern District had its offices in the Civil Courts Building at 12th and Market in St. Louis. The Court occupied the 12th floor and the 12th mezzanine. Conditions became extremely cramped in the early 70s. As early as 1973, the Court was considering alternatives. In 1976, seven judges remained in the Civil Courts Building, while three judges (one division) moved to the St. Louis County Courthouse in Clayton. By 1980, the situation at the Civil Courts Building became unworkable. Offices that were created for three judges, two commissioners, and their staff were becoming woefully inadequate for the burgeoning Court. The Court was no longer confined to the 12th floor. One judge was on the 9th floor, along with the offices for the Court's law clerks and the staff attorneys. Offices were also created in the former lobby of the Court.

Finally, on June 23, 1981, the Court moved to the newly renovated annex of the Wainwright Building at 111 North 7th Street, where the Court currently resides. The Wainwright Building was designed by architect Louis H. Sullivan and built in 1891 as a rental office building for Ellis Wainwright, a St. Louis businessman. State of Missouri, Board of Public Buildings, Wainwright State Office Building (brochure). The State of Missouri purchased the building in 1974, narrowly escaping demolition. George McCue, Spirit from St. Louis, Progressive Architecture, November 1981(reprint), at 1. Mitchell/Giurgola Architects in association with Hastings & Chivetta Architects won a design competition to restore the Wainwright Building and for construction of the annex. *Id.*

In 1987, three judges again established a branch office in Clayton due to overcrowding in the Wainwright Building and to better serve the public. Currently, eleven judges have their chambers in the Wainwright Building, while three judges have their chambers on the 5th floor of the World Trade Center, 121 S. Meramec, Clayton, Missouri.

VI. Territorial Jurisdiction

The original territorial jurisdiction of the St. Louis Court of Appeals encompassed the City of St. Louis and the counties of St. Louis, St. Charles, Lincoln and Warren. Art. VI, § 12, Mo. Const. of 1875. However, it became readily apparent that the limited territorial jurisdiction was insufficient to provide necessary relief to the Missouri Supreme Court. Becker, *supra* note 24, at 2-A. As a direct result, a constitutional amendment was adopted in 1884, that among other things, extended the jurisdiction of the St. Louis Court to 51 additional counties. Art. VI, Mo. Const. of 1875, as amended in 1884 in § 1. The Court then had jurisdiction over the following counties:

MONROE	SHELBY	KNOX
SCOTLAND	CLARK	LEWIS
MARION	RALLS	PIKE
LINCOLN	WARREN	ST. CHARLES
ST. LOUIS	JEFFERSON	STE. GENEVIEVE
PERRY	CAPE GIRARDEAU	SCOTT

MISSISSIPPI

DUNKLIN

BOLLINGER

WASHINGTON

IRON

BUTLER

SHANNON

PULASKI

OZARK

LACLEDE

TANEY

LAWRENCE

MCDONALD

NEW MADRID

STODDARD

MADISON

FRANKLIN

REYNOLDS

RIPLEY

DENT

TEXAS

DOUGLAS

WEBSTER

STONE

BARRY

CITY OF ST. LOUIS

PEMISCOT

WAYNE

ST. FRANCOIS

CRAWFORD

CARTER

OREGON

PHELPS

HOWELL

WRIGHT

CHRISTIAN

GREENE

NEWTON

The 1884 amendment also established which had jurisdiction of all counties of district of the St. Louis Court. Art. VI, Mo. Const. of 1875, as amended in 1994 in 2. The amendment also authorized the court of appeals and to change the boundaries of the court of appeals.

Even with two appellate districts, the number of cases appealed to those courts soon exceeded the number they could properly dispose of and congestion and delay bogged down the courts again. Becker, *supra* note 24, at 2-A. To remedy the problem, the legislature established the Springfield Court of Appeals in 1909 and rearranged the territorial jurisdiction of the courts of appeal. Chapter 35, art. 2, § 3926, RSMo 1909. Springfield was given jurisdiction over 33 counties. *Id.* At this time, the St. Louis Court's territorial jurisdiction consisted of the City of St. Louis and the 32 counties of Monroe, Shelby, Knox, Scotland, Clark, Lewis, Marion, Ralls, Pike, Lincoln, Montgomery, Warren, St. Charles, St. Louis, Jefferson, Ste. Genevieve, Perry, Cape Girardeau, Scott, Mississippi, New Madrid, Pemiscot, Dunklin, Stoddard, Wayne, Bollinger, Madison, St. Francois, Washington, Franklin, Iron, and Reynolds. Chapter 35, art. 2, § 3928, RSMo 1909. These territorial changes, along with constitutional changes in appellate jurisdiction and the authorization of Commissioners, were "necessary to increase the capacity of the courts to handle the increased judicial business" and to give them "sufficient manpower to keep up with the growth of their dockets." Hyde, *supra* note 19, at 14.

In 1913, the legislature transferred jurisdiction over eleven counties from the St. Louis Court of Appeals to the Springfield Court of Appeals, changing its jurisdiction to include the counties of Maries, Reynolds, Iron, Wayne, Bollinger, Scott, Stoddard, Dunklin, Pemiscot, New Madrid and Mississippi. Chapter 35, art. 2, § 3926, RSMo 1913. Despite this transfer, the number of appeals continued to rise in the St. Louis Court of Appeals, and in 1919, the

legislature again reduced its territorial jurisdiction to the City of St. Louis and 23 counties: Monroe, Shelby, Knox, Scotland, Clark, Lewis, Marion, Ralls, Pike, Lincoln, Montgomery, Warren, St. Charles, St. Louis, Jefferson, Ste. Genevieve, Perry, Cape Girardeau, Madison, St. Francois, Washington, Franklin and Audrain. Chapter 21, art. 2, § 2385, RSMo 1919.

In 1945, the legislature amended the St. Louis Court's territorial jurisdiction and added on the counties of Gasconade and Osage, § 477.050, RSMo 1949. which has remained the Court's geographical limitation until the present time. Currently, the territorial jurisdiction of the Eastern District comprises the city of St. Louis and the 25 counties of Monroe, Shelby, Knox, Scotland, Clark, Lewis, Marion, Ralls, Pike, Lincoln, Montgomery, Warren, St. Charles, St. Louis, Jefferson, Ste. Genevieve, Perry, Cape Girardeau, Madison, St. Francois, Washington, Franklin, Audrain, Gasconade, and Osage. § 477.050, RSMo 2000.

VII. Appellate Jurisdiction of the Court of Appeals

A. General Appellate Jurisdiction

In 1875, the St. Louis Court of Appeals had appellate jurisdiction over all cases of the circuit courts within its district. That jurisdiction was final, except in cases where the amount in controversy exceeded \$2500, cases involving the construction of the Missouri Constitution or the United States Constitution, the validity of a treaty or statute of the United States, the revenue laws, title to State office, title to real estate, where a political subdivision or State officer was a party, and in all cases of felony. Art VI, § 12, Mo. Const. of 1875; See also, Hyde & Conard, *supra* note 21, at 495. In these cases, the party had the right to a further appeal in the Missouri Supreme Court. Art. VI, § 12, Mo. Const. of 1875. The St. Louis Court also had the power to issue remedial writs. *Id.*

From January 1, 1876 until the 1884 amendment, the St. Louis Court of Appeals delivered opinions contained in the first sixteen volumes of the Missouri Appeal Reports. These first sixteen volumes contain the Court's holdings in all areas of law, including those that later fell within the exclusive jurisdiction of the Missouri Supreme Court. By 1884, it had become apparent that the St. Louis Court of Appeals had not provided a speedier disposition of cases, because of the right to further appeal to the Missouri Supreme Court. Henry W. Bond, St. Louis Court of Appeals, in The History of the Bench & Bar of Missouri 35 (A.J.D. Stewart, ed., 1898). As a result, the 1884 Constitutional amendment not only changed the Court's territorial jurisdiction, it also changed its appellate jurisdiction.

The 1884 amendments gave exclusive appellate jurisdiction to the Missouri Supreme Court of all such cases that had previously been appealable to it, and in one fell swoop, several classes of cases no longer had an appeal to the St. Louis Court of Appeals. Becker, *supra* note 24, at 2-A; Art. VI, Mo. Const. of 1875, as amended in 1884 in § 5. These cases included all felonies and as a result, the St. Louis Court of Appeals heard only misdemeanor criminal cases for almost one hundred years until a later constitutional amendment in 1972. In addition, the 1884 amendments made the courts of appeal the courts of last resort in all cases, except those within the Supreme Court's exclusive jurisdiction. Bond, *supra* note 106, at 36. It did, however, provide for certification to the Supreme Court when one judge of the court of appeals deemed its decision to be contrary to any previous decision of the Court or the Missouri

Supreme Court. Art. VI, Mo. Const. of 1875, as amended in 1884 in § 6. In addition, prior to 1945, a party could obtain review by the Supreme Court by seeking a writ of certiorari. *See, e.g., State ex re. Silverforb v. Smith*, 43 S.W.2d 1054 (Mo. 1931). A writ of certiorari fell into complete disuse after the Missouri Constitution of 1945 adopted a provision for an order of transfer. Art. V, § 10, Missouri Constitution of 1945. After 1945, the mechanism changed to seeking an application for transfer. Art. V, § 10, Mo. Const. of 1945, as amended in 1976.

The 1884 amendments also empowered the legislature to increase or decrease the pecuniary limit of appellate jurisdiction. Art VI, Mo. Const. of 1875, as amended in 1884 in § 3. Over the years, since the establishment of the court of appeals, the amount in controversy has varied slightly. In 1875, it was \$2500 Art. VI, § 12, Mo Const. of 1875.; in 1899, \$4500; Chap. 14, art. 2, § 1649a, RSMo 1906. and in 1909, \$7500. Chap. 35, art. 2, § 3937, RSMo 1909. In 1959, the amount increased to \$15,000. § 477.040, RSMo 1959. In 1970, the amount was \$30,000. § 477.040, RSMo Cum. Supp. 1973. This limitation based on amount in controversy was eliminated with the 1970 Constitutional amendment reforming the judiciary.

In 1970, the people of Missouri voted to amend Article V of the Missouri Constitution regarding the judiciary. The amendment, effective January 1, 1972, significantly amended the appellate jurisdiction of the court of appeals and the Missouri Supreme Court. The courts of appeal were again provided general appellate jurisdiction of all cases except those within the exclusive jurisdiction of the Supreme Court. Art. V, § 3, Mo. Const. of 1945, as amended in 1970. However, the amendment substantially reduced the mandatory jurisdiction of the Supreme Court. The cases within the exclusive jurisdiction of the Supreme Court were: (1) all cases involving the “construction” of the United States or Missouri Constitutions; (2) the validity of a treaty or statute of the United States; (3) any authority exercised under the laws of the United States; (4) the construction of revenue laws; (5) the title to any office in Missouri; (6) all appeals involving offenses punishable by a sentence of death or life imprisonment; and (7) in other cases provided by law or supreme court rule. *Id.* The Missouri Supreme Court has narrowly interpreted and construed its mandatory jurisdiction. For example, in *Garrett v. State*, 481 S.W.2d 225, 227 (Mo. 1972), the Court narrowly construed the language “in all appeals involving offense punishable by a sentence of death or life imprisonment” to cases where these were the only two possible punishments. The biggest change in jurisdiction was to remove the amount in controversy requirement for jurisdiction in the court of appeals. As a result, most civil cases were now appealable to the court of appeals, not the Supreme Court. Another significant change in the jurisdiction was to provide the court of appeals with jurisdiction over all felonies except those punishable by a sentence of death or life imprisonment.

In 1976, the people of Missouri again amended Article V of the Constitution. The effective date of this amendment was January 1, 1979. Art. V, § 27, Mo. Const. of 1945, as amended in 1976. This Constitutional amendment again changed the mandatory jurisdiction of the Supreme Court. The 1970 amendments provided the Supreme Court with jurisdiction in all cases “involving the construction of the constitution of the United States or this state.” Art. V, § 3, Mo. Const. of 1945, as amended in 1970. After judicial decisions attempting to interpret the meaning of the word “construction,” the new amendment changed the jurisdiction to all cases “involving the validity of a treaty or statute of the United States, or of a statute or provision of the constitution of this state. . . .” Art V, § 3, Mo. Const. of 1945, as amended in 1976 (emphasis added).

Another significant change in 1979 involved a change in the language regarding offenses punishable by death or life imprisonment. A slight change in the wording resulted in a change of the Supreme Court's jurisdiction to only those cases where the actual punishment imposed was death or life imprisonment. *Id.*; For an excellent comparison of the 1970 and 1976 amendments to the Supreme Court's jurisdiction, see: Joseph J. Simeone, The New Judicial Article: The End of the Yellow Brick Road², 33 J. Mo. Bar 10, 14-15 (Jan.-Feb. 1977). At this time, the only cases falling within the exclusive jurisdiction of the Supreme Court were: (1) all cases involving the validity of a treaty or statute of the United States or of a statute or provision of the constitution of Missouri; (2) the construction of the revenue laws of Missouri; (3) the title to any state office; and (4) in all cases where the punishment imposed was death or life imprisonment. Art. V, § 3, Mo. Const. of 1945, as amended in 1976.

In 1982, the Constitution was amended once more to change the exclusive jurisdiction of the Missouri Supreme Court in criminal cases only. At that time, the amendment removed the words "or life imprisonment" from the jurisdictional requirement and concluded the Court should have jurisdiction only in those cases "where the punishment imposed is death." Art. V, § 3, Mo. Const. of 1945, as amended in 1982. The 1982 amendments remain the law today. Presently, the Court has general appellate jurisdiction in all cases except those within the exclusive jurisdiction of the Supreme Court. *Id.* The Missouri Supreme Court has exclusive jurisdiction in all cases involving the validity of a treaty or statute of the United States, or of a statute or provision of the Missouri Constitution, the construction of Missouri revenue laws, the title to state office, and all cases in which the punishment imposed is death. *Id.*

The Court has always had original jurisdiction in extraordinary writs and general superintending control over other courts within the district. See, Art. V, § 4, Mo. Const. of 1945, as amended in 1976. The Court may also transfer cases to the Supreme Court, when any member of the court or any division thereof, dissents from the majority opinion and certifies that he or she deems the opinion contrary to any previous decision of the Supreme Court or any court of appeals. Art. V, § 10, Mo. Const. of 1945, as amended in 1976. In addition, either the Supreme Court may order the case transferred to its jurisdiction or the court of appeals may order the case transferred if either the general interest or importance of the question involved justifies the transfer or re-examination of the existing law is necessary. *Id.*

B. Power to Naturalize Citizens

The Missouri Court of Appeals, Eastern District, has the power to naturalize citizens. From its creation in 1875 until at least 1906, the St. Louis Court of Appeals exercised this power. The power was authorized under a federal statute that allowed a "court of record of any of the states having common law jurisdiction and a seal and a clerk" to naturalize qualified aliens and issue certificates of citizenship. Levin v. United States, 128 F. 826, 827 (8th Cir. 1904). As this case indicates, the Court struggled with naturalization fraud during the time it naturalized citizens. The Eighth Circuit Court of Appeals upheld the jurisdiction of the St. Louis Court of Appeals to do so, finding it had "common-law jurisdiction, and it falls in the class of state courts upon which Congress has conferred the jurisdiction to admit qualified aliens to citizenship." *Id.* at 833; See also, Joseph Fred Benson, St. Louis Court of Appeals: A Judicious Gatekeeper, 30 St. L. Bar J. 57, 58 (Winter 1984). The Court's own archives, however, contain only one volume of "Alien Declaration

Books of the St. Louis Court of Appeals,” dating from May 1, 1876 to September 20, 1906. In this book, the person declared his or her intent to become a citizen. The Court has two volumes of “Final Naturalization Paper,” dating from October 13, 1898 to October 14, 1902, where final citizenship papers were granted. It is unclear how long after 1904, if any time, the St. Louis Court of Appeals continued to exercise its jurisdiction to naturalize aliens.

Today, the federal statute still confers authority to naturalize persons as citizens of the United States to “eligible courts.” 8 U.S.C. § 1421(b)(1)(A) (2000). Eligible courts have the authority to administer the oath of allegiance and issue certificates of naturalization (as prepared by the Attorney General of the United States). 8 U.S.C. § 1421(b)(1)(A) & (b)(2)(A) (2000). Eligible courts are defined as a district court of the United States or any state or “any court of record in any State having a seal, a clerk, and jurisdiction in actions in law or equity, or law and equity, in which the amount in controversy is unlimited.” 8 U.S.C. § 1421(b)(5) (2000). Therefore, on the face of the statute, the Court would apparently still have authority to naturalize citizens. Moreover, they could collect a fee of \$1.50 for doing so. § 488.012.3(15), RSMo 2000. However, there are new provisions in the federal statute that allow an eligible court to obtain exclusive authority to naturalize citizens. 8 U.S.C. § 1421(b)(1)(B) & (b)(2) & (b)(3) (2000). Today, the United States District Court, Eastern District of Missouri, has the exclusive authority to naturalize citizens within its territorial jurisdiction. Another little known jurisdictional fact is that the Court of Appeals has the authority to verify passports for the Secretary of State. The State Department has implemented federal regulations governing the execution of passport applications. Those regulations designate certain people before whom passport applications can be executed and oaths can be administered. These persons include “[a]ny clerk of any State court of record or a judge or clerk of any probate court.” 22 C.F.R. § 51.21(b)(3) (2000). However, this is not a mandatory function imposed upon the public official and the Court can refuse to handle passport applications without penalty. See, Platz v. Hamilton, 653 P.2d 144, 146 (Mont. 1982). At this time, the Court does not handle passport applications and there is nothing in our records to indicate we have ever done so.

C. Admission and Discipline of Attorneys

From 1875 until 1905, the St. Louis Court of Appeals had jurisdiction to admit applicants to the bar and thereby authorize them to practice law. See, Chap. 73, § 4918, RSMo 1899. The applicant had to be at least 21 years old, provide sufficient testimonials of good moral character and was subject to a strict oral examination in open court “by the judge or judges, together with any other attorneys present who may desire to participate. . . .” Chap. 73, § 4920, RSMo 1899. The oral examination tested the applicant’s knowledge of pleading, evidence, criminal law, equity, commercial law, property, contracts, Missouri statutes, the United States Constitution, and the Missouri Constitution. *Id.* Graduates of the University of Missouri law school, Washington University law school, the Kansas City law school, and the Benton College of Law could be admitted without taking the oral examination. Chap. 73, § 4937, RSMo 1899; See also, Benson, *supra* note 132, at 57. The St. Louis Court of Appeals also had the authority to suspend and disbar attorneys. Chap. 73, § 4924 & 4925, RSMo 1899. See, In re: Frank Bowman, 7 Mo. App. 569 (St. L. 1878) (Appendix) and Bowman v. Lewis, 101 U.S. 21 (1880). In 1905, the legislature passed a statute vesting the Missouri Supreme Court with original and exclusive jurisdiction over the bar exam. Chap. 73, § 4920, RSMo 1906. As a result of the statute, the St.

Louis Court of Appeals lost any authority to admit persons to the practice of law. The Court also lost authority to suspend and disbar attorneys.

VIII. Appointment of Commissioners

For a brief period from 1883 to 1885, three Supreme Court commissioners were appointed to assist the Supreme Court with its work. Beginning in 1919, due to a backlog of cases, the legislature authorized this Court to appoint three commissioners for four years. Chap. 21, art. 2, § 2398, RSMo 1919; See also, Becker, *supra* note 24, at 2-A. The commissioners were to be divided equally between Democrats and Republicans. Chap. 21, art. 2, § 2398, RSMo 1919. When their terms expired, the legislature authorized four commissioners for two years. Becker, *supra* note 24, at 2-A. From 1925 to 1963, the legislature authorized two commissioners for the Court every two to four years. They made the same salary as the judges and acted as judges, except they had no vote. In 1963, an act provided for the appointment of these commissioners for four year terms, thus eliminating the necessity of legislation every four years. § 477.153, RSMo Supp. 1963. In 1965, legislation passed increasing the number of commissioners for the St. Louis Court to four. § 477.153, RSMo Supp. 1965. With the help of the commissioners, the St. Louis Court of Appeals was able to clear up a backlog of cases and maintain a current docket.

The 1970 amendment to the Constitution eliminated the commissioner system. The persons who were commissioners of the Supreme Court or the Court of Appeals on January 1, 1972, could continue to hold their offices until the end of their terms and be eligible for reappointment from term to term until their retirement, death, resignation or removal for cause, whereupon their office would cease to exist. Art. V, § 31, subsection 7, Mo. Const. of 1945, as amended in 1970. In 1970, the St. Louis Court had four commissioners, Russell Doerner, James D. Clemens, Gerald M. Smith, and Harry L.C. Weier. All of the commissioners, except for Russell Doerner, ultimately became judges with the Eastern District in 1971 and 1972. Russell Doerner retired on March 31, 1972. As of July 1, 1973, there were no commissioners serving on any Missouri Court of Appeals, although four commissioners continued to serve on the Supreme Court until 1982. However, because of the increasing workload of the Courts of Appeal, in 1975 the Supreme Court assigned its four commissioners to work as special judges in the Eastern District and Western District of the Court of Appeals. In 1982, the last remaining commissioners retired and the commissioner system, which had served the judiciary for about one hundred years, became only a part of history.

IX. Judicial Reform in the 1970s

The Missouri Court of Appeals, as we know it today, was created by an amendment to the Constitution of 1945 adopted at a special election in August of 1970 and effective January 1, 1972 Art. V, § 31, Mo. Const. of 1945, as amended in 1970. and then by complete revision which became effective January 2, 1979. Art. V, § 27, Mo. Const. of 1945, as amended in 1970. The current Court came into existence as a result of a call for judicial reform in the mid to late 60s. In an article published in September of 1968, Charles B. Blackmar (currently a retired Missouri Supreme Court judge) noted the appellate system had serious problems and that with an increase in the appellate caseload, the problems could only become more severe. Charles B. Blackmar, Missouri's Appellate System: Is It Adequate for the 21st

Century?, 24 J. Mo. Bar 380 (September 1968). To assist with the handling of its increasing caseload, the Missouri appellate system had used three primary methods, the divisional system, an intermediate appellate court, and the use of commissioners. *Id.* at 381. However, the use of them all at the same time had created a “monstrosity,” which was impeding the “smooth functioning of the entire system” and causing “substantial waste of the judges’ and lawyers’ time.” *Id.* In addition, litigation over jurisdictional issues peculiar to Missouri had also caused much judicial waste. *Id.* at 382. Moreover, under the system prior to 1972, the Supreme Court was compelled to hear many routine questions of law. *Id.* at 381. As a result, there was an urgent call for judicial reform. *Id.*; See also, Fred L. Howard, The Need for a Unified Court System in Missouri, 24 J. Mo. Bar 433 (October 1968).

The result of this call was the adoption of a Constitutional Amendment in 1970, effective January 1, 1972, which provided for sweeping reform of the appellate court system. The primary change in 1972 was a substantial reduction in the mandatory jurisdiction of the Missouri Supreme Court, with a corresponding increase in the appellate jurisdiction of the courts of appeal. See section VII above regarding appellate jurisdiction. The St. Louis Court of Appeals opposed the Constitutional revisions, primarily because the changes would increase its jurisdiction, thereby increasing the number of appeals, but failed to provide for an immediate increase in judicial personnel to handle the increasing workload. Appeals Judges Here Oppose Revisions, St. Louis Post-Dispatch, August 2, 1970.

In addition, the three courts of appeal were no longer separate entities. On the effective date of the amendment, the St. Louis Court of Appeals, the Kansas City Court of Appeals, and the Springfield Court of Appeals became one appellate court to be known as the Missouri Court of Appeals. The amendments provided for one Missouri Court of Appeals with three separate districts, the St. Louis, Kansas City, and Springfield districts. Art. V, § 31, subsection 6, Mo. Const. of 1945, as amended in 1970. Each district of the Court of Appeals still operated separately as it had in the past under superintending control of the Missouri Supreme Court, but with limited territorial jurisdiction. Under the amendment, additional districts of the court and judgeships could be established by the legislature. Art. V, § 13, Mo. Const. of 1945, as amended August 4, 1970. In 1979, the three districts of the Court of Appeals became known as the Eastern District, the Western District, and the Southern District. § 477.040, RSMo 1978.

The Constitutional Amendment of 1970 also did away with the Commissioner system, which had been part of the Court of Appeals since 1919. When commissioners left the Supreme Court, they were replaced with judges on the Missouri Court of Appeals in this order: “St. Louis, Kansas City, Springfield, St. Louis, Kansas City, St. Louis.” Laws of Missouri, 1971-72, p. 455, section 3, subsection 2; See also, § 477.152, RSMo 1978. In addition, each time a commissioner of the St. Louis Court of Appeals resigned, an additional judgeship was also added to the St. Louis Court. As a result, if the Governor appointed one of the existing Commissioners to the Court, then the Governor created another vacancy on the Court, which he could then fill. In the early 70s, Governor Hearnes appointed three St. Louis Commissioners to the St. Louis Court of Appeals. Each time he did so, he created another vacancy on the St. Louis Court to be filled.

As Commissioners retired and resigned, the total judges in St. Louis increased from three to ten. In early 1972 when the amendments went into effect, the Court increased to five judges and by the end of 1972, it had seven judges. The Court added an eighth judge in 1973 and increased to ten judges in 1974. The Court remained at

ten judges until 1978, when the legislature authorized twelve judges for the Eastern District. § 477.160, RSMo 1978. In 1982, with the retirement of the last remaining Supreme Court commissioners, the total judges at the Eastern District increased to fourteen, the same amount it has today in 2001.

X. Missouri Nonpartisan Court Plan

Another major change in the last 125 years occurred when the State of Missouri adopted a nonpartisan court plan for its appellate courts. During Missouri's first 30 years under its 1820 Constitution, all judges were appointed by the Governor, by and with the advice and consent of the Senate. Art. V, § 13, Mo. Const. of 1820. From 1851 until about 1940, all judges were selected by popular election. Art. VI, § 1, Mo. Const. of 1820, as amended August 1, 1851 (S.Ct. judges); Art. VII, § 1, Mo. Const. of 1820, as amended August 1, 1851 (circuit judges). Art. VI, § 5 (S.Ct.), § 13 (Ct. of App.), § 25 (circuit judges), Mo. Const. of 1875. By the late 30s, the Missouri Bar Association spearheaded a plan to study other methods of judicial selection due to widespread dissatisfaction with elections of judges in urban areas. Judge Harry A. Hall, Merit Judicial Selection for Missouri Courts, 24 J. Mo. Bar 486, 487 (November 1968). After careful study, the Missouri Bar recommended the approval of a merit plan for selection of judges, a plan that became known as the Missouri Nonpartisan Court Plan. *Id.* In 1940, the people of Missouri amended the Constitution and adopted the Missouri Nonpartisan Court Plan. Mo. Const. of 1820, Amendment of 1940, §§ 1-7. The legislature resubmitted the vote to the people again in 1942, when it was again adopted at twice the former majority. Hall, *supra* note 168, at 487. The people again retained the amendment in the Constitution of 1945. Art. V., §§ 29(a) – 29(g), Const. of 1945 (adopted by a vote of the people of Missouri, Feb. 27, 1945).

The nonpartisan court plan applies to all appellate courts and certain trial courts. For vacancies in each of the three districts of the court of appeals, there is one nonpartisan commission known as the Appellate Judicial Commission, which consists of the Chief Justice of the Supreme Court, three attorneys from the district elected by the Bar, and three lay people from the district appointed by the Governor. The Appellate Judicial Commission reviews the qualifications of applicants for a judgeship. After reviewing the qualifications of the applicants, the commission selects three persons whose names are then presented to the Governor, who appoints one of the three nominees within 60 days. Art. V, § 25(a), Mo. Const. of 1945, as amended. If the Governor fails to act within 60 days, the Commission appoints one of the nominees to fill the vacancy. *Id.* This provision was not originally contained in the Missouri Nonpartisan Court Plan, but was added in the 1972 Constitutional Amendments.

Each judge who is appointed under the plan serves until December 31, following the next general election after expiration of twelve months in office. To serve a full term of twelve years, the judge must file a declaration of candidacy with the Secretary of State to stand for retention at the general election. The judge's name is placed on a nonpartisan ballot which states only "Shall Judge _____ of the (court) be retained in office?" The voters then vote "yes" or "no." Art. V, § 25(b) & 25(c)(1), Mo. Const. of 1945, as amended.

XI. The Traveling Court of Appeals

Prior to 1976, the Court never traveled outside of St. Louis City to hear oral arguments. Beginning in 1976 and continuing until today, the Court has traveled to many different locations within the Eastern District to hear oral arguments. The Court has traveled outside St. Louis to save time and expense for litigants and attorneys and to make it easier for the public throughout the Eastern District to observe oral arguments. In 1976, the Court opened an office for the first time in Clayton, Missouri and conducted oral arguments at a courtroom there. This continued until the Court relocated its office to the Wainwright Building in 1981, but upon the Court's return to Clayton in 1987, it held oral arguments there again.

Beginning in 1981, the Court began to travel outside the St. Louis metropolitan area. In 1981, a panel of three judges sat at the federal building in Cape Girardeau, closely followed by a docket held at the federal building in Hannibal. At that same time, the Court established its "Northern Division" and its "Southern Division" and decided to sit regularly in Hannibal and Cape Girardeau at least once a year. Currently, the Court holds oral arguments regularly in St. Louis and Clayton and generally twice a year in Hannibal and Cape Girardeau. From 1976 to 2001, the Court has held oral arguments at the following locations around the Eastern District:

Hannibal (Marion County Courthouse)	Cape Girardeau (Court of Common Pleas)
Jackson (Cape Girardeau County Courthouse)	Hillsboro (Jefferson County Courthouse)
Farmington (St. Francois County Courthouse)	Mexico (Audrain County Courthouse)
Warrenton (Warren County Courthouse)	Union (Franklin County Courthouse)
St. Charles (St. Charles County Courthouse)	New London (Ralls County Courthouse)
Troy (Lincoln County)	Harris-Stowe State College (St. Louis)
Clayton (St. Louis County Courthouse & World Trade Center)	
St. Louis University Law School	Hannibal High School
Washington University Law School	Southeast Missouri State University

XII. History of Filings

Until the Constitutional amendment of 1972, the St. Louis Court of Appeals handled approximately the same general number of filings of appeals and writs, usually around 300 or so filings. During its first nine years, the St. Louis Court of Appeals disposed of 3,219 cases and from its inception up to April 1897, it had disposed of over 6,800. Hyde & Conard, *supra* note 21, at 496. As a result, it averaged about 324 appeals per year from 1876 to 1897. It was reported that the St. Louis Court of Appeals handled 308 appeals in 1896-1897, with 211 in the Missouri Supreme Court. Bond, *supra* note 106, at 37. From about 1937 to 1940, Judge Becker reported that the Court averaged about 360 appeals per year, 80 percent of which came from St. Louis City and St. Louis County. Becker, *supra* note 24, at 2-A. In 1968, the St. Louis Court had a total of 293 filings of cases on appeal and writs. By 1971, this number of filings had increased to 380 – a 30% increase over 1968.

Then, in January of 1972 when the constitutional amendment became effective, most felony criminal appeals were shifted from the Supreme Court to the Court of Appeals and in addition, the monetary limit on civil

appeals was removed. As a result, in one year, the number of filings jumped from 380 to 608 – a 60% increase over 1971. This number has steadily increased over the years and in the year 2000, the Court handled approximately 1500 appeals. This compares to 380 appeals in 1971 (before the effective date of the constitutional amendment), 830 filings in 1973, and 1,000 filings in 1975. Today's filings represent a 147% increase over 1972 and a 295% increase over 1971.

As a result of the significant increase in filings since 1972, the Court is handling a much greater volume of business today than it ever has before. It took 96 years, 11 months for the Missouri Court of Appeals, Eastern District to reach a total of 35,000 filings. This occurred on November 14, 1972. After the constitutional amendments of the 1970s, it only took another 24 years to reach the next 35,000 filings for a total of 70,000 filings. This occurred on February 21, 1996. It is anticipated that the Court will reach 80,000 filings in July of 2001. At the current rate, the Court will handle its 100,000th filing in the year 2006.

XIII. Eastern District Personnel

When the Court opened for business on January 3, 1876, it had six employees: the three judges, the Clerk of Court Josiah Thornburgh, Deputy Clerk W.W. Brewer and Marshal William Baggot. One hundred and twenty-five years later, the Court has over 70 employees, mainly due to the increased volume of business the Court handles due to the jurisdictional changes of 1972. Each judge appoints one administrative assistant and two law clerks to assist him or her with judicial duties. Of the 14 judges, a Chief Judge is selected for a term of one year.

Today, the permanent legal staff of the Court consists of the Court Administrator and Staff Counsel, the Clerk of the Court, Assistant Staff Counsel, and Staff Research Attorney. In January 1972, the Eastern District employed its first law clerks and law interns to assist the judges in legal research. At the time of the Court's Centennial in 1976, the Eastern District was composed of ten judges, one of whom was Chief Judge for a term of two years. The Court at that time employed a full time staff of 44 and 12 part time employees. Each judge could also appoint one secretary and one law clerk. A Research Department consisted of six attorneys who provided further assistance to the judges.

The Research Department came about as a result of the Eastern District's increasing workload. To meet the challenge of this expanding caseload and prevent a backlog, the Court applied for and received a grant for the formation of the Research Department modeled after two successful programs in California and Michigan. It officially began operation on October 16, 1972 under the direction of Judge Harry Weier. Initially, the department consisted of a Research Director, two research attorneys, and a secretary. In January 1973, a third research attorney joined the staff and in the summer of 1973, a fourth attorney was added. By 1976, there were six research attorneys. The research attorneys were primarily responsible for preparing prehearing reports, which were research memos on all appeals prior to oral argument, for use by the judges who would hear the cases. The grant also made possible the position of docket attorney (today known as Staff Counsel). Federal funding for the law clerks ended on December 31, 1973. The judiciary and a citizens' committee asked for passage of legislation to provide state funding for the

research attorneys. The State did provide funding for the research attorneys, who became law clerks on the Court's staff.

At the time of the Court's Centennial in 1976, the Court was organized into three divisions of three judges each. On a temporary basis, the Chief Judge would sit with two Commissioners from the Supreme Court to form a fourth division. The Court is presently organized into five divisions and the judges are rotated in the divisions annually. Division Five consists of the Chief Judge, one other judge, and a senior judge. Each division sits monthly beginning in September and continuing through June.

XIV. Conclusion

Over the last 125 years, the Eastern District of the Missouri Court of Appeals has grown with the eastern portion of Missouri. The Court has undergone significant changes in territorial and appellate jurisdiction and in the size of the Court. As a result, the Court has become stronger and its importance in the Eastern District of Missouri cannot be underestimated. Today, the opinion of the Court is generally the final decision in 97 percent of the cases before it. It has also seen technological changes, including serving as the Pilot Court for the Court Automation Program. Because of these changes, the Court today is well positioned to handle the demands of the region and to perform the important task that appellate courts must perform to see that justice is done. In next 125 years, the Court faces many challenges, including new technological advances and increased caseloads. However, despite the challenges, in the next 125 years the Court remains dedicated to serving the public and providing the public with easy access to justice. The Court continues to adhere to its first maxim – to administer justice. “Judicis est jus dicere, non dare.”