

## Charles B. Blackmar: Professor, Judge, Chief Justice and Charlie

*This eulogy was delivered by Michael A. Wolff, Chief Justice of the Supreme Court of Missouri, at the funeral service for Judge Charles Blackmar, who died January 20, 2007, at the age of 84.*

I am deeply honored to talk to you about Charles Blakey Blackmar: Professor, Judge, Chief Justice and, of course, Charlie. He was my friend, a long-time mentor, and a mentor and friend to many of you. I hope I can do justice in these several minutes to this remarkable man and to the wonderful and full life that he led.

Everyone, I am sure, remembers the first time they met Charlie Blackmar. I certainly do. It was in 1975 when I came to St. Louis University to teach law. Our offices were next door to each other. We exchanged pleasantries, talked about judges whom we had known and knew in common. He had clever nicknames for his. Political correctness aside, I don't remember which judge was "the little magician" or which one was "the wicked dwarf." But I realized that in this great brain of his was a rather wicked sense of humor. It also occurred to me that this man probably had forgotten more law than I would ever know. But as I came to know him, I realized that he probably did not forget anything ... at least about the law... or baseball.

About the third day of my time at St. Louis University, I was in the library and I heard his voice saying, "Have you read this case at 23 Federal 2<sup>nd</sup> 671 (or some such thing like that)?" "I've got to read this other case" and he gives a citation. Then I realized he was not talking to me; he was talking to himself. And it was a better conversation, to be sure. As many of you know, he had a way of processing information by speaking it to himself out loud. One of those characteristics that you just catch on to eventually.

Professor Blackmar was an extraordinary teacher, one of the most popular at the law school. It was truly a great fortune for St. Louis University in 1966 to obtain the services of this extraordinary scholar, great and deeply experienced lawyer, and superb teacher. His main course was Corporations, and it was routinely over-enrolled. But more importantly, he was the "go to" person for everything. If the dean needed a course taught, at the last minute, Charlie was it. I remember when Dick Childress, our former dean, died in 1977 early in the semester when he was teaching Constitutional Law. Charlie was in the classroom for the next class picking up exactly where Childress had left off. He was truly the law school's utility infielder.

What the students loved about his teaching was his wonderful sense of humor. He kept them awake, and he kept them engaged in the subject matter. The source of his popularity was not just his humor; he had a very logical mind and his analyses were well-structured. He made the subject look easy, even when it was not.

His teaching was, as well, accompanied by some unique mannerisms. I could demonstrate a few of them but perhaps that would not quite do him justice.<sup>1</sup> There were a number of students who made a specialty of Professor Blackmar imitations. Probably the high point (or low point) was in the early 1980s when, at a student variety show, two of the better imitators did a skit, to the tune of "Dueling Banjos," called "Dueling Blackmars," where they imitated his mannerisms in tempo to the "Dueling Banjos" music.

He was no stranger to politics, academic as well as in the real world. Perhaps most of you think of the academic world as populated mostly by Democrats; Charlie was a Republican. Rather famously, in 1972 he was the head of "Republicans for McGovern." And, to be fair, probably its only member. He was a friend, mentor and occasional critic to some of our state's most notable Republicans.

He played academic politics and real politics with good humor. When students agitated to be allowed to attend faculty meetings, Professor Blackmar took the position that attending faculty meetings would violate the constitution's prohibition of "cruel and unusual punishments." When there was an opening for the deanship after his friend Vince Immel stepped down, there was a search committee formed to find a new dean and they solicited suggestions from the bar and alumni in the St. Louis area. One letter they got from the husband of conservative activist Phyllis Schlafly, who indicated that there were many fine men on the St. Louis University faculty who could be dean, but Charlie Blackmar was not among them. Charlie often mentioned that being a dean was definitely not one of his life's goals.

He was the fastest reader and the fastest writer I have ever known. His output, as shown in the many works listed in his biography, was prodigious. This extraordinary productivity could produce, as is common in academia, a bit of envy. One of his faculty colleagues, who wanted to make sure that Charlie was not the smartest guy around, came up to him one day and pestered him about whether he had read such and such a law review article. Charlie responded: "Well, no. Actually I've been too busy writing law review articles to read that many of them." To the contrary, for many recent years, unbeknownst to the St. Louis University law faculty, Charlie has read every faculty writing as the sole judge of an award given by a St. Louis law firm for the best faculty writing of the year. This position seems fitting in view of the fact that when the award was instituted, many years ago, Professor Blackmar was the first winner.

Charlie's sartorial reputation may or may not have been deserved. I personally never saw him wear one brown shoe and one black shoe, but I tell you, that if he did, they were a matched set because he had another pair just like them at home.

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1. The standard mannerism involves raising the right arm over the head and stretching across the head down the left side of the face, with fingers spread open.

From the late '60s until he went to the Supreme Court of Missouri in 1982, Charlie was the main author of *Federal Jury Practice and Instructions*, a work that he turned over to me, in part, after he left for the court. It was an enormous undertaking. But during the same time period when he was writing and teaching, he also did scores of labor arbitrations, supervised the writing of briefs in criminal cases for his good friend, Attorney General Jack Danforth, in the early '70s. Later in the '70s he undertook a project to rewrite the entire election code of Missouri. It was not a simple matter, and there are probably very few minds large enough to get around the subject. It is probable that every change in election law since then has not been an improvement. In the early '80s he was the first settlement coordinator for the U.S. Court of Appeals for the Eighth Circuit.

He was modest about his accomplishments as a lawyer and legal scholar. I remember him telling me, shortly after we met, that he was a lawyer, a member of the "Rope and Chair Club" and the "Million Dollar Club." The first club is composed of lawyers whose clients have received the death penalty; the second club has lawyers whose clients have suffered a million dollar judgment. That was back when a million dollars was a lot of money.

Throughout his career, he was steadfastly for the underdog, and championed a number of causes that he felt were just and right. He did not care, particularly, whose ox he gored, and was willing to write poison-pen letters to as many powerful people as he thought ought to listen to him. He was a natural adversary of pompous blow-hards.

Charlie was a passionate defender of the Missouri Nonpartisan Court Plan. One of his last published works, forthcoming, is a history of the Nonpartisan Court Plan which is in part a history of his own involvement with it, starting with circulating petitions in 1940 for the measure to be put on the ballot. Charlie's father, a prominent Kansas City lawyer, was one of the initiators of the Nonpartisan Court Plan. This group of farsighted lawyers, that included his father, took on the political establishment of the day and ran the first successful campaign in the country to have a nonpartisan court plan adopted. It has since become known as The Missouri Plan, and copied in some part in over thirty states.

As a judge, he was absolutely conscientious about the law, and always hoped to direct it in ways that made good common sense. He wrote decisions that were instrumental in changing the way we try cases to juries, for example.

As Judge Blackmar, he was scrupulous in separating the needs of the law from his own personal preferences. For example, in an essay entitled "Judicial Activism," which was published nine years ago in the *St. Louis University Law Journal*, he wrote:

I have been an opponent of the death penalty from the time I defended, under court appointment, a man who was executed. There are elements of subjectivity in any judicial decision and, undoubtedly, in any other decision. The judge, however, does not exercise

unrestrained power. I wrote several opinions upholding death sentences and concurred in quite a few others. I would not be true to my oath if I voted automatically to set aside any death sentence. I did write quite a few dissents and partial dissents in death cases, not because I wanted to spare a particular defendant the needle but because I felt that courts should be scrupulous in applying procedural safeguards when the ultimate penalty is involved .... I tried to do my duty as I thought in death cases, and I am confident that my colleagues did also.<sup>2</sup>

Judges, he said, “have a special duty, in controversial cases, to take account of their predilections and to satisfy themselves that decisions fit soundly into the total fabric of the law.”<sup>3</sup> Judge Blackmar also said that judges have “a responsibility to give careful attention to the opposing views of colleagues, which is sometimes lacking in appellate courts.”<sup>4</sup>

It’s fair to say that he deeply resented the Missouri Constitution’s age 70 mandatory retirement. After his forced retirement in 1992, he served as a senior judge. He started at the trial level, and did a docket of cases in St. Louis County; thereafter, he sat fairly regularly as a member of panels on the Court of Appeals in St. Louis; and in recent years we have benefited greatly from his service as a senior judge on our court when there have been judges who have recused.

To the end of his life, he was passionately involved with the law, in learning more about it, in learning about life through the law, and on wonderful occasions, giving us the benefit of his insights.

I really will miss the regular phone calls that often came a day or two after our decisions were handed down. The conversations invariably started with this: “Well, I have studied the learning from the learned court . . .” Whereupon, he would proceed to critique each of the opinions in order, gently expressing his surprise or disappointment where we didn’t quite get it right, and otherwise offering the benefit of his thinking.

Not that I always welcomed these insights, mind you. Sometimes people find themselves disagreeing with them, which is sometimes hard to do because he takes your position and then shows how wrong, dysfunctional, or otherwise idiotic it is, without using words like idiotic. In every case where he sat with us, I honestly came away believing I had learned something.

You eventually always knew where he stood, and it was always a pleasure, agree or not, to listen to him lay out his analysis in any given case. He

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2. Charles B. Blackmar, “Essay: Judicial Activism,” 42 ST. LOUIS U. L.J. 753, 760-61 (1998).

3. *Id.*

4. *Id.*

truly was masterful, and remained so all the way through his last vote on our court which was just three weeks ago... and in a pointed and understated book review published in a legal newspaper just a couple of weeks ago.

I have mentioned his modesty about his personal talents and accomplishments. For most of the time that I have known Charlie, I was not aware of the extent of his service in World War II. Many of you may have been surprised, upon reading his obituary, that he served in combat in the European theatre and was awarded the Silver Star, the Bronze Star and the Purple Heart. That represents a lot of combat experience. In fact I did not know the extent of it until one day he told me about it after a retired colleague from the Court had written a memoir indicating that the writer was the only the member of the Supreme Court of Missouri who had seen combat service in World War II. I would have to say that the colleague who wrote that erred most likely because Charlie probably never mentioned it. In writing of his service, Charlie understated his service, making it seem as though he was just in the neighborhood when the war was going on. He concluded: "I didn't ask for military service, particularly in the front lines, but it became part of my life and now, having survived, I'm glad I had the experience."<sup>5</sup>

There was one part of his life that he was particularly proud of: his family. He was proud of each and every one of you. He loved your company. He celebrated with you and with us your accomplishments, large and small. He shared with you all of the joy, the sorrows, the exasperation that family life can bring. Without the solid grounding of the love that you gave him, he would have been much poorer company for all of us. And for that we thank you.

Charles Blakey Blackmar. What a guy. We will all miss him, very much.

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5. *The Princeton Class of 1942 During World War II: The Individual Stories*, ed. Charles B. Blackmar 2000, at pp.60-63.