

Saint Louis University Law Journal

Volume 50
Number 2 *A Tribute to the Honorable Michael A.
Wolff (Winter 2006)*

Article 11

2006

Michael A. Wolff, Chief Justice, Professor and Scholar

Joseph J. Simeone
Saint Louis University School of Law

Follow this and additional works at: <https://scholarship.law.slu.edu/lj>



Part of the [Law Commons](#)

Recommended Citation

Joseph J. Simeone, *Michael A. Wolff, Chief Justice, Professor and Scholar*, 50 St. Louis U. L.J. (2006).
Available at: <https://scholarship.law.slu.edu/lj/vol50/iss2/11>

This Tribute is brought to you for free and open access by Scholarship Commons. It has been accepted for inclusion in Saint Louis University Law Journal by an authorized editor of Scholarship Commons. For more information, please contact [Susie Lee](#).

**MICHAEL A. WOLFF,
CHIEF JUSTICE, PROFESSOR AND SCHOLAR**

JOSEPH J. SIMEONE*

Anyone who is a colleague or who has worked closely with our Chief Justice of the Missouri Supreme Court, or knows him only by reputation, fully realizes that he is a good and fine judge, a great professor of law and a true scholar—not only of the law, but of life itself.

In his career he has obtained a wealth of experience and has worn many hats—graduate of Dartmouth College, editor in chief of *The Dartmouth*, law graduate of the University of Minnesota Law School, newspaper reporter, federal law clerk to a famous judge, a lawyer and advocate for legal service programs, director of the Black Hills Legal Services Program, professor of law lauded by his colleagues,¹ candidate for Attorney General of Missouri, transition director for the former Governor of Missouri, chief counsel to that Governor, special advisor to the Governor for desegregation reform, counselor to the Governor, author of numerous books and articles, Judge of the Missouri Supreme Court, Chairman of Special Commissions, husband to a successful pediatrician, Patricia Barrett Wolff, M.D., and a father of two sons who are, respectively, a successful physician and a soon-to-be lawyer!

What a list of accomplishments! How much can one person do in the few short years of his life since he was born in April 1945? And in all this he has kept his sense of balance and, most of all, takes it all in stride and with humor, as the *St. Louis Post-Dispatch* reported when he was appointed to the court in August 1998² by the late, beloved Mel Carnahan.

If one takes the time, anyone can find his great accomplishments throughout his career by looking in the law library or running a search of him on Lexis or Google. But if you put in the name of Michael Wolff in Google,

* Professor Emeritus, Saint Louis University School of Law; U.S. Administrative Law Judge; Missouri Supreme Court, Judge, retired; Missouri Court of Appeals, Chief Judge, retired.

1. See Sandra H. Johnson, *Five Easy Pieces: Motifs of Health Law*, 14 HEALTH MATRIX 131, 139 (2004).

2. Terry Ganey, *Governor Picks SLU Professor to Fill Vacancy on High Court*, ST. LOUIS POST-DISPATCH, Aug. 11, 1998, at A1.

be very careful—there are several persons with the same name, but not with the background or profession.³

In reviewing his background and many of his works, opinions, and articles, one is certainly impressed with the breadth of his knowledge and his easy style. The computer shows that there are some forty-three references to his many legal books, law journal articles, and speeches.⁴

As a judge of the highest court in the State of Missouri, Judge Wolff sits perched high upon a vantage spot overlooking the arena, aloof from the passions and emotions of the case, walled off from the parties, and takes an impartial role. The judges are the showcase of the legal system. There, the citizen expects a fair hearing and a reasonable result. On the Supreme Court, the parties are faceless and not before the court; the clash of fire and the intensity of the combat are preserved in a cold, written transcript. Under these circumstances, the judge must render a decision and justify that decision in a legal opinion, often written in the middle of the night, with sweat and sometimes tears.

That is what Judge Wolff has done.

In his tenure on the Supreme Court since August 1998 to the time of this writing, he has written some 108 majority opinions, twenty-five separate concurring opinions, and about fifteen dissents. All are interesting and they range all over the legal lot. They range from taxation to “dead bodies.” His opinions are remarkable in legal analysis and sound reasoning, from his first majority opinion, *Colton v. Wise*,⁵ which dealt with the guardianship of children, to his latest, which dealt with the expungement of arrest records.⁶

3. One Michael Wolff is a brilliant pianist and composer with a wealth of jazz credentials; one is an author and entrepreneur who wrote the best seller *Burn Rate*, an expose of early days of business on the internet; one is a member of a TV round table who believes that liberals are not funny. One Michael Wolff is called the “son of spam,” and one Michael Schjelderup Wolff died in Germany in 1912. Be careful that one chooses our own Chief Justice.

4. Some of Judge Wolff’s books and articles are *Juror Questions: A Survey of Theory and Use*, 55 MO. L. REV. 817 (1990); *The Fair Housing Amendments Act of 1988: A Critical Analysis of “Familial Status,”* 54 MO. L. REV. 393 (1989); *Teaching Civil Procedure: The Most Important Course in Law School?*, 47 ST. LOUIS U. L.J. 1 (2003); *From the Mouth of a Fish: An Appellate Judge Reflects on Oral Argument*, 45 ST. LOUIS U. L.J. 1097 (2001); *Ted McMillian: The Happy Coincidence of Timing, Talent, and Persistence*, 43 ST. LOUIS U. L.J. 1297 (1999); *Foreward: Moving from Campaigning to Governing, “It’s the Budget Stupid,”* 16 ST. LOUIS U. PUB. L. REV. 1 (1996); EDWARD J. DEVITT, CHARLES B. BLACKMAR, MICHAEL A. WOLFF & KEVIN F. O’MALLEY, *FEDERAL JURY PRACTICE AND INSTRUCTIONS* (4th ed. 1992).

5. 977 S.W.2d 263 (Mo. 1998)

6. *In re the Matter of Dyer*, 163 S.W.3d 915 (Mo. 2005).

Judge Wolff's many judicial opinions, whether for the majority, in concurrence, or in dissent, are masters of art, well-reasoned and to the point.⁷ Three of the more interesting ones are *State v. Bratina*,⁸ *State ex rel. American Family Mutual Insurance Co. v. Clark*,⁹ and *Cox v. Director of Revenue*.¹⁰

In *Bratina*, the defendant was charged with "abandonment" of a corpse.¹¹ Bratina left his house early in the morning to go to work, leaving the body of his deceased wife.¹² On appeal, he claimed that the statute was vague, and the trial court granted his motion to dismiss because of vagueness.¹³ Judge Wolff's majority opinion held that the statute was not vague, but remanded the case to determine whether there was an intentional abandonment of a corpse.¹⁴

In the course of the opinion, Judge Wolff quoted from *The Adventures of Huckleberry Finn* where Huck Finn and his friend Jim found a dead man in a house and left, indicating that if they lived today they would be facing a felony charge.¹⁵ But here Bratina was not a mere bystander.

In *State ex rel. American Family Mutual Insurance Co. v. Clark*, a class action case, Judge Wolff, in a separate concurring opinion, dealt with the question of the due process of notice in class actions suits.¹⁶ The opinion is so well expository of the notice requirement in class actions that it is now part of a law school casebook on civil procedure.

And in *Cox v. Director of Revenue*, Judge Wolff dissented in a case where Cox had his driver's license revoked because he was "driving" while intoxicated.¹⁷ A police officer discovered Cox's auto with Cox sleeping or unconscious sitting in the driver's seat while the keys were in the ignition and the motor was running.¹⁸ The officer knocked on the window; the driver rolled

7. Some of his many majority opinions are *State v. Pike*, 162 S.W.3d 464 (Mo. 2005) (equal protection); *Norman v. Wright*, 153 S.W.3d 305 (Mo. 2005) (pleading); *State v. Brown*, 140 S.W.3d 51 (Mo. 2004) (child abuse statute).

Separate concurring opinions include *In re Spencer*, 123 S.W.3d 166 (Mo. 2003) (commitment proceeding); *In re Norton*, 123 S.W.3d 170 (Mo. 2003) (commitment of sexual predator); *Thompson v. Hunter*, 119 S.W.3d 95 (Mo. 2003) (property tax); *State ex rel. Linthicum v. Calvin*, 57 S.W.3d 855 (Mo. 2001) (venue).

Dissenting opinions include *Cox v. Director of Revenue*, 98 S.W.3d 548 (Mo. 2005); *State v. Black*, 50 S.W.3d 778 (Mo. 2001) (death penalty).

8. 73 S.W.3d 625 (Mo. 2002) (majority opinion).

9. 106 S.W.3d 483 (Mo. 2003) (separate concurring opinion).

10. 98 S.W.3d 548 (Mo. 2003) (dissenting opinion).

11. 73 S.W.3d at 626.

12. *Id.*

13. *Id.*

14. *Id.* at 629.

15. *Id.* at 626–27.

16. 106 S.W.3d 483, 489–96 (Mo. 2003).

17. 98 S.W.3d 548, 552 (Mo. 2003).

18. *Id.* at 549.

the window down and the officer smelled alcohol.¹⁹ Cox failed a sobriety test and Cox's license was suspended.²⁰ The majority of the court held that Cox was "driving" in an intoxicated condition.²¹ Judge Wolff dissented on the ground that "[n]o one wants a person in Cox's condition to drive. That means it should be lawful for him to get in his car, run the engine for heat or air-conditioning, and stay put."²²

Despite all these beneficial attributes of the Chief Justice, and lest one think that Judge Wolff is to be canonized, there are some things about him that make him truly human. Some years ago in the infancy of television there was a quiz program hosted by St. Louis's own Gary Moore. It was called "To Tell The Truth." Kitty Carlisle, Peggy Cass, and Bill Cullen were the regular panelists. Three persons appeared before the panel, often holding a strange occupation and the panelists had to pick out the real person—and at the end, Gary Moore would say: "Will the real John Smith please stand up!"

So there are some personal things about our friend Mike Wolff that are not known to many people or the public—so "Will the real Mike Wolff please stand up!" Mike visits with some of the law faculty almost every Saturday morning. He comes in the law school perspiring and in shorts and a T-shirt. He rode his bicycle from his home to the law school. I say to him: "Mike, that is not the proper role of a supreme court judge. You should be more formal." But that is Mike—humble, and down-to-earth. When he comes in to visit, he never has any cigarettes and he "bums" only one from me, while we enjoy coffee.

But when he visits us, he is kind enough to get my mail in a part of the law school complex where it is too far to walk, and gets me a cup of coffee. Having a supreme court judge get one's mail and coffee is quite an honor! What other supreme court justice in the whole United States would get an old law professor emeritus a cup of coffee and his mail?

With all his accomplishments and in all this, Mike Wolff has not lost his sense of serving the people of Missouri with class, honor, humility, and humor. Surely, the Almighty has blessed him and his family. And there are many more years to come.

19. *Id.*

20. *Id.*

21. *Id.* at 551.

22. *Cox*, 98 S.W.3d at 552.