

From: Charley German
To: bwatson@newstribune.com; reporterbob@yahoo.com
Subject: Activist Judges Survey Response

Mr. Watson...This is a response to your questionnaire, and it is submitted on behalf of the Kansas City Metropolitan Bar Association. The KCMBBA is a 5,000 member professional organization for lawyers in the Kansas City area. I am privileged to be the 2007 president.

1. What are your definitions of an "activist judge" and an "activist court?"

The phrase "activist judges" has appeared on the political scene as a shorthand phrase used by those whose agenda is to undermine the judiciary's constitutional role in our system of government. The phrase has no definition and doesn't deserve one--it really means only that the person using that invective doesn't like a particular court decision. Judges swear an oath to uphold the law and the Constitution. Court decisions are subject to appellate review. And under the Missouri Non-Partisan Court Plan, part of our state Constitution for over 65 years, judges are subject to periodic retention elections. Courts should be insulated from political attacks and intimidation intended to impair their ability to be fair and impartial. Our judiciary embodies and applies the Rule of Law, a bedrock foundation for separation of powers, checks and balances, and for citizens rights. Please see the President Column #1, attached to this response, where the fundamental values inherent in the Rule of Law are discussed in more detail.

2. In your opinion, does Missouri have either activist judges or activist courts?

No. Court critics try to portray independent courts as the enemy of mainstream values. When they disagree with a decision, they accuse judges of being unaccountable. A national survey conducted in 2005 by the non-partisan Justice at Stake Campaign finds that the American public holds the core values of fairness, responsibility and preservation of citizen rights as central to the role of the judiciary in our democracy. Please see the attached Op-Ed piece that I wrote recently regarding the current spate of unfair criticism of Missouri courts and the Non-Partisan Court Plan for more on this issue.

3. Some would change the 1940 "Missouri Nonpartisan Plan" for selecting judges. Do you think the Nonpartisan Plan should be changed?

No. The Non-Partisan Court Plan has served the citizens of Missouri extremely since it was adopted by the people as part of our Missouri Constitution in 1940. It is a model adopted by states across the country to lessen the influence of politics on the selection of fair and impartial judges. It insures that the impact that a current political regime has on the composition of our appellate and urban courts is gradual, and the Plan also protects judges from being subject to intimidation and retribution from politicians trying to remove legal constraints on a political or social agenda. Please see the excellent article published recently in the Columbia paper, attached to this response, which was written by attorney Craig Van Matre.

4. Not applicable.

5. Do you think society's expectation of the judicial system has changed?

No. The citizens expect and deserve a court system that insures that the Rule of Law prevails in this country. The citizens expect and deserve judges who are accountable to the law and the Constitution, and not to the current political regime. The citizens, and reasonable legislators, see through the current rhetoric of "activist judges," and understand that the people hurling that meaningless phrase around have a political and social agenda that includes undermining the ability of courts to be fair and impartial. Attempts over the last 200 years to lessen the importance and constitutional role of the courts have largely failed because the citizens recognize and support an independent judiciary that is accountable to the Rule of Law and the Constitution.

Thank you for the opportunity to share these views.
Charley German
President
Kansas City Metropolitan Bar Association

From: Bob Watson <reporterbob@yahoo.com>
To: <Laura.Stith@courts.mo.gov>, <Stephen.Limbaugh@courts.mo.gov>, <William.Price@courts.mo.gov>, <Mary.Russell@courts.mo.gov>, <Richard.Teitelman@courts.mo.gov>, <Michael.Wolff@courts.mo.gov>, <Booker.Shaw@courts.mo.gov>, <Clifford.Ahrens@courts.mo.gov>, <Nannette.Baker@courts.mo.gov>, <Patricia.Cohen@courts.mo.gov>, <Kathianne.Crane@courts.mo.gov>, <Robert.Dowd@courts.mo.gov>, <George.Draper@courts.mo.gov>, <Gary.Gaertner@courts.mo.gov>, <Mary.Hoff@courts.mo.gov>, <Lawrence.Mooney@courts.mo.gov>, <Glenn.Norton@courts.mo.gov>, <Roy.Richter@courts.mo.gov>, <Kenneth.Romines@courts.mo.gov>, <Sherri.Sullivan@courts.mo.gov>, <Jeffrey.Bates@courts.mo.gov>, <Robert.Barney@courts.mo.gov>, <Phillip.Garrison@courts.mo.gov>, <Gary.Lynch@courts.mo.gov>, <John.Parrish@courts.mo.gov>, <Nancy.Rahmeyer@courts.mo.gov>, <Daniel.Scott@courts.mo.gov>, <Victor.Howard@courts.mo.gov>, <Patricia.Breckenridge@courts.mo.gov>, <Joseph.Ellis@courts.mo.gov>, <Lisa.Hardwick@courts.mo.gov>, <Ronald.Holliger@courts.mo.gov>, <Harold.Lowenstein@courts.mo.gov>, <Thomas.Newton@courts.mo.gov>, <James.Smart@courts.mo.gov>, <Paul.Spinden@courts.mo.gov>, <Robert.Ulrich@courts.mo.gov>, <jbardgett@blitzbardgett.com>, <inglishmonaco@inglishmonaco.com>, <Matt.Bartle@senate.mo.gov>, <Jack.Goodman@senate.mo.gov>, <John.Loudon@senate.mo.gov>, <Rob.Mayer@senate.mo.gov>, <Chuck.Graham@senate.mo.gov>, <Jolie.Justus@senate.mo.gov>, <Jeff.Smith@senate.mo.gov>, <Chris.Koster@senate.mo.gov>, <Bryan.Pratt@house.mo.gov>, <Timothy.Flook@house.mo.gov>, <Rachel.Bringer@house.mo.gov>, <John.Burnett@house.mo.gov>, <Connie.Johnson@house.mo.gov>, <Timothy.Jones@house.mo.gov>, <Scott.Lipke@house.mo.gov>, <Ray.Salva@house.mo.gov>, <Jason.Smith@house.mo.gov>, <Bryan.Stevenson@house.mo.gov>, <Michael.Vogt@house.mo.gov>, <Brian.Yates@house.mo.gov>, <Matt.Blunt@mo.gov>, <rich.chrismer@mo.gov>, <peter.kinder@ltgov.mo.gov>, <Barry.Bennett@ltgov.mo.gov>, <robin.carnahan@sos.mo.gov>, <Carrie.Bebermeyer@sos.mo.gov>, <susan.montee@auditor.mo.gov>, <sean.spence@auditor.mo.gov>, <sarah.steelman@treasurer.mo.gov>, <kelly.gunderson@treasurer.mo.gov>, <jay.nixon@ago.mo.gov>, <scott.holste@ago.mo.gov>, <rbaird@blmhpc.com>, <genfrank@aol.com>, <charleyg@rhgm.com>, <blawthomp@yahoo.com>, <beckett@smithlewis.com>, <kottmeyer@gmail.com>, <bplacke@charter.net>, <info@showmeinstitute.org>, <press@adamsmithfoundation.com>, <saraschuetz@socket.net>
Date: 8/15/2007 1:58:41 PM
Subject: News Tribune "Activist Judge" story Questions

THIS QUESTIONNAIRE IS BEING SENT TO MISSOURI'S SUPREME COURT and APPEALS COURT JUDGES, to the SIX Statewide elected office holders, to the chairs and members of the Legislature's two Judiciary committees, to the presidents of the Missouri, Cole County, Boone County, St. Louis and Kansas City Bar associations and to some groups formed to discuss judicial issues -- the Show-Me Institute, the Adam Smith Foundation, the Federalist Society, the Missouri Association of Trial Attorneys and the Missourians for Fair and Impartial Courts.

The Questionnaire is based on the following premise:

"Activist judge."

The term seems to be appearing more and more in some politicians' and officials' comments.

A lobbying group has been formed in Missouri to urge people to work against "judicial activism," including urging people to contact the Supreme Court's new chief justice, Laura Denvir Stith, or other Appellate Judicial Commission members.

Another group has been formed to "protect Missouri courts from attacks by a small group of politicians and special interests," while also saying it works to protect the 66 year-old "Missouri Nonpartisan Court Plan" from those who want to change it.

Some observers already speculate next year's elections will include talking points and debates about the role judges and the courts play — and should play — in government operations.

For the News Tribune's Aug. 26 "Views" news analysis page, we want to explore the concept of "judicial activism" and whether Missourians already have felt the results of "activist" judges or courts, or believe there's no problem here.

To help with our story, please answer the following questions, and return them to us either at reporterbob@yahoo.com (I'm using my PERSONAL e-mail because the company server won't take a long mailing list at one time), bwatson@newstribune.com (my Company address), by FAX at 573/761-0235 or by U.S. Mail at P.O. Box 420, Jefferson City, MO 65102-0420.

To be included in the story, I must have your comments by 8 a.m. Tuesday, Aug. 21, so I can finish writing the story and turn it in to my editors by their deadline (so they can design the page and print it in the "early run" on Thursday, Aug. 23).

Thank You,

Bob Watson
Jefferson City News Tribune
Wednesday
Aug. 9, 2007

HERE ARE THE QUESTIONS:

1) What are YOUR definitions of an "activist judge" and an "activist court"?



2) In your opinion, does Missouri have either activist judges or activist courts?

NO

If you answered "Yes," please identify the judge(s) and/or court(s) you have in mind.

Please provide SPECIFIC examples of a ruling(s) you believe support your answer, and WHY you think each ruling is an "Activist" one.

IF the ruling you cite changed a previous ruling, please tell why the "old" ruling was not an "activist" one instead of the newer one you've cited.

(Please don't offer an opinion from another state or from the federal court system — although you well may have those examples, we're interested in specific MISSOURI cases that fit/don't fit the "activist" mold.)

3) Some would change the 1940 "Missouri Nonpartisan Plan" for selecting judges.

Do YOU think the Nonpartisan Plan should be changed?? If so, what kind of system should Missouri have?????

NO ... Reforms are always possible and we should be open to reasonable proposals. But the NPEP model should be kept intact w/ it kept out of politics of the court.

proceed - feel your matter article

4) How would your alternative idea (from Question 3) BETTER serve the people than the current system?

5) Do you think society's expectation of the judicial system has changed?

Thanks for your help with this story.

HERE's a LIST of the people receiving this Questionnaire, as I have e-mail addresses for them:

CURRENT SUPREME and APPELLATE COURT JUDGES

Chief Justice Laura Denvir Stith — Laura.Stith@courts.mo.gov
Judge Stephen N. Limbaugh Jr. — Stephen.Limbaugh@courts.mo.gov
Judge William Ray Price Jr. — William.Price@courts.mo.gov
Judge Mary R. Russell — Mary.Russell@courts.mo.gov
Judge Richard B. Teitelman — Richard.Teitelman@courts.mo.gov
Judge Michael A. Wolff — Michael.Wolff@courts.mo.gov

EASTERN DISTRICT

Judge Booker T. Shaw — Booker.Shaw@courts.mo.gov
Judge Clifford H. Ahrens — Clifford.Ahrens@courts.mo.gov
Judge Nannette A. Baker — Nannette.Baker@courts.mo.gov
Judge Patricia L. Cohen — Patricia.Cohen@courts.mo.gov
Judge Kathianne Knaup Crane — Kathianne.Crane@courts.mo.gov
Judge Robert G. Dowd Jr. — Robert.Dowd@courts.mo.gov
Judge George W. Draper III — George.Draper@courts.mo.gov
Judge Gary M. Gaertner Sr. — Gary.Gaertner@courts.mo.gov
Judge Mary Kathryn Hoff — Mary.Hoff@courts.mo.gov
Judge Lawrence E. Mooney — Lawrence.Mooney@courts.mo.gov
Judge Glenn A. Norton — Glenn.Norton@courts.mo.gov
Judge Roy L. Richter — Roy.Richter@courts.mo.gov
Judge Kenneth M. Romines — Kenneth.Romines@courts.mo.gov
Judge Sherri B. Sullivan — Sherri.Sullivan@courts.mo.gov

SOUTHERN DISTRICT

Judge Jeffrey W. Bates — Jeffrey.Bates@courts.mo.gov
Judge Robert S. Barney — Robert.Barney@courts.mo.gov
Judge Phillip R. Garrison — Phillip.Garrison@courts.mo.gov
Judge Gary W. Lynch — Gary.Lynch@courts.mo.gov
Judge John Edward Parrish — John.Parrish@courts.mo.gov
Judge Nancy Steffen Rahmeyer — Nancy.Rahmeyer@courts.mo.gov
Judge Daniel E. Scott — Daniel.Scott@courts.mo.gov

WESTERN DISTRICT

Judge Victor C. Howard — Victor.Howard@courts.mo.gov
Judge Patricia Breckenridge — Patricia.Breckenridge@courts.mo.gov
Judge Joseph M. Ellis — Joseph.Ellis@courts.mo.gov
Judge Lisa White Hardwick — Lisa.Hardwick@courts.mo.gov
Judge Ronald Holliger — Ronald.Holliger@courts.mo.gov

Judge Harold (Hal) Lowenstein — Harold.Lowenstein@courts.mo.gov
 Judge Thomas H. Newton — Thomas.Newton@courts.mo.gov
 Judge James Madison Smart Jr. — James.Smart@courts.mo.gov
 Judge Paul M. Spinden — Paul.Spinden@courts.mo.gov
 Judge Robert G. Ulrich — Robert.Ulrich@courts.mo.gov

FORMER SUPREME COURT JUDGES

John Bardgett — jbardgett@blitzbardgett.com
 Duane Benton — duane.benton@
 Ann Covington —
 Andrew Jackson Higgins — inglishmonaco@inglishmonaco.com
 John C. Holstein —
 Edward D. "Chip" Robertson —
 Ronnie L. White —

SENATE JUDICIARY COMMITTEE

o Matt Bartle, 8th, Chair — Matt.Bartle@senate.mo.gov
 o Jack Goodman, 29th, Vice-Chair — Jack.Goodman@senate.mo.gov
 o John Loudon, 7th — John.Loudon@senate.mo.gov
 o Rob Mayer, 25th — Rob.Mayer@senate.mo.gov
 o Chuck Graham, 19th — Chuck.Graham@senate.mo.gov
 o Jolie Justus, 10th — Jolie.Justus@senate.mo.gov
 o Jeff Smith, 4th — Jeff.Smith@senate.mo.gov
 o Vacant (Chris Koster, 31st, was on the committee during the session, before his recent party change) — Chris.Koster@senate.mo.gov

HOUSE JUDICIARY COMMITTEE

Pratt, Bryan, Chair — Bryan.Pratt@house.mo.gov
 Flook, Timothy, Vice Chair — Timothy.Flook@house.mo.gov
 Bringer, Rachel L. — Rachel.Bringer@house.mo.gov
 Burnett, John P. — John.Burnett@house.mo.gov
 Johnson, Connie "LaJoyce" — Connie.Johnson@house.mo.gov
 Jones, Timothy W. — Timothy.Jones@house.mo.gov
 Lipke, Scott A. — Scott.Lipke@house.mo.gov
 Salva, Ray — Ray.Salva@house.mo.gov
 Smith, Jason — Jason.Smith@house.mo.gov
 Stevenson, Bryan P. — Bryan.Stevenson@house.mo.gov
 Vogt, Michael — Michael.Vogt@house.mo.gov
 Yates, Brian — Brian.Yates@house.mo.gov

STATEWIDE ELECTED OFFICIALS

Gov. Matt Blunt — Matt.Blunt@mo.gov, rich.chrismer@mo.gov
 Lt. Gov. Peter Kinder — peter.kinder@ltgov.mo.gov, Barry.Bennett@ltgov.mo.gov
 Secretary of State Robin Carnahan —
 robin.carnahan@sos.mo.gov, Carrie.Bebermeyer@sos.mo.gov
 State Auditor Susan Montee — susan.montee@auditor.mo.gov, sean.spence@auditor.mo.gov
 State Treasurer Sarah Steelman —
 sarah.steelman@treasurer.mo.gov, kelly.gunderson@treasurer.mo.gov
 Attorney General Jeremiah "Jay" Nixon —
 jay.nixon@ago.mo.gov, scott.holste@ago.mo.gov

BAR PRESIDENTS

Missouri Bar
Ron Baird — rbaird@blmhpc.com

Bar Association of Metropolitan St. Louis
Genevieve Frank — genfrank@aol.com

Kansas City Metropolitan Bar Association
Charles German — charleyg@rhgm.com

Cole County Bar Association
Bill Thompson — blawthomp@yahoo.com

Boone County Bar Association
Bruce Beckett — beckett@smithlewis.com

OTHER GROUPS

Missourians for Fair and Impartial Courts
Jim Kottmeyer — kottmeyer@gmail.com

The Federalist Society
Bill Placke — bplacke@charter.net

The Show-Me Institute
info@showmeinstitute.org

The Adam Smith Foundation
press@adamsmithfoundation.com

Missouri Association of Trial Attorneys
saraschuetz@socket.net

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<http://mobile.yahoo.com/go?refer=1GNXIC>