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Keynote Address, to be delivered September 27, 2016
“Courage as a Necessary Skill in Court Leadership”
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[PART I—INTRODUCTION]

Good morning, and thank you.

Only in a world of magnificent improbability could it happen, that a country judge who serves in a very rural place on the northern border of Missouri, would be invited to give the keynote address at a national convention attended primarily by judges and court administrative officers from some of our nation’s largest urban areas. It is a remarkable, and wholly unexpected, honor to be here be with you. I owe a word of thanks to my state’s Chief Justice, Patricia Breckenridge, for sending me here – but I was given free rein to prepare my own remarks, so she is not to be blamed for anything that I might say.

I did not coin the phrase, “magnificent improbability” – many others have used that expression, in a variety of contexts. But perhaps it is in part because we do live in a world of magnificent improbability, that it may be worth our while to spend a few minutes considering the subject of courage, as it relates to judicial leadership.

[PART II – THE MUNICIPAL COURT ISSUE IN MISSOURI]

For a little more than two years now, the Missouri Judiciary has found itself at the center of unforeseen events. On August 9, 2014, a young man named Michael Brown, Jr., was shot and killed by a police officer named Darren Wilson, in Ferguson – an inner suburb of St. Louis, with a population of a little over 21,000. That singular event focused the attention of the nation, and the world, upon our state. The political, social, and legal consequences of the events of that day are still developing rapidly. They are already the subject of several books, scholarly articles, and reports.

Among the many impacts of the events of August 2014, has been an unprecedented level of attention to Missouri’s system of limited-jurisdiction municipal courts, and the manner in which they are operated. In one sense, the municipal divisions have a very limited charge. The only cases they hear involve violations of city ordinances. The punishments which they are authorized to impose are limited to fines, probation, and, in some cases, short jail sentences.

Our state’s municipal courts are also the places where the largest numbers of people interact with the judicial branch of state government. In fiscal years 2014 and 2015, over sixty-one per cent of all the cases filed, in all levels of the Missouri judiciary, were filed in the municipal divisions – well over one million cases per year. The municipal courts are where many people either do or do not find justice, and where they may form their initial, and their most lasting, impressions of the entire court system.

Ferguson, and the numerous other municipalities in the suburbs of St. Louis, operate municipal division courts; and there are many others all around the state. Since August 2014, there has been close, continuing, and, for the most part, exceedingly negative attention given to Missouri's municipal court system by the press, primarily in the St. Louis area, but also from national and international news media.

In a few dozen of our cities, there have been egregious abuses of authority, by law enforcement and by the courts: grossly excessive numbers of tickets being written; tickets being written with, at best, a marginal connection to public peace and public safety; the operation of low-budget, part-time courts in inadequate facilities, with poorly trained staff and insufficient record-keeping systems and practices; the charging of excessively high fines and court costs, including at times costs and surcharges which were not even authorized by law; and the use of oppressive, and at times, unconstitutional practices to collect amounts which had been assessed to municipal defendants, often with little or no regard to an individual's ability to pay.

The United States Department of Justice published its major report on Ferguson, and numerous other reports and policy papers have been produced. In each of the past two years, the Missouri General Assembly passed legislation signifying a major commitment toward municipal court reform and improvement. Our State Auditor is now carefully scrutinizing the city governments, and in particular, their municipal court operations.

Civil rights lawsuits have also been brought against several of the St. Louis area municipalities in federal court, and several of these lawsuits have led to consent decrees in which the cities have agreed to major changes and restrictions, not only as to their policing practices, but also regarding their court operations. In many cases, these settlements purport to restrict severely the uses of certain kinds of authority which courts have always possessed.

It was only natural that, in this rapidly-changing environment of red-hot controversy, there were also many calls for the courts themselves, under the leadership and direction of the Supreme Court of Missouri, to play a major role in reform. The situation required, and continues to require, not only courage, but also wisdom and prudence, on the part of those charged with leading our courts. So, what have we learned? What are we still trying to learn?

[PART III – COURAGE TO MOBILIZE PEOPLE AND RESOURCES FOR ACTION]

None of us would likely choose to find ourselves unexpectedly plunged into a crisis situation. But a sense of crisis, and a sudden outpouring of news media interest, have the potential to create the political will to address problems which have festered over a long period of time and become deeply entrenched. In ordinary times, the political will necessary to do much of anything about such things is, as a general rule, sorely lacking. Perhaps it is one of the ironies of life, that a crisis, a tragedy, or other unusual circumstances can provide a chance to bring forth good from evil. In such times, there may be a rare opportunity for courageous leaders to mobilize people and resources which would not have otherwise been made available, to attack difficult problems, and to make improvements and reforms which may have long been needed.

As some of the problems in the Ferguson municipal division came to light, and the local municipal judge resigned under pressure, our Supreme Court took one of the most dramatic actions

readily available to them – they assigned one of our most respected and experienced judges, Roy Richter, to preside in the Ferguson municipal court for a time. Now, I don't know about you, but to me, almost nothing says, "And we mean it!" quite like sending a veteran judge of the state Court of Appeals to sit in a local, limited jurisdiction court.

Judge Richter, with assistance from our Office of State Courts Administrator, prepared a report regarding the operations of the Ferguson municipal court, outlining the progress which had been made, and work that remained to be done. This document remains one of the best and most thoughtful reports written thus far about the municipal court situation.

The Supreme Court followed up this effort by enlisting the assistance of the National Center for State Courts – our friend Gordon Griller, and his associates – to come in and first, to do a detailed study of the Ferguson Municipal Court with recommendations for needed improvements. After further study and investigation, the National Center then prepared a report of "Best Practices Recommendations" for statewide consideration. This Report contains an important discussion of some of the inherent limitations in the current structure of governance and operations of our municipal divisions. These National Center reports have contributed much toward informing our discussions and efforts within the Judiciary, as well as in the legislature and elsewhere.

The Supreme Court took the additional step of establishing its Municipal Division Work Group on May 14, 2015, to make an independent and candid study of a wide range of issues concerning these courts. The Work Group members included, among others, two former chief justices of the Supreme Court of Missouri; a former chief judge of the Missouri Court of Appeals; the mayor of Kansas City; a law professor; and the immediate past president of the Missouri Bar.

And, perhaps as a whimsical afterthought, it pleased the Supreme Court to add to this illustrious group, one state trial judge who happens to serve as ex-officio municipal judge for the little town of Memphis, Missouri. That's how I ended up involved in all of this. It was not by design – trust me.

After much study and effort, our Work Group produced a Report which was not intended to please, or appease, any or all of the political players with an interest in these issues, but rather was focused on identifying and addressing the underlying economic incentives and legal structures which have permitted and encouraged the development of corrupt and abusive practices in some of the municipal divisions.

Our Report made a great effort to distinguish between the root causes of the problems in the municipal divisions, and the problematic issues which may best be understood as symptoms of these underlying causes. In this regard, our Report differs significantly from some others, which have focused much of their attention on reforming only the outward symptoms of deeper problems.

One rather important finding of the Work Group was that most municipal courts in Missouri appear to be, by and large, functioning appropriately. Our Report reflects this basic conclusion. To suggest an analogy: If one has a fleet of 500 cars, and thirty or so of them are having engine trouble, it is not a rational response to decommission the entire fleet. It makes much more sense to repair or replace the ones with identifiable problems. Such a finding does not in any way minimize the problems, but it does bring a sense of perspective to the news media coverage –

and it also at once simplifies and complicates, our efforts to improve the courts. In the process of trying to fix what is broken, one does not desire to break what is working well.

Once our Supreme Court had an opportunity to ponder the findings of its Work Group, together with the other available reports and perspectives, on May 31 of this year, the Court created a completely new, standing Committee on Practice and Procedure in Municipal Division Cases.

Thus we now have, for the first time, a committee within our state Judiciary focused exclusively on municipal court matters, whose members include appellate judges, presiding circuit judges, associate circuit judges, municipal judges, and practicing attorneys – a committee whose members represent the geographic, gender, and ethnic diversity of the state. This group, for which the Court has assigned me to serve as the chair for a time, immediately set to work addressing the concerns identified by the Supreme Court as the most urgent priorities. Just last week, our Supreme Court adopted a version of our new committee’s work, promulgating a new court rule defining “minimum operating standards” which must be met by all municipal divisions. The Court has also prioritized and redirected our information technology resources toward the creation of practical, functional case management software designed for the municipal courts, and applications which will make court information much more accessible and understandable to the public.

Of course, courageous leadership should not be limited solely – or even primarily – to the actions of those at the top of the pyramid. While everything else has been going on, many of the municipal judges in the St. Louis metropolitan area have formed their own Municipal Court Improvement Committee, to work toward reform. Under the leadership of Judge Frank Vatterott and others, these ongoing efforts have led to real progress, with many of the municipal divisions making important operational and procedural improvements, on a voluntary basis at the local level, without waiting for mandates from the state. The Missouri Association of Municipal and Associate Circuit Judges has provided valuable training programs for municipal judges around the state, and new efforts are also underway to enhance the education and training of municipal court clerks.

[PART IV – COURAGE TO AVOID A RUSH TO JUDGMENT AND TO AVOID BEING HIJACKED BY THE POLITICAL AGENDAS OF OTHERS]

So far, I have talked with you only about leaders having the courage necessary to act, and to mobilize others for action. But there is a flip side to this coin, that is at least equally important – and somewhat perversely, it is having the courage not to act. When we find ourselves in the thick of current events – events which are intensely controversial and intensely political – we must constantly remind ourselves of our unique role and responsibility, as the Third Branch of government.

Without taking the time to overwhelm you with the gory details, we are in the midst of a really messy political situation, involving a large number of influential players with a variety of goals, many of whom are seeking to pursue political and ideological agendas which go far beyond the issues at hand. I could not adequately explain for you the complexities of the politics surrounding the municipal courts, even if I were to spend the next couple hours attempting to do so.

Courts are not usually very good at politics, either by temperament, or in terms of our constitutional role, or our internal governing structure, or the resources we can bring to bear in the political arena. But we must remember that others often do not see us as we see ourselves. The Judiciary likes to think of itself as impartial, apolitical, above the fray. This is not how others often

see us. I recently pointed out to a number of my colleagues that, if you go to the web site of the Reuters news organization, you will find their U.S. Supreme Court coverage under their “Politics” page.

Many people, including many in the news media, view the courts as just another political branch of government, as a means to be used to achieve their political goals and purposes, whatever those might happen to be at the moment. This is also true with regard to the various factions and groups who hope to see certain types of changes in the municipal courts. To the extent that we may allow ourselves to be used in this manner, without regard to our proper constitutional role and obligations, then so much the greater fools we.

In a sudden and unexpected crisis situation, we find ourselves living in a news media environment, and in a social media environment, which understands the courts, our special constitutional role, and the day-to-day work that we do, either very poorly, or not at all. Social media can bring many benefits – but we have seen that it also has the capacity to spread inaccurate information very rapidly, often increasing the tension at times when the community is on edge, or is already taking to the streets.

This continuous stream of partial information and misinformation flows into a hyper-partisan world. The various interest groups, and even many of the most prominent news media outlets, seem far more interested in forcing all current events into an interpretation which fits their own “narrative” of the way they believe the world works, or the way they think it ought to work, than they are in anything that might remotely approach “objective” news reporting. And perhaps “narrative” has simply become the modern, polite parlance for an older, more disfavored term; we used to call such things, “propaganda.” While there are many exceptions to this observation, most likely, all of you can think of examples of what I’m talking about, without having to think very hard.

Many of the interested parties are very skillful at trying to persuade decision-makers – including our state’s highest court – to follow their own particular political “narrative”. A highly charged environment always creates the danger that decision-makers will act rashly, on the basis of incomplete information, and cave in to the partisan wishes of whatever interest group happens to be the most vocal, or the most effective at applying political pressure, at any given moment.

For the past two years, our state Supreme Court has been subjected to continuous attempts by various groups and by news organizations, each seeking to badger, intimidate, shame, bait, tempt, or seduce the Court into making decisions in accordance with its own political agenda. Many of the things the Court has been encouraged to do, are not even matters committed by our state constitution to the authority of the Judicial Branch. The Court has been encouraged to act in ways which would blatantly usurp the authority of the coordinate branches of government, which would wholly disregard the will of the voters in the affected cities, and which would preclude any meaningful opportunity for reform and innovation to come from the local level.

Now, please don’t misunderstand me. I do not believe that most of those who are seeking to influence the Court are acting in bad faith. Not at all – they are playing the role of citizens, attempting to influence the politics and governance of their state and nation, as they see fit. But it remains up to us to remember, that we are not supposed to be just one more “political branch” of the government.

To its great credit, at least as I see it, the Supreme Court of Missouri has done a commendable job of balancing the need to be firm and decisive, with the obligation to proceed in a deliberative, well-informed, and non-partisan fashion, under exceedingly trying circumstances. It requires great fortitude – courageous leadership – to avoid a rush to judgment, especially when your court is being bombarded with public accusations of indifference, complicity, or cowardice, unless you do exactly what the person or the group criticizing you wants to you do, and you do it right now.

In this regard, courts do have at least one institutional advantage, if we use it. What do courts do, day in and day out? We are not in the business of making broad policy, or of creating political “narratives.” We are in the business of deciding individual cases, trying our best to make the right decisions in each case without regard to popularity, without consideration of the prevailing political winds. We are required to decide without partiality to any party or cause. And we are required not to decide, until we have heard all the evidence to be presented. Now, overseeing court operations and writing rules of procedure is not like deciding a case – but the same calm, dispassionate, reasoned approach which we are required to apply as we decide hard cases, may serve us very well, when we find ourselves tossed about upon the storms of current events.

[PART V – COURAGE TO EXAMINE OUR OWN HEARTS]

Having the boldness to act when the times demand it, and the wisdom and prudence not to act impetuously or imprudently, are challenging enough. But even greater courage is required, to have the willingness to examine our own hearts, and to speak candidly about what has happened.

Brutal honesty and self-examination require us to admit that those Missouri municipal courts in which the greatest abuses and failures have occurred, in which the citizenry have been treated the most unjustly – those courts, at least in some measure, lost sight of the highest ideals and purposes of justice. But, they did not fail to accomplish the purposes they were being operated to achieve. Rather, they were chillingly effective at getting certain things done.

You see, the framers of Missouri’s constitution made a very wise choice, when it came to disposition of revenues from state law violations. Our state constitution has long required that all fines and forfeitures resulting from state law violations must go to the school funds of the state. Neither law enforcement nor the courts can benefit from fine monies collected as a result of state law criminal charges.

But, for whatever reason, a very different choice was made when it came to fines resulting from municipal ordinance violations – the cases which are heard in our limited jurisdiction, municipal courts. Instead of adequate provision being made for law enforcement, courts, and other city operations to be funded solely from general revenue, the cities were allowed to keep the fines and forfeitures. And this situation prevails in conjunction with the fact that, in the vast majority of instances, the governing bodies of the cities themselves hire and supervise not only their own executive branch personnel – the police and prosecutors – but also their judicial branch personnel, the municipal judges, and also the clerks of court, most of whom also perform “executive branch” duties. The National Center’s “Best Practices Report” discusses this conflict in a clear and direct way.

Thus were created both the conditions and the incentives under which misconduct, corruption, and abuse could thrive. The great majority of our municipal court divisions around the state resisted this temptation – and in fairness to many honorable and conscientious judges and lawyers, I cannot emphasize enough that the vast majority have operated their courts in a manner largely above reproach. Still, there remained a few dozen municipalities – many in the St. Louis area, but also some scattered across the state – which succumbed to the temptation to use their police and their municipal courts as a means to generate additional revenue for the city. And this is what has led to most of the abuses, where they have occurred.

The Missouri Supreme Court’s Municipal Division Work Group concluded that these anomalies lie at the very heart of the problem. Perhaps the most important recommendation in our entire Report was this:

That the most sure way to thoroughly and forever eliminate the perverse financial incentives affecting the municipal courts is to direct all fines and forfeitures received on account of municipal ordinance violations to the school funds of the state, as the Missouri Constitution already requires with regard to state law violations.

This recommendation was directed to the Missouri General Assembly – the legislative branch of government, to which is granted the power to make this type of change. And it may not happen in the next year or two – but perhaps a seed has been planted, which may lead to major beneficial reforms in the public policy of our state.

Because, if one really wants to attack and eliminate corruption, it is necessary to heed the simple advice, “Follow the money.” If the municipal courts cannot be used for the improper purpose of generating revenue to support law enforcement and other executive branch municipal expenses – if the cities cannot keep the fine revenues and cannot collect unauthorized costs and fees – then most of the motivations and incentives which have led to corrupt and abusive practices in some of our courts will, to a great extent, no longer exist.

There has been some real progress. Legislation passed in the two most recent sessions imposes stricter limits on the revenues which cities may derive from most municipal violations, with significant consequences for exceeding the limits. Our State Auditor’s office has become much more aggressive in its review of municipal court operations, and it looks closely at whether the limits have been exceeded. These developments, at the very least, represent meaningful steps in the right direction.

This provides an example of one of the many areas where the Missouri Judiciary cannot act alone – under the doctrine of separation of powers, the responsibility to take many needed actions lies with the other branches of government. But the leadership of Chief Justices Russell and Breckenridge in addressing this issue, prominently and publicly, and the courage of the Court’s Work Group in focusing on this as an issue of central importance to reform of the municipal courts, has made a timely and meaningful contribution, in getting our state to recognize openly, and to begin to attack, one of the toughest structural problems which had been built into the system.

Corruption can be a very difficult issue for us to talk about.

None of us want to think of ourselves as corrupt, or as working for a corrupt organization. It is, in fact, very important to most people's self-image and sense of worth, to believe that we ourselves, and the people we work for, are honest and above board. Corruption is an evil that we prefer to think of as something that only happens in foreign countries and in far-away places. But current events have shown that we do not always enjoy the luxury of thinking in this way. We must find the strength and the fortitude to confront corruption when it appears in our own midst.

But that is not the only difficulty. A few minutes ago, I suggested one of our institutional strengths as courts, when it comes to dealing with pressure in tough situations; now, I would suggest one of our limitations. What are courts really good at? Our specialty is distinguishing between "legal" and "illegal." Judges, and the lawyers who appear in front of us, expend extraordinary effort in finding facts and sifting through fine points of law, in order to draw conclusions about whether somebody's conduct may have been "legal," or "illegal." This is what judges do, every day – it becomes an ingrained habit of our thinking.

But the idea of "corruption" cuts across the neat categories of "legal" and "illegal." There is no universally understood definition of "corruption" that means the same thing to everyone in the public we serve, in the news media, and in the courts. One of the great challenges we face, is that many of the practices which are now being condemned from many quarters as "corrupt," are in fact, perfectly legal, and have been the usual order of business for decades. But just because things have long been done in certain ways, does not mean that these practices will always continue to be acceptable to the public as we go forward.

It is a sobering thought, to stop and consider that the Missouri municipal courts which have drawn the most harsh condemnations – some of which are now being sued in federal courts for violating the civil rights of their own citizens – the courts which the Supreme Court of Missouri is now expending the greatest efforts to improve – these courts were not failures according to their own lights, in the eyes of the people who were running them. They were, in fact, rather good at doing what they were expected to do. Unfortunately, to borrow the words of State Senator Eric Schmitt, who has sponsored some of the reform legislation, a major function of certain municipal courts was to treat their own residents and hapless passers-by as ATMs, thereby providing a seemingly endless source of revenue to supplement the city budgets.

Here's the rub. Do we, as court leaders in the state of Missouri, have the courage to confront the hard reality, that there was almost no incentive whatsoever, for anyone working within the municipal court system to fight to make it better? It is no accident that the most vigorous challenges to the system have come from the outside. While not all the criticisms of our municipal courts made by academics, activists, and the media have been accurate or fair, the fact remains that many of the charges they have laid against the system have been right on target.

The same darker side of human nature which makes it a continuing necessity that courts exist in the first place, also guarantees that we will never be immune from the temptation to abuse the awesome power that is vested in courts. And our own reasonable concerns for personal well-being, job security, and material comfort, along with our own need for self-validation, guarantee that we human beings will continue to find endlessly creative ways to rationalize our own participation in whatever the system for which we work happens to be doing. And, if we cannot manage to rationalize certain things, then too often we deaden our own consciences, convincing ourselves that

even if we should take a brave stand against certain things, it would be meaningless – it would not matter – someone else could easily be found to take our place.²

This is not mere moralizing – all of history bears witness to these painful truths.

We cannot escape responsibility; we cannot escape morality. Every choice that we make, and every failure to make a deliberate choice, has consequences which effect real people in powerful ways.

And for those of you who have been given the opportunity and the privilege, to serve for a time as the stewards and as the leaders of our nation’s largest urban courts, that responsibility is heightened when you consider how your bureaucratic and technological systems are designed, and how they are used in actual practice. For, to borrow a military term, our bureaucratic and technological systems function as incredible “force multipliers” – by dramatically increasing human productivity, they exponentially increase the impact of whatever our human efforts may be directed toward – whether good, bad, or indifferent.

Challenge yourselves to consider whether the incentives are any different within your own courts. To do so – to discuss such things openly and then to seek ways to mitigate the inherent tendencies of the system – requires extraordinary courage and humility, along with much patience, and tact.

It requires a certain degree of courage just to admit that such things ought to be discussed. It requires even greater courage to ask ourselves and those who work for us and with us, in the courts and in the coordinate branches of government, to continually examine and re-examine our practices in this light. Not merely to ask, are we doing the things we do, as well as they can feasibly be done in light of today’s technological possibilities and what are, for the moment, considered to be the “best practices.” But also to ask, whether the things we are doing, are things that ought to be done, at all. To ask hard questions about whom we are really serving, and whom we may be harming. To ask whether our wonderful technologies and our complex organizational systems are really serving the people, whoever they may be and in the real places where they live, or whether our practices and systems are simply serving some pre-conceived model of bureaucratic “efficiency.” To ask whether the things we do are consistent with the highest ideals of American constitutional governance, as they are taught to our children.

[PART VI – CONCLUDING THOUGHTS]

In the spirit of a keynote address, it has been my intention to discuss a few broad themes, without getting down into the weeds of all the laborious details and specifics of our municipal court situation. If you want more of that kind of information, please feel free to call, or send me a note. I have accumulated lots and lots of such stuff, and I am willing to share.

The title for this keynote address was already set, when I was invited to give it. And the first several people that I told about this project, all had the same initial reaction I did: that courage is not a “skill.” Welding, embroidery, writing technically precise judgments that resolve each issue in a complex court case – such things are skills. One is born with a certain level of natural talent for such things, and one’s natural gifts can be honed and improved through persistent study and practice.

Courage, on the other hand, has always been understood not as a “skill,” but as a virtue – a basic quality of character. Many have written about courage, but Aristotle’s *Nicomachean Ethics* is still as good a place to start as any. Courage, bravery, fortitude: this virtue is neither the absence of fear, nor is it foolhardiness.³ Rather, it is the willingness and the confidence to face things which a rational and prudent person knows should be feared; to endure criticism and suffering with patience; to risk one’s position, prestige, wealth, income, and if necessary, life itself, for the sake of a greater good.

The basic nature of courage is such that it is always inextricably linked to morality and to responsibility. Maybe these are tough words to use nowadays, because they are used to mean so many different things, to so many different people. Such words can tend to lead to pointless, but very loud and very noisy, arguments between people who simply talk past one another, and who may have very little genuine desire to listen to one another. It seems like there’s a lot of that going around, these days. But for the sake of this discussion, I mean to use these words in a simple and straightforward sense.

There can be no courageous leadership without morality, because it is only morality which enables one to distinguish between what is right and wrong, and between what is worth taking significant risks to achieve or to defend, and what is not.⁴ That does not mean, of course, that everyone will agree about every moral question, or that everyone can always be right at the same time.

There can be no courageous leadership without responsibility, because ultimately, each person has to decide whether to risk anything, or everything, in order to lead. It is always much easier to wait and watch, to hope that somebody else will do what needs to be done, or to hope that, somehow, a problem may go away by itself. By the same token, it requires no particular courage simply to do something that may be unpopular, if there is no significant risk involved for you, personally. It may or may not be leadership; but if you, yourself, really don’t have anything at risk, there is no reason to view it as particularly courageous.

The Czech philosopher Jan Patočka, who was incarcerated and subjected to lengthy police interrogation by the former communist government for having had the courage to stand upon his convictions, and who died shortly thereafter due to complications of his medical conditions, is quoted as having said that **“the most interesting thing about responsibility is that we carry it with us everywhere. That means that responsibility is ours, that we must accept it and grasp it *here, now, in this place in time and space where the Lord has set us down, and that we cannot lie our way out of it by moving somewhere else.*”**⁵

I suspect this may be why your planning committee asked for a keynote speaker from Missouri. Not because we are any wiser or more learned than the rest of you. Not because we have it all figured out; we don’t. There are still many points on which we cannot even agree among ourselves within the Judiciary as to what ought to be done, let alone come to consensus with the many others who have an interest in these issues and a stake in the outcome.

No; I assume you wanted a speaker from Missouri because you know good and well that these questions are so difficult; so tied in with many political agendas and many longstanding vested interests; so closely interwoven, at least in the public mind, with much broader, urgent societal issues

of race relations and policing practices; so controversial – so “radioactive,” if you like – that simply to wrestle with them at all, in an honest and meaningful fashion, simply to attempt to lead Missouri’s justice system to a better way of being, requires not only wisdom, patience, and determination, but also a measure of courage. For judges and court administrators, it simply cannot be done without significant personal and professional risk. And maybe you were just curious to see whether we are up to the challenge.

As of today, my only answer, at least that I can give honestly and on my own behalf, is that I don’t know yet. The failures we seek to address are primarily failures of culture and of politics, and only secondarily, failures of technical competence. Real and durable change will not come quickly, or easily. The issues are an ever moving target, and our attempts at reform are a work in progress. But there is real progress. We are moving forward.

Courage may not be a “skill.” But, through the regular exercise of this virtue, it may become what the great thinkers of another time would have called a “practical habit.” That is something far better. Because you are public servants and leaders in the judiciary, you have the duty to cultivate this “practical habit” in yourself, as you work in your own worlds of magnificent improbability: the duty to display and to model genuine humility, courage, responsibility, and integrity, for those around you, each day – and, to borrow one of the late Czech president Václav Havel’s fine expressions, “to inspire others to awaken to their responsibility as well.”⁶

Thank you.

¹ The author would like to express his sincere gratitude to the Honorable Anita Watkins, Circuit Clerk in Scotland County, Missouri; the Honorable Kelly L. Lovekamp, Associate Circuit Judge in Schuyler County, Missouri; and Professor Kieran Williams at Drake University, Des Moines, Iowa, for reviewing an earlier draft of these remarks, and for offering helpful comments and suggestions. Thanks also to Professor Williams; to Mr. David Muhlena, Library Director at the Skala Bartizal Library, National Czech and Slovak Museum, Cedar Rapids, Iowa; and to Mr. Gordon Griller, of Scottsdale, Arizona, with the National Center for State Courts, for their helpful suggestions with regard to reading materials and other resources. The opinions and conclusions set forth in these remarks, together with any flaws which remain, are the sole responsibility of the author.

The author has served as associate circuit judge for the Circuit Court of Scotland County, First Judicial Circuit of Missouri, since January 1, 1999. He hears criminal, probate, civil, domestic relations, municipal ordinance, and juvenile cases. He has also served by special assignment in over twenty other counties and in the City of St. Louis, at the Eastern District of the Missouri Court of Appeals, and at the Supreme Court of Missouri. He is a past president of the Missouri Association of Probate & Associate Circuit Judges, and also serves on the State Judicial Records Committee, the Executive Council of the Judicial Conference, the Legislative Committee of the Judicial Conference, and the Trial Judge Education Committee. On May 31, 2016, he was appointed to serve as chair of the Supreme Court of Missouri’s newly established Committee on Practice and Procedure in Municipal Division Cases. He has previously chaired the Supreme Court’s Ad Hoc Committee to Study Garnishments and the State Court Administrator’s Ad Hoc Committee on Civil Infractions, and also previously served on Supreme Court of Missouri’s Municipal Division Work Group, the Committee on Civic Education, and the Missouri Court Automation Committee. He also serves on the Editorial Board of the *Journal of the Missouri Bar* and on the Missouri Bar Legislative Committee. The author earned bachelor’s, master’s, and law degrees from the University of Missouri at Columbia, where he was editor-in-chief of the *Missouri Law Review*. Prior to his judicial service, he served one term as a member of

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² As to this point, *see generally*, Václav Havel, "Politics and Conscience"(February 1984), *in* Václav Havel, *LIVING IN TRUTH: TWENTY-TWO ESSAYS PUBLISHED ON THE OCCASION OF THE AWARD OF THE ERASMUS PRIZE TO VÁCLAV HAVEL*, Jan Vladislav, ed. (London & Boston: Faber & Faber Ltd. 1987), pp. 136-57; Hannah Arendt, *EICHMANN IN JERUSALEM: A REPORT ON THE BANALITY OF EVIL* (from the *Postscript*) (New York: Penguin Classics ed. 2006; first published in the United States 1963, The Viking Press), pp. 285-98.

³ *See generally* Aristotle, *NICHOMACHEAN ETHICS* (M. Ostwald, Trans.) (Indianapolis: The Bobbs-Merrill Co., The Liberal Arts Press, Inc. 1962). In particular, Books II and III of this work.

⁴ *See, e.g.*, Alexander Solzhenitsyn, "The Exhausted West" (English translation of commencement address delivered at Harvard University, 8 June 1978), *HARVARD MAGAZINE*, July-August 1978, at 25: "To defend oneself, one must also be ready to die; there is little such readiness in a society raised in the cult of material well-being."

⁵ Václav Havel, "The Power of the Powerless"(October 1978), *in* Václav Havel, *LIVING IN TRUTH: TWENTY-TWO ESSAYS PUBLISHED ON THE OCCASION OF THE AWARD OF THE ERASMUS PRIZE TO VÁCLAV HAVEL*, Jan Vladislav, ed. (London & Boston: Faber & Faber Ltd. 1987), p. 104.

⁶ Acceptance Remarks by Václav Havel, President of the Czech Republic, upon Conferment of an Honorary Doctorate of Law. Valletta, University of Malta, 9 April 2002. Available on-line at http://vaclavhavel.cz/showtrans.php?cat=projevy&val=23_aj_projevy.html&typ=HTML (last visited July 22, 2016).