



Hon. Howard Sachs

Senior U.S. District Judge, Western District of Missouri

by Lauren Dollar and Kristin Marshall



Lauren Dollar and Kristin Marshall are law clerks for Hon. Stephen R. Bough, U.S. district judge of the Western District of Missouri. Dollar is a recent graduate of the University of Missouri-Kansas City School of Law. Marshall is a graduate of the University of Virginia School of Law. © 2018. Lauren Dollar and Kristin Marshall. All Rights Reserved.

Appointed by President Jimmy Carter in 1979, Judge Howard Sachs is considered the “dean” of the bench in the Western District of Missouri. Jeffrey Simon, law clerk to Judge Sachs from 1988 to 1990, state, “Judge Sachs is distinguished by his intellectual curiosity, fidelity to precedent, and kindly, reserved demeanor. Don’t let that demeanor fool you, though; Judge Sachs knows at least as much about the law governing your case as you do, and probably more.” The legacy Judge Sachs has built is inspirational. During his years leading up to and on the bench, he strived to promote justice, fairness, and due process. Judge Sachs continues to bring honor to the profession, both in his scholastic ability and his demeanor on the bench.

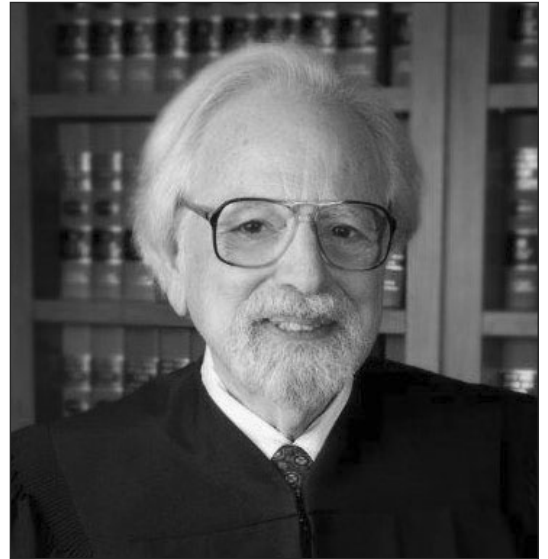
Growing Up

Judge Sachs was born in Kansas City, Mo., in 1925, the son of Alex and Rose Sachs. In 1932, Alex Sachs, a civil engineer, was recommended to Harry S. Truman, who was then presiding judge of the Jackson County Court, as a candidate for the elective office of Jackson County Highway Engineer. After this connection was made, Alex Sachs and Truman became friends for life. Later, once Truman was president, he personally selected Alex Sachs to fill a vacancy as Kansas City postmaster.

Over the years, the families kept in touch. The Sachs family sent flowers, notes, an occasional bottle of bourbon, and pictures to the Trumans on multiple occasions. Harry and Bess Truman always returned the kindness, evidenced by the numerous messages, now part of the extensive collection at the Harry S. Truman Presidential Library. One letter from Harry S. Truman to Alex Sachs read:

I can’t tell you how very much I appreciated that picture of the farm which you and Howard left with me the other day. It is one of the most beautiful pictures of the layout I have ever seen. It was a pleasure to visit with you, and I hope I will have the chance to see you more often.

President Truman is not the only high-profile figure Judge Sachs interacted with from a young age.



Judge Sachs went to Southwest High School in the Brookside area of Kansas City. That school’s alumni not only includes Judge Sachs and Hon. Joseph Stevens from the Western District of Missouri, but also was home to Nobel Prize winner Richard Smalley; film director Robert Altman; author Evan Connell; Richard Bloch of H&R Block; Missouri Supreme Court Judge Charles Blackmar; and even a local Kansas City rapper, Tech N9ne. Even before high school, Judge Sachs followed the controversy over Franklin D. Roosevelt’s “court-packing” plan, sparking his passion and interest in the law. After high school, Judge Sachs served in the U.S. Navy during World War II as an electronic technician’s mate. His ship, the U.S.S. South Dakota, was in Tokyo Bay during the Japanese surrender. Following his military service, he earned a bachelor’s degree from Williams College in 1947 and graduated from Harvard Law School in 1950 on the G.I. Bill.

Legal Career

After law school, Judge Sachs clerked for Hon. Albert A. Ridge of the U.S. District Court for the Western District of Missouri from 1950 to 1951. During his time with Judge Ridge, Judge Sachs witnessed an early civil rights case, which applied the “separate but equal” doctrine a few months before *Brown*. At the

time, Kansas City public swimming pools were racially divided—whites swam at Swope Park pool and blacks swam at the smaller Parade Park pool. In 1951, after three black Kansas Citians were denied the opportunity to buy 40-cent admission tickets to Swope Park pool, suit was brought before Judge Ridge. Judge Sachs' clerkship was near its end, but he volunteered to stay on to research the case.

Judge Sachs remarked, "[The case] was important enough that Thurgood Marshall, then chief attorney for the NAACP, came in to try the case," even though Marshall's caseload was such that he was unable to be in Topeka for the original argument in *Brown*. Marshall was "a person with a great deal of presence," recalled Judge Sachs. "He was not a major figure at the time, but he was on the verge of it." In fact, Kansas City's lawyers tried to remove Marshall from the case on the grounds that some of his legal affiliations were "fronts for the Communist Party," an inflammatory allegation in the early 1950s, but Judge Ridge quickly denied the motion.

In court filings, the city argued that a policy of segregation was "reinforced by a recognized natural aversion to physical intimacy inherent in the use of swimming pools by members of races that do not mingle socially." The city contended that the pools were equal, despite the fact that Swope Park Pool was built in 1942 for \$534,000 while Parade Park Pool had been built for \$60,000 just three years earlier.

Others remember the stark inequality between the pools. Swope Park Pool had a sand beach, concession stand, and extra pools for wading and diving. Parade Park Pool did not. Swope Park Pool could accommodate 3,000 swimmers; Parade Park Pool could only hold 250. Parade Park was often so crowded that kids had to stay out of the water for 30 minutes so others could swim. Lifeguards would "go through the line and check to see if [their] suit was still wet. If it was, you weren't allowed back in," remembers former lifeguard Clarence Shirley. A young Howard Sachs assisted Judge Ridge in drafting the opinion that held that the pools were not equal, ordered the integration of the Swope Park Pool, and concluded that the denial of tickets violated an individuals' ability to contract, guaranteed by the Civil Rights Act.

Following his clerkship, Judge Sachs went into private practice where he worked for Phineas Rosenberg for five years and then at Spencer Fane Britt & Browne, one of the few large firms in Kansas City to employ Jewish lawyers at the time. At Spencer Fane, Judge Sachs practiced both trial and appellate litigation. Although he did not specialize in any one area of law, Judge Sachs handled numerous labor law and property disputes while at the firm.

After nearly 30 years in private practice, he was nominated as district judge by President Carter in 1979 and was the first native-born Kansas Citian to serve in the Western District of Missouri. Judge Sachs was nominated, along with Judge Scott O. Wright, to fill the new judicial positions created to help eliminate the backlog

facing the court. When Judge Sachs was confirmed, he was the first Jewish district judge to sit in the Eighth Circuit in nearly 100 years. In 1990, Judge Sachs served as the chief judge of the court, and he took senior status in 1992. He was also nominated as an Eighth Circuit judge, a nomination that failed because of the Reagan election.

While on the bench Judge Sachs dealt with numerous public and noteworthy cases. His dedication to the profession and his scholastic ability led to well-reasoned, clearly articulated opinions—always with a focus on justice. Judge Sachs' docket included both criminal and civil cases. In 1984, Judge Sachs ruled that inmates had a right to marriage.¹ He held that marriage and the decision to enter into a marital relationship involved fundamental human rights, and the Department of Corrections' ban on inmate marriage unconstitutionally infringed upon those rights. In the same case he ruled that inmates had the right to supervised inmate-to-inmate communication between institutions and that the current ban was unconstitutional. The Eighth Circuit affirmed. The Supreme Court granted writ of certiorari and affirmed in part and reversed in part.² The Supreme Court held that the ban on inmate marriage was unconstitutional and infringed on the rights of inmates. However, the Supreme Court held that the ban on inmate-to-inmate communication between institutions was not unconstitutional.

This was not Judge Sachs' only case to reach the Supreme Court. Twice the Supreme Court considered aspects of a case originating out of Judge Sachs' courtroom, *Trans World Airlines Inc. v. Indep. Fed'n of Flight Attendants*³ and *Mistretta v. United States*.⁴ In *Trans World Airlines*, the flight attendants' union brought a declaratory judgment action relating to the airline's failure to reinstate striking flight attendants at the end of the strike. Judge Sachs granted partial summary judgment for the airline, which was appealed. The Eighth Circuit affirmed in part and reversed in part. After cert was granted, the Supreme Court agreed with Judge Sachs and held that the airline was not required to displace flight attendants who did not strike in order to reinstate striking flight attendants with greater seniority. By a divided vote, the Court upheld a ruling that dues payments should continue during the impasse.

In 1988, Judge Sachs wrote the lower court ruling in *Mistretta*, a case that challenged the constitutionality of the Sentencing Commission that produced the federal sentencing guidelines.⁵ At the time of the case, district courts nationwide were split on whether the guidelines were constitutional. In an unusual occurrence, when the case was presented to the Western District of Missouri, the briefs and arguments were heard by all seven judges of the district who were responsible for the processing of criminal cases. Judge Sachs wrote the majority opinion, finding that the guidelines were constitutional because it was not an unconstitutional delegation of legislative power. The Supreme Court granted certiorari before the Eighth Circuit had ruled on the case. The Supreme

Court affirmed Judge Sachs' ruling, finding the guidelines constitutional because "Congress neither (1) delegated excessive legislative power to the commission nor (2) violated the separation-of-powers principle."⁶

A case most noteworthy of Judge Sachs' integrity and devotion to the profession was the sentencing of another judge. In 2003, a former associate circuit judge for Missouri pled guilty to soliciting a \$10,000 bribe in exchange for dismissing a drug and firearms case. Originally, he was also charged with conspiracy to commit murder, but this charge was dropped in exchange for the plea. Judge Sachs considered all the evidence, including the conspiracy to commit murder, in the sentencing. In a request for leniency, the former judge told Judge Sachs he simply got in too deep and would have never gone through with the murder. Sachs responded, "There's no suggestion that you thought you were kidding or anyone else thought you were kidding." The defense asked for a 33-month sentence, and the government asked for 41 months. Judge Sachs, going above the government's recommendation, thought both sides asked for too much leniency and stated "the seriousness of the offense require[d] at least a four-year sentence."

Civic Involvement

Along with his landmark decisions on the bench, Judge Sachs was heavily influential in the legal community. To this day, he is credited as a driving force behind the integration of the Kansas City Metropolitan Bar Association (KCMBA) (then, Kansas City Bar Association). Prior to 1955, the KCMBA was an all-white, all-male organization. At the time, the KCMBA's Constitution only prohibited female admittance, but custom and practice dictated that no black or Hispanic lawyers were to be admitted. Instead, black lawyers belonged to a separate organization, the Jackson County Bar Association.

After the bar leadership rejected the application of three black attorneys, Sachs, along with 15 other attorneys, advocated for the admission of black lawyers to the bar. Only one of the 16 attorneys—Judge Sachs—remains alive today. One of the three rejected attorneys had recently been elected as Kansas City's first black municipal court judge. Judge Sachs remembers the applications were initiated as the result of a conversation about how strange it was that there was a municipal court judge who was not acceptable for membership in the bar association.

The 16 advocates were mostly World War II veterans who had fought against Adolf Hitler's racist schemes abroad only to find similar division at home. They witnessed Harry S. Truman integrate the armed forces in 1948 and were ready for a similar change in their post-war professions. They began their lobby with a Nov. 29, 1955, letter announcing their intention to present a revised constitution at the next general bar association meeting. The letter stated, "If the association is to truly represent the legal profession of our community, its membership should be open to any lawyer admitted to

practice and in good standing. Only if this is true can we speak with dignity and authority on the many matters of current concern to our profession."

This was a controversial move. Judge Sachs said many members were accustomed to the status quo and used "procedural tricks" to delay or cancel the votes. "They had a pretty strong feeling about it, and it largely had to do with social things. The white, male lawyers were used to having stag events without racial intermingling," Sachs recalls. One of Sachs' co-advocates, Austin F. Shute, wrote an editorial in the *Kansas City Bar Association Journal* entitled, "A Profession or Club?" Shute was not allowed to publish anything in the journal's next edition to allow for a "cooling off period," and he lost his job at a private firm as a result of the article. When asked about his employment termination, he said casually, "It was not a big deal. I was standing up for what I thought was right." Current Kansas City Mayor Sly James Jr. paints the actions of the 16 civil rights lawyers in a different light, "To do what they did was a courageous thing to do. It was very controversial. People have to remember that we lived in a pretty segregated society."

Eventually, the constitution was amended to allow blacks and women to join. On Dec. 1, 1955, three black attorneys were admitted to the KCMBA, an all-white organization since its beginnings in 1884. In one swoop, the association was open to all lawyers, regardless of race or gender. The next year, as a member of the Kansas City Human Relations Commission, Judge Sachs began encouraging the Kansas City Council to ban discrimination in hotels and restaurants. It took five years to convince the council, but they adopted Judge Sachs' discrimination ban, the first city in the state of Missouri to implement such a ban. That ordinance was eventually narrowly upheld by the Missouri Supreme Court as an exercise of local municipal authority.

In 1967, Kansas City adopted a fair housing ordinance. Immediately, opponents of the new ordinance mobilized a referendum effort to repeal the provision. Only weeks before the scheduled election, riots broke out in the city following the assassination of Martin Luther King Jr. Judge Sachs, along with a colleague from private practice, crafted a strategy for the mayor to utilize an obscure emergency clause in the city charter to keep the referendum off the ballot to prevent additional rioting, while also allowing the city council to adopt a federal fair housing ordinance.

Over the course of his career, Judge Sachs has been involved in several other Kansas City area interests, including the Jackson County Young Democrats, the Kansas City Chapter of the National Conference of Christians and Jews, the National Jewish Committee Relations Advisory Council, the Kansas City School District Desegregation Task Force, and the Jewish Community Relations Bureau. He also received the prestigious Harry S. Truman Public Service Award from the city of Inde-

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pendence, Mo., an accomplishment for which the Missouri House of Representatives congratulated him in a formal House Resolution.

Reputation

Judge Sachs' reputation is as impressive as his legal career. Paul Donnelly, a fellow Western District of Missouri clerk and good friend of Judge Sachs for over 30 years, raved, "In his first decade on the bench, Judge Sachs was viewed as the court's intellectual. By mid-career, he was also recognized as the workhorse of the court, the judge who logged the most time in the courtroom. But throughout, his hallmark has been an impeccable reputation for fairness. And that opinion comes from every segment of the practicing bar." One of Judge Sachs' former colleagues, Charles Thomas, proclaimed, "He has a towering intellect and yet is utterly free of arrogance." His oldest childhood friend, Morton Sosland, sums up Judge Sachs: "Howard's commitment to securing the facts, his probity in deciding what is best to do, his willingness to listen to all sides, and his sureness and determination to search for what is right makes this lifelong friend someone I and a whole lot of other people look to with total reliance on his intelligence and character. No, he wasn't called 'Judge Sachs' when we grew up together, but he should have been."

Even though Judge Sachs recently celebrated his 38th anniversary on the bench, he shows few signs of slowing down. Judge Sachs is proud of making it past age 90 as a sitting judge, 20 years beyond the "presumptively senile age" for Missouri state court judges. The quip is pointed at the U.S. Supreme Court, which upheld a mandatory retirement provision of the Missouri Constitution, requiring retirement at age 70 because "physical and mental capacity sometimes diminish with age."⁷ Judge Sachs is now the oldest district judge in the circuit retaining a docket. Even though Judge Sachs assumed senior status in 1992, he is still active on high-profile matters, including a recent decision to block two statewide abortion restrictions and another to impose a condition on supervised release that a criminal defendant must use contraceptives during sexual activity unless against their religious principles or rejected by their partner.⁸ In the latter case, Judge Sachs recognized that appellate approval may be questionable, but nonetheless expressed that courts have a responsibility to monitor and regulate a defendant's lifestyle while on supervised release.

Conclusion

In his free time, Judge Sachs enjoys spending time with his family, including his two sons, Alex Wilson Sachs and Adam Phinney Sachs, and four grandchildren. He is also an accomplished historian, having spent many weekend hours at the Truman Presidential Library researching pre-World War II requests from German and Polish Jews to Sen. Truman for help in obtaining passports. Judge Sachs also enjoys re-

searching his own heritage and ancestry, proud of his family roots. In fact, Judge Sachs still lives in the home his father built in 1948.

Judge Sachs exemplifies the character and tenacity of the Western District of Missouri, and his dedication to justice, fairness, and due process fills the courthouse. He puts it best, "Judges need to work for justice within the rules. I indulge in 'activism' in the courtroom even during a jury trial by questioning witnesses to clarify facts and issues—but the purpose is to be sure both sides get the best feasible development of the case." ☺

Endnotes

¹*Safley v. Turner*, 586 F. Supp. 589, 593 (W.D. Mo. 1984), *aff'd*, 777 F.2d 1307 (8th Cir. 1985).

²*Turner v. Safley*, 482 U.S. 78, 92 (1987).

³*Indep. Fed'n of Flight Attendants v. Trans World Airlines, Inc.*, 643 F. Supp. 470, 478 (W.D. Mo. 1986), *aff'd in part, rev'd in part*, 819 F.2d 839 (8th Cir. 1987), *rev'd*, 489 U.S. 426 (1989).

⁴*Mistretta v. United States*, 488 U.S. 361 (1989).

⁵*United States v. Johnson*, 682 F.Supp. 1033 (W.D. Mo. 1988) was the lower court opinion.

⁶*Mistretta*, 488 U.S. at 361.

⁷*Gregory v. Ashcroft*, 501 U.S. 452 (1991).

⁸*United States v. Cason*, 25 F.Supp.3d 1212 (W.D. Mo. 2014).