

# THE JOURNAL OF APPELLATE PRACTICE AND PROCESS

## INTRODUCTION

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### PLANNING AND CONDUCT OF THE NATIONAL CONFERENCE

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#### BACKGROUND

In 1975, appellate judges, lawyers, and scholars held a national conference on appellate justice. To mark its thirty-year anniversary and to provide a forum for evaluating the changes that have taken place in the thirty-year interval, a second conference was conceived by the American Academy of Appellate Lawyers, the Federal Judicial Center, the National Center for State Courts, and the Institute of Judicial Administration at New York University College of Law. Individuals from each of those organizations served on a thirteen-member Steering Committee that included Seventh Circuit Judge Diane P. Wood, Indiana Supreme Court Chief Justice Randall T. Shepard, and University of Pittsburgh School

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of Law Professor Arthur D. Hellman.<sup>1</sup> Professor Hellman also agreed to serve as Reporter for the Conference.

Planning for the Conference took more than a year. Among the most important tasks undertaken in preparing for the Conference were the choice of participants, the selection of topics for discussion, the determination of a format, and the funding of judges and court personnel who might not be able to attend without outside financial assistance.

The Steering Committee determined early in its process that the Conference would succeed only if it included representatives of all the major constituencies served by and participating in the appellate process, and that consequently the Conference would be by invitation only. The Committee extended invitations only to federal and state appellate judges, appellate attorneys, law professors, and appellate court staff personnel who were recognized for their expertise in, or who had significant practical experience in, either appellate jurisprudence or appellate court process, procedure, technology, or administration. The Committee received acceptances from almost all of the individuals to whom invitations were sent. Justice Stephen G. Breyer addressed the Conference, and Chief Justice John G. Roberts, Jr., was its guest at the opening reception.

#### PLANNING AND STRUCTURE

The Conference centered around small breakout sessions that followed substantive speeches and panel presentations on pre-selected topics. Professor Hellman took the lead in suggesting topics for discussion at the Conference. The Steering Committee then had extensive discussions to refine the topics, to choose and contact proposed speakers on the subjects selected, to prescribe the time frames for the speakers and panel presentations, and to select materials relevant to the topics that would be sent to conferees as the required advance reading.

The breakout groups, each composed of twelve to fifteen conferees, were asked to discuss their experiences and ideas

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1. The committee also included co-chairs Russell Wheeler, Victor E. Flango, and Oscar G. Chase, and members Kenneth C. Bass III, David E. Herr, Wendy Cole Lascher, Kathleen McCree Lewis, Daniel J. Meador, and Michael J. Meehan.

relating to the specific topic addressed in the immediately preceding plenary session. Each breakout group was a cross-section of federal judges, state judges, appellate attorneys, and state court personnel, and each group was diversified by geography and levels of judicial body represented.

Each breakout group was assigned a discussion leader to keep the group focused on the subjects being considered, and a law professor who served as its reporter. Each group discussion was audio recorded, with the understanding that the tape would be held by the group's reporter to assist in reporting the group's discussion to Professor Hellman in his capacity as Conference Reporter. The audio tapes were then destroyed.

Funding for the Conference was an early concern of the Committee. A reasonable registration fee was set to cover hotel charges for rooms and meals, and the costs of administrative services such as the reproduction and mailing of Conference materials.<sup>2</sup> The Federal Judicial Center agreed to pay the registration fees and travel costs of federal judge conferees. To fund state court personnel who might be unable to attend without financial assistance, three Fellows of the American Academy of Appellate Lawyers created a non-profit foundation to raise the necessary money, and then to accept grant applications from conferees needing financial assistance.

## PARTICIPANTS AND PROGRAM

The planning complete, more than 190 state and federal judges, academics, appellate lawyers, trial judges, court administrators, and appellate staff attorneys convened on November 4 through 6, 2005, at the Hyatt Regency on Capitol Hill in Washington, D.C., for the National Conference. Each of the conferees, speakers, and panelists had been sent a modest package of materials to read before arriving at the Conference. Only one of the individuals scheduled to address the Conference was unable to attend: Third Circuit Judge Samuel J. Alito, who advised the Steering Committee just days before the Conference that he had been nominated by the President for a seat on the

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2. The Conference secretariat was Management Solutions Plus, Inc., of Rockville, Maryland.

Supreme Court. Fifth Circuit Judge Carl Stewart graciously and expertly filled in for Judge Alito.

The Conference began on Friday evening with a dinner and keynote address from Wisconsin Supreme Court Chief Justice Shirley S. Abrahamson.<sup>3</sup> The Saturday session began with remarks by Justice Breyer.<sup>4</sup> These were followed over the next two days by plenary panel sessions on “The Position of the Courts Today,” “The Challenge of Volume and the Promise of Technology,” and “Optimizing the Law-Declaring Function,” each of which was followed by breakout sessions. The Conference closed with an address by Indiana Supreme Court Chief Justice Randall Shepard.<sup>5</sup> Subsequently, Professor Hellman prepared a Conference Report based on the presentations at the plenary sessions and the discussions in the breakout groups.<sup>6</sup>

#### IMPACT AND RESULTS

For at least two reasons, the Conference was an important milestone in the struggle of judges, lawyers, academics, and legislative bodies to come to grips with the nature, extent, and effect of the obvious and not-so-obvious changes that have altered and (in the view of some) plagued the federal and state appellate justice systems in the United States. First, it was one of the truly rare occasions when judges in both the state and federal appellate court systems engaged in constructive dialogue with experienced appellate lawyers about their respective perceptions of the appellate justice system, its positive features, its flaws, and its direction, and about possible adjustments that can be made to accommodate the interests of bench, bar, and consumer clients. Conference participants from all areas of the United States, and from all levels and sizes of appellate court systems,

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3. Shirley S. Abrahamson, *The Old Order Changes*, 8 J. App. Prac. & Process 77 (2006).

4. Stephen G. Breyer, *Reflections on the Role of Appellate Courts: A View from the Supreme Court*, 8 J. App. Prac. & Process 91 (2006).

5. Randall T. Shepard, *Building an Appellate System Worthy of a Great Nation*, 8 J. App. Prac. & Process 207 (2006).

6. Arthur D. Hellman, *The View from the Trenches: A Report on the Breakout Sessions at the 2005 National Conference on Appellate Justice*, 8 J. App. Prac. & Process 141 (2006).

were exposed to each others' candid assessments of the realities and directions of American appellate justice. The personal relationships that were forged, the insights that were gained, and the shared candor in exposing deficiencies and seeking solutions will provide a solid foundation for continuing discussions among those immersed in and most affected by the appellate justice systems.

Second, the Conference examined as never before the 800-pound gorillas of volume and technology, addressed misperceptions of the bench and the bar that have inhibited constructive problem-solving, and produced a fair degree of consensus on whether there will be a continuation of the traditional notion that appellate justice requires full briefing, oral argument, and the publication of reasoned appellate decisions in all cases. Dissemination of the Conference Report will provide an opportunity for implementing a range of positive steps by the bench and bar, by Congress, and by state legislatures, in the hope that meaningful improvements will be made in the delivery of appellate justice throughout the United States.

#### A PERSONAL NOTE

For me, the Conference was a wonderful experience in every way. The Steering Committee was a collection of very bright, able, dedicated, and convivial appellate specialists with whom it was a delight to work intimately. The Conference itself was also intellectually and personally rewarding, as the conferees were uniformly top-notch appellate specialists who are imaginative thinkers enthusiastic in their commitment to exploring new ideas for improving the quality of appellate justice and the processes for its delivery.



