

THE JOURNAL OF APPELLATE PRACTICE AND PROCESS

FOREWORD

DEATH OF A FRIEND

While Howard Eisenberg's death on June 4, 2002, has already been noted among his friends and in the press, it gives the rest of us in the appellate bar an occasion for reflecting on the overwhelming good a single lawyer can do. Dean Eisenberg enjoyed a distinguished career that linked his experiences as a litigator to the training of lawyers. As dean of the Marquette University Law School since 1995, and before that, as dean here at the William H. Bowen School of Law at the University of Arkansas at Little Rock, he used his influence in the classroom and in the community to argue for the active participation of lawyers in the pursuit of justice on behalf of real clients. His academic career was never tied to abstract theory, but focused instead on teaching law students to press their clients' claims in the courts on the basis of the law.

Dean Eisenberg's legal career was always a career in public service. He started out by clerking for the Wisconsin Supreme Court, and worked for the office of the public defender there, serving as chief State Public Defender from 1972-78. He left Wisconsin to become Executive Director of the National Legal Aid and Defender Association in Washington, D.C., before beginning his teaching career at Southern Illinois University School of Law. In 1991 he was appointed dean at UALR, where he served until moving to Marquette in 1995. Twice, in 1992 and 2002, he was honored with the Walter J. Cummings Award as the outstanding court-appointed lawyer in the Seventh Circuit, and in 1989 he

received an Outstanding Achievement Award from the Governor of Illinois for his work in combating elder abuse. He was a fellow of the American Academy of Appellate Lawyers and once chaired the Wisconsin State Bar's Appellate Practice Section.

As an appellate practitioner, his record of productivity was prodigious. One would expect to find the large number of Wisconsin state court cases in which, as chief of the state's defender system, he was lead counsel of record, but one might not expect to learn that he was lead counsel in fact, and not just in title, in a substantial number of these. But he was actually responsible for those cases, and his appellate practice in Wisconsin continued throughout his deanship at Marquette, both in cases in which he served as lead counsel and in his amicus practice on behalf of the Wisconsin Association of Criminal Defense Lawyers. He also appears as counsel in fifty-eight published decisions of the Seventh Circuit and forty-five of the Eighth Circuit. Many were cases for which Howard arrived at his law-school office early in the morning to write before turning his attention to law school matters when other faculty and staff were just beginning to trickle in. It is difficult to imagine any appellate lawyer working harder, or devoting more hours to his work.

At a time when law school deans are primarily expected to succeed as fund-raisers and institutional managers, Howard Eisenberg proved a refreshing alternative role model—that of the accomplished lawyer returning to the law school to share a vision of practice and a legacy of commitment. When he talked about the real world, his students listened, not because he had been there before he began teaching, but because he had been there the day before. And because he would be there again the next day, always on behalf of someone who could never have hoped to afford his talent and tenacity.

Howard believed in advocacy's power to ensure fairness. He was hardly naïve, however, in his thinking. He knew that resources all too often dictate outcomes in litigation, so he devoted his energy to representing the poor. Howard readily accepted court appointments, took cases without a thought for the fees they might generate, and often represented clients without charge, explaining that his position in the law school permitted him the luxury of doing so. His death is a loss for the appellate bar.

Howard's life-long love for the Chicago Cubs was well known and well documented: A photograph of his name in lights on the marquee at Wrigley Field hung proudly on his office wall. He understood that following the Cubs is a lot like representing appellants from among those who are marginalized in our society. You lose more often than you win. But Howard knew the precious joy of the occasional victory, and he found fulfillment in doing his job well.

Howard Eisenberg will be missed by those he represented, by those of us who knew him, and by the system of justice. As they might say at Wrigley, "Hey, hey, Howard, let's play two."

ACCOLADES

A Reprint

We are pleased to have been asked to authorize the reprint of Maryland Solicitor General Andrew Baida's piece, *Writing a Better Brief: The Civil Appeals Style Manual of the Office of the Maryland Attorney General*,¹ in the Australian Bar Review. The reprint of his article, now entitled, *Writing a Better Brief: A Useful Guide to Better Written Submissions in Appellate Advocacy*, appears at 22 Aust. Bar Rev. 149 (2002) with this preface:

The Australian Bar has a rich tradition of oral advocacy, but no comparable tradition of written advocacy. There is, accordingly, a particular need to pay close attention to the preparation of written submissions in Australian courts. That need is reinforced by the increasing tendency of Australian courts, under pressure from increasing workloads, to rely upon the written word. The day might well come (if it has not already arrived) when Australian advocates, at least in Appellate Courts, will be compelled to accept that any entitlement to make submissions must be confined to written submissions. Whether or not that time has yet come, there remains a need to ensure that written submissions are persuasive.

This article, written by Andrew H. Baida, the Solicitor-General of the State of Maryland in the United States, was

1. 3 J. App. Prac. & Process 251 (2001).

commended to the Editor of the Australian Bar Review by Justice Michael McHugh of the High Court of Australia.²

A Prize

Melissa Serfass, The Journal's Research Editor, and her colleague Jessie Cranford, both members of the library faculty here at the William H. Bowen School of Law, have been honored by the Academic Law Libraries Special Interest Section of the American Association of Law Libraries. Their exhaustive survey, *Federal and State Court Rules Governing Publication and Citation of Opinions*,³ received the Section's Outstanding Article Award for 2002 after appearing last year in our symposium on *Anastasoff v. United States*⁴ and its impact on the issue of restrictions on citation of unpublished opinions.⁵

We are proud to have published this fine article, and we are happy in addition to see Professors Serfass and Cranford receive the recognition they deserve.

JTS
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2. Readers interested in learning more about practice before Australia's highest court might review Michael Kirby, *Rules of Appellate Advocacy: An Australian Perspective*, 1 J. App. Prac. & Process 227 (1999). Justice Kirby is a member of the High Court of Australia.

3. 3 J. App. Prac. & Process 251 (2001).

4. 223 F.3d 898 (8th Cir. 2000), *vacated as moot*, 235 F.3d 1054 (8th Cir. 2000) (en banc).

5. See generally *Anastasoff, Unpublished Opinions, and "No Citation" Rules*, 3 J. App. Prac. & Process 169-451 (2001).