# THE JOURNAL OF APPELLATE PRACTICE AND PROCESS

## FOREWORD

### THREE GIANTS

About a year ago, I heard Professor Stephen Wermiel speak at the Clinton School of Public Service about Justice Brennan's life, his approach to judging, and his work on the Court. I hoped to ask him during the question-and-answer session how Justice Brennan was likely to be remembered in a hundred years, when no one who knew him would still be alive. But the student circulating with the microphone never picked me. And then Professor Wermiel left town.

It occurred to me weeks later that my unasked question might be the basis for an interesting essay, so I contacted Professor Wermiel to see if he would write for us about the way in which Justice Brennan might be remembered a century from now. He was quick to say yes, which enabled me to persuade Professors Andrew Kaufman and Melvin Urofsky to write about Justices Cardozo and Brandeis by addressing essentially the same hundred-year question, but approaching it from the opposite perspective—looking back through the intervening century to see where our impressions of these Justices might be made more complete.

The resulting essays form the heart of this issue, offering a surprising amount of detail about the work, the lives, and the lasting influence of these three famous Justices. My favorite find is Professor Kaufman's statement that Justice Cardozo's "main hobby was reading,"[1] which made me think first of my own bookish past and then of the classmate who told me after a torts class that her primary ambition had just become learning to write

1. Andrew L. Kaufman, *Cardozo at 100*, 13 J. App. Prac. & Process 183, 186 (2013).

like Cardozo. I hope that you too will discover something that you did not already know—and that will perhaps spark a memory—as you read the hundred-year essays.

## THE REST OF THE ISSUE

We also have in this issue an essay about the ways in which certain unpublished opinions have taken on some characteristics of precedential opinions, an article reviewing the Internet-citation practices of the appellate courts in Texas, and an article surveying the ways in which appellate courts across the country approach the use of vacated opinions. And we feature too the first-ever printing of an outline for a 1982 speech by Joseph Sneed, then a judge of the United States Court of Appeals for the Ninth Circuit, discussing appellate courts' review of trial-court discretion. I found all of this material fascinating, and trust that at least some of it will also be of interest to you.

## ELEGY

Mark R. Kravitz, who was until his death last fall a United States District Judge for the District of Connecticut, was in this office as elsewhere regarded as a fine lawyer, a thoughtful and serious judge, and a writer whose gift for grace was complemented by an unwavering dedication to mastery of the craft. But we also knew him as a friend and supporter of *The Journal*: Judge Kravitz first wrote for us as a lawyer and continued to write for us after his appointment to the bench. His work was invariably interesting to our readers when it appeared in *The Journal*, and—nearly as important from our perspective—was always close to flawless when first it came to us. We will miss him.

NBM
Little Rock
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