

THE JOURNAL OF APPELLATE PRACTICE AND PROCESS

FOREWORD

READING ABOUT THE NATIONAL CONFERENCE

This issue of *The Journal* is devoted entirely to the 2005 National Conference on Appellate Justice. Although they don't add up to a play-by-play report on each of the Conference sessions, the papers gathered here will leave you impressed by both the breadth of the Conference's agenda and the care with which each of the participants considered the topics discussed.

All of the Conference papers are important, but Arthur Hellman's Conference Report is especially significant. By summarizing and commenting on the discussions in the small-group sessions, Professor Hellman reveals the character of today's appellate courts: What are appellate judges thinking? Appellate lawyers? Court observers? And what are the judges worried about, what concerns the lawyers who practice before them, and what is the public to make of it all? If it doesn't provide a complete answer to any of these questions (as the Conference itself did not), the Report gives us a snapshot of this moment, capturing the state of appellate justice as the country's courts enter the twenty-first century. And it prompts us to reflect on where we were a generation ago, when a sudden growth in appellate caseloads sparked fears of an increase in filings that would soon outstrip the system's ability to respond.

I don't know about each of you, but I was a student in 1975, one untroubled by—indeed, unaware of—the crisis of volume that had captured the attention of the appellate world.

But the best minds on the appellate bench, in the appellate bar, and among the appellate scholars were indeed troubled, and they set themselves the task of addressing the impending disaster at the country's first national conference on appellate justice. The thoughtful papers associated with that initial conference fill five volumes, and it's not easy to set any of them down once you begin flipping through it.

Reading about the 1975 conference is both a comfort and a challenge. Some of what then looked like handwriting on the wall—the signs and portents that so concerned our predecessors—turned out to be a false alarm. But some of those worries were warranted, and we see in the Hellman Report indisputable evidence that the struggle to provide access to the appellate courts, and to provide justice to those who appear before them, continues today. For this reason alone, the Report would make a critical contribution to the continuing debate about the future of the appellate courts. But of course it is made more valuable by the thoughtful way in which Professor Hellman has presented the data and commented on its substance. As I said, it's an important document.

Chief Justice Abrahamson's keynote address is similarly important, reminding us that although the concerns, the questions, and even the courts may change, the litigant's search for justice and the court's corresponding duty to do justice remain the same. And so too is Chief Justice Shepard's closing address, which encourages us to focus on both preserving the strengths of the appellate courts we have and ensuring the vigor of those we hope to build. Read as the conferees heard them—in the context of the discussions summarized in the Hellman Report and the presentation-based essays that are collected elsewhere in this issue—these speeches call our attention to the importance of every topic discussed at the National Conference.

I assure you, then, that this issue has something for everyone, including as it does the scholarly and the technical, the inspirational, the pragmatic, and even the who-knows-what's-next. We have Justice Breyer's remarks, which address our current situation, present his view of what may be in store, and include his answers to conferees' questions about many aspects of the appellate practice. And we have essays from other judges and from law professors, each of which evaluates our

history, casts a critical eye on our present, contemplates our future, or considers some combination of the three. It's a fascinating group of papers, easily the equal of the series prepared for that first conference all those years ago.

A NOTE OF THANKS

I would be remiss in failing to acknowledge here my gratitude to the sponsors of the 2005 National Conference, who chose *The Journal* as the place in which to publish these important papers and invited me to attend the Conference so that I could see how they might best be presented. As *The Journal's* editor, I appreciate the opportunity to offer this material to our subscribers. And as a lawyer whose interest in the appellate courts is both professional and personal, I am grateful to the sponsors for inviting me to the Conference. The editor of a small academic journal leads a quiet life that seldom offers an opportunity to see history being made. I was in consequence as surprised to receive their invitation as I am honored by their confidence in our ability to report the Conference proceedings. I have done what I can to ensure that we deserve their faith in us.

NBM
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