

THE JOURNAL OF APPELLATE PRACTICE AND PROCESS

FOREWORD

THE SPECIAL SECTION

Every lawyer noticed that this spring's newspapers were full of stories about judicial appointments. I read them with particular interest, however, for my work on this issue of The Journal made me see the appointments controversy in a whole new light.

If the articles in this issue's special section teach us anything, it's that appellate judges must be men and women of integrity, because they police themselves. And the country's faith in its courts will suffer if they blind themselves to the appearance of impropriety. These truths, more than party affiliation or political philosophy, should guide those who choose potential appointees and—where judges are still elected to appellate courts—those who counsel prospective candidates for judicial office.

Recusal is of course not the only place in which judges' actions will influence public perception of the courts, but cases in which recusal becomes an issue are among the most visible. (The headlines cited in Mr. Bashman's and Judge McKeown's articles make this only too clear.) The courts are a mystery to many who end up as parties to cases on appeal, and any hint of judicial self-interest is likely to feed their latent fear that the process can be rigged. Only if our appellate judges continue to recuse when confronted with circumstances suggestive of self-interest will public faith in the appellate courts be preserved.

I do not intend by featuring recusal in this issue to imply that our appellate judges are anything but serious about their responsibilities. On the contrary, I recognize that we have in this country a tradition of respect for judicial decisionmaking based largely on the widespread recognition that one receives in our

appellate courts a hearing untainted by the corrupting influences of position, power, and prejudice. Let us hope that the similarly dangerous influences of politics and partisanship will not come to affect either our judges or their decisions on appeal.

THE REST OF THE ISSUE

I am especially happy to be publishing Professor McCormick's fascinating essay about the selection of Supreme Court judges in Canada. With the long-rumored possibility of a vacancy on our own Supreme Court now a reality, his topic could not be more timely. The rest of the articles in this issue cover a variety of interesting subjects: judicial outreach, the often-mysterious role of the judge's secretary, and appellate courts' treatment of mixed questions of fact and law. This issue also contains an installment of our From the Library series, and the choice this time is a genuine classic. Professor Llewellyn's off-the-cuff advice to lawyers practicing in the 1960s still rings true today.

A NOTE OF THANKS

You will notice when you turn to it that the recusal section is introduced by a certain RHTjr of Little Rock, for whose participation in the preparation of this issue I am grateful. Ray Thornton—former Attorney General of Arkansas, twice a member of Congress from this state, president at different times of two of our state universities, and late a justice of the Arkansas Supreme Court—has been the Law School's Public Service Fellow for the past few years. We are fortunate in many respects to have him here, but no student or member of the faculty appreciates his presence more than I. His agreeing to review the pieces in the recusal section, his writing the thoughtful introduction that accompanies it, and the grace with which he attended to the work involved in putting it together have lightened my burden immensely.

NBM
Little Rock
July 5, 2005