

# THE JOURNAL OF APPELLATE PRACTICE AND PROCESS

## FOREWORD

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### NOW AND THEN AT THE SUPREME COURT

The Supreme Court section of the law school's library is crowded with treatises, transcripts, critiques, textbooks, analyses, and biographies. Slim little soft-cover books lean against multi-part sets that are shelved next to heavy volumes bound in leather and stamped with gold. But it's not their differences that we notice, for together they tell a single story. Its featured players were our professional ancestors, and what a family tree we have: John Marshall. John Marshall Harlan. Oliver Wendell Holmes. Charles Evans Hughes. Louis D. Brandeis. Harlan Fiske Stone. Felix Frankfurter. Robert H. Jackson. Thurgood Marshall. John Archibald Campbell.

John Archibald Campbell?

Yes, John Archibald Campbell. And Peter V. Daniel, William Johnson, and Melville Weston Fuller. Each is the subject of at least one of the books I couldn't resist perusing when I was supposed to be at work on something else. And then there are justices like William Henry Moody, John Blair, Horace Gray, and Bushrod Washington, each perhaps famous in his own time, but none the subject of a biography important enough to land a place in the library's collection.

I could go on of course, listing additional members of the Supreme Court whose names are all but forgotten now, their years on the Court apparently lacking the distinction that might have made them household names. But I turn instead to the current Court, where we have seen in the last few months a resignation, a death, three nominations, and two confirmation hearings. The new Chief Justice is on the bench, and it appears

that Judge Alito will be Justice Alito by the time this issue reaches you.

The inevitable shifts in philosophy and approach that accompany these changes in personnel will, we are told, be profound. We can expect a seismic shift in American jurisprudence, a change that will reverberate through several generations in the law. Well, maybe. But then again, maybe not.

Age, illness, term limits, and elections all mean that the names of our appellate judges, and sometimes the names of the appellate courts themselves, will continue to change. Many states that once had a single court of last resort now have two. The specter (or if you prefer, the promise) of a twelfth circuit haunts the federal courts of appeals. Judges come and go. Court structures are modified, improved, re-thought, expanded, recast, revised, and then reorganized again. But the courts themselves remain. And their orderly renewal is perhaps the unsung genius of our system, for it has enabled the appellate courts to retain their integrity through countless periods of dramatic change. I am confident that they will survive this one too.

With an eye to the work undertaken at the highest levels of our appellate system, I am happy to have in this issue something of a primer on the essentials of Supreme Court advocacy. It includes an article describing the work of Stanford's Supreme Court Litigation Clinic, where a new generation of appellate advocates is learning how to frame an issue and brief a case; one outlining the work of Georgetown's Supreme Court Institute, which stages moot courts for lawyers preparing cases to be heard at the Court; and one highlighting the many places in which a lawyer new to Supreme Court practice might find assistance. David Frederick, whose treatise on appellate advocacy is itself a valuable resource for expert and novice alike, has provided us with a compelling introduction to these three articles, so I think you will find that everything in this issue's special section is worth your time.

## A NEW SCHEDULE

We have for the past several years aimed to publish an issue of the *Journal* at the end of every semester, Issue 1 of each volume appearing just after spring classes conclude, and Issue 2 appearing just after the end of the fall semester. Maintaining this

schedule has required my colleagues on the editorial board to join me in the race toward publication just as they are composing finals, conducting end-of-semester reviews, and grading papers and exams. None of us is happy with this arrangement, so we begin with this issue a new schedule. We plan to continue publishing twice a year, once in late winter (that issue denominated "Fall," because we will continue to work on it during the fall semester) and then again in early fall (that issue denominated "Spring," because we will continue to work on it during the spring semester). The result from our perspective will be rather less tension surrounding the publication of each issue, and the result from your perspective will be the appearance of each issue about a month later than you have come to expect.

#### AN INVITATION

We run in this issue the announcement of the 2006 edition of the Eisenberg Prize, which is to be awarded later this year by the American Academy of Appellate Lawyers. The published writers among you will want to keep that competition in mind.

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January 16, 2006

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**April 10, 2006**

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**The View from the Clerk's Office**

The Honorable Michael E. Gans  
Clerk, United States Court of Appeals for the Eighth Circuit

**Ethical Issues in Representing the Government:  
The Public's Interest in Effective Representation  
(Even When the Case May Be Troubling)**

James R. Layton, State Solicitor, Office of the Missouri Attorney General  
President, ABA Council of Appellate Lawyers  
Past President and Director, Eighth Circuit Bar Association

**Significant Federal Appellate Evidence Questions**

Robert Steinbuch, Assistant Professor of Law,  
William H. Bowen School of Law

**No Little People, No Little Cases**

E. Gregory Wallace, Associate Professor of Law  
Campbell University, Norman A. Wiggins School of Law

**Perspectives on Eighth Circuit Practice**

The Honorable Morris Sheppard Arnold  
The Honorable C. Arlen Beam  
The Honorable William Jay Riley  
The Honorable Lavenski R. Smith

**Reception**

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