

# THE JOURNAL OF APPELLATE PRACTICE AND PROCESS

## FOREWORD

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### THE APPEAL OF TECHNOLOGY

I am old enough to have been in law school when electronic legal research was new. My classmates and I spent the fall of our first year researching by hand, not yet authorized to use either Lexis or WestLaw. And even in the second semester, most of us did most of our research by pulling books and flipping through them. I know, in fact, that some people made it through first year without using either the Lexis terminals in their dark little room behind the circulation desk or the WestLaw terminals in their similarly small but better-lighted room nearby. And we all continued to stack books on library tables; take notes on legal pads; trace cases through volume after volume of Shepard's Citations; and trudge from shelf to shelf exchanging the dead ends for more promising books until we were finally ready to write.

I remember that WestLaw was more popular than Lexis, mostly because its user interface (which I am confident we never referred to as a user interface) was widely regarded as easier to understand. But because I could often get to a Lexis terminal when the WestLaw room was full, I became a Lexis devotee. This turned out to be a boon: The firm with which I spent my first law-school summer signed up with Lexis on my first day of work, and I was suddenly the office expert.

A few years later, I returned to one of my summer firms and saw an even younger lawyer—a lawyer!—seated at one of the secretarial desks, typing on a keyboard and squinting at a screen. Like my friends in the windowed offices surrounding the secretarial pool, I thought it looked weird, inappropriate, and just plain wrong. Lawyers dictate and secretaries type: So it had always been, and so, we thought, it would continue to be. Of course we were wrong.

Today everybody types. Or swipes. Or clicks. Or taps. And some of us talk to Siri. There's no going back. Technology, as this issue's special-section papers confirm, has already changed the ways of the more progressive appellate courts, is remaking the offices of many appellate lawyers, and will doubtless continue to modify appellate practices and processes in ways that we are incapable of imagining today—all at astonishing speed. We must continue to adapt, adopting an improvement or two from each new technological wave if we are to have any hope of keeping up.

On the other hand, however, we must be wary of adopting the next new thing just because it's the next new thing. Electronic systems that process and organize digital records have many advantages over the hand filing of paper documents. But what if digital records vanish because of technical glitches? The mismatch between the archives of the Second, Seventh, Eleventh, and Federal Circuits and the recently upgraded version of PACER is a case in point.<sup>1</sup> What if the incompatibilities had been impossible to resolve? And what if no one had sounded the alarm? PACER might have moved to an all-digital format without preserving access to those archived records, which would have been lost to us all.<sup>2</sup> We should in consequence approach digital developments with humility, remembering that new technologies appear with a speed that can at first outstrip our ability to channel their power.

## THE REST OF THE ISSUE

In addition to the fascinating pieces in this issue's special section, we have an essay focused on what the Supreme Court of Canada's approach to statutory interpretation might have to

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1. See United States Courts, PACER, *Restoring Access to Information Available on PACER*, <https://www.pacer.gov/announcements/general/webpacer.html> (announcing that “the locally developed legacy case management systems” of the affected courts “became incompatible with PACER and electronic access to information in closed cases on those systems was disrupted” in mid-August of 2014, but promising that “[t]he judiciary will restore full electronic access to identical case information previously available to the public” through the legacy systems) (accessed Oct. 24, 2014; copy on file with Journal of Appellate Practice and Process).

2. It is of course only fair to point out that paper records can themselves disappear. See e.g. National Archives at St. Louis, *Military Personnel Records, 1973 Fire*, <http://www.archives.gov/st-louis/military-personnel/fire-1973.html> (noting that “a disastrous fire at the National Personnel Records Center . . . destroyed approximately 16–18 million Official Military Personnel Files,” and that no list of the lost records is available) (accessed Oct. 24, 2014; copy on file with Journal of Appellate Practice and Process).

offer appellate courts in the United States and a review of the new third edition of Bryan Garner's indispensable *The Winning Brief*. Whether you are reading this issue as words on paper or pixels on a screen, I invite you to enjoy it all.

NBM

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