THE JOURNAL OF APPELLATE PRACTICE AND PROCESS

FOREWORD

TAKING THE LONG VIEW

We once ran a densely footnoted article that surveyed the history of published opinions.[1] And before it went to press, we checked every source in its 308 footnotes. You might suppose that checking those citations was pure drudgery, but at the risk of outing myself as a law geek, I will confess that it was not.

Of course I could not have known beforehand that the job would be interesting. Indeed, I assumed initially that the author must have string-cited his sources, and certainly there were days on which I feared that *The Journal*'s research editor and I would spend the rest of our lives verifying those citations. But the notes turned out to be rich with references to undeservedly forgotten books of legal history, classic works about the civilizations of the ancient world, and antique texts containing the sort of esoteric knowledge that no lawyer with the heart of a historian can resist.[2] Even now, I am unable to stop myself from paging through the article, reading footnotes at random, whenever I chance upon that issue while searching for something else.[3] Expired centuries and their vanished lawyers haunt those notes,

1. Kenneth H. Ryesky, *From Pens to Pixels: Text-Media Issues in Promulgating, Archiving, and Using Judicial Opinions*, 4 J. App. Prac. & Process 353 (2002).

2. I learned there, for example, that in the New York of the 1880s, a man might be both party and appellate counsel in the same case, and that he might after decision be the person to publish the court's opinion as well. *Id.* at 362 n. 52 (citing *Van Antwerp v. Devol*, 3 N.Y.S. 462 (Sup. Ct. 3d Dept. 1888), which featured Marcus Hun as party, lawyer, and reporter). And I also learned that the basalt stele containing the entire Code of Hammurabi is on public display at the Louvre. *Id.* at 367 n. 78.

3. Just the other day I encountered again my favorite of all the arcana in Mr. Ryesky's notes: Francis Scott Key was Chief Justice Taney's brother-in-law. *Id.* at 414 n. 297.

prompting me each time I read them to wonder how we will be remembered in a hundred years or so.

You have probably deduced by now that these reflections on an article that ran in an earlier issue of *The Journal* are intended to introduce the lead essay in this one. Like the other histories that we have published, Professor Anderson's piece takes the long view, highlighting the milestones that mark the winding path along which the appellate brief has traveled. She has unearthed, and extracted some gems from, books that were new even to me, and my job requires me to spend lots of time in the library. (I have on occasion opened a book so dusty that I suspected it of sitting undisturbed for fifty years or more.) If you have any interest in history, I am confident that you will find Professor Anderson's essay absorbing.

I hope that the rest of the issue will also hold your attention. The range of topics that our authors address is broad, while their insights and conclusions strike me as likely to be of use to judges and lawyers alike. And I hope too that this issue will someday be of interest to the appellate community of the future, lawyers and judges whose work will probably differ from ours in significant respects, but who will no doubt share with us a curiosity about the way things used to be.

NBM
Little Rock
August 30, 2010