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## Foreword

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# THE JOURNAL OF APPELLATE PRACTICE AND PROCESS

## FOREWORD

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In the basement of the law school where *The Journal of Appellate Practice and Process* is produced are some priceless reminders of the ways appellate practice has been affected by new developments in technology. We are fortunate to have a collection of the briefs and transcripts filed in the Arkansas Supreme Court, dating well back into the 1800s. In examining some of these old records, I found that many changes were being implemented shortly before the nineteenth century ended and the twentieth century began. It was just a little over a hundred years ago that the typewriter, rather than the pen, became the predominant writing tool for transcripts and briefs.<sup>1</sup> No doubt some number of the state's judges resisted the change; indeed, it is likely that a great number of those who read briefs produced by typewriter were themselves unable—and unwilling—to type their opinions. The fragile manuscripts in storage do not reveal the methods used to deliver them to the clerk's office. Some were no doubt borne there by riders on horseback, while others, the products of more upscale or urban lawyers, were delivered by automobile.

Were the olds ways inadequate, or did the new ways just prove that much better? Either way, at the turn of the new century, judges and attorneys found, first, that their time-

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1. Indeed, by the end of the nineteenth century, the written brief had supplanted the oral argument as the predominant form of persuasion in the appellate courts. See William H. Rehnquist, *From Webster to Word-Processing: The Ascendance of the Appellate Brief*, 1 J. App. Prac. & Process 1 (1999).

honored ways of handling appeals were changing, and second, that they would probably have to adapt their procedures and practices to serve the public's needs and expectations. Not surprisingly, a mere hundred years later, we again see appellate practice in technological flux, with e-pioneers demonstrating new techniques to increase efficiency, to ease access, and to facilitate decisionmaking, even as some will argue that the existing systems are neither broken nor in need of fixing.

This issue of *The Journal* began last winter as the editorial board was discussing ideas for the Developments section of a future issue. I had just learned of Florida's Gavel to Gavel web site, which then featured streaming archived video of oral arguments to the Florida Supreme Court.<sup>2</sup> A couple of weeks later, David Eanes, a former student, now clerking for an appellate judge and knowing of my interest in computers and law practice, told me about CD-ROM briefs and brought me a sample.<sup>3</sup> And then former UALR Dean Rodney Smith introduced us to his friend in the California appellate courts, George Nicholson, who turned out to be a veritable gold mine of ideas for topics and potential authors. After talking to Judge Nicholson, we knew we needed to feature technology in an entire issue.

We deliberately chose to bring our readers a wide array of articles and essays, from the descriptive to the theoretical, featuring not only some particular courts that were the early testing grounds for new technologies, but also writers whose personal experiences with electronic brief-writing, electronic filing, and teleconferenced oral argument would provide vivid illustration of these new developments for courts considering their adoption in the future. We did not intend an exhaustive coverage of new developments, preferring to leave many topics for future issues of *The Journal*; we invite your articles and essays on the topics we did not cover in this issue.

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2. Beginning in September 2000, the Florida Supreme Court began broadcasting *live* Internet coverage of oral arguments on the Florida Channel, seen on educational and government access cable channels statewide, and on the Internet at <<http://www.wfsu.org/gavel2gavel/>>. Fla. B. News 10 (Sept. 1, 2000).

3. We thought you might like to see one, too. Many thanks to Laura Simmons and realLegal.com (formerly PubNETics), who have provided the CD-ROM insert in this issue to *Journal* subscribers, and whose web site, <<http://www.reallegal.com>>, lets visitors download a sample electronic transcript and brief.

Judge Nicholson's essay introduces readers to several technological initiatives, some of which have the potential to foster greater networking and communication among appellate courts around the globe, others which may profoundly change the appellate processes in American courts. Professor Fredric Lederer, Director of the Courtroom 21 Project at William & Mary, takes his expertise on technological advances at trial to examine their appellate counterparts. Justice Philip Talmadge describes the Supreme Court of Washington's experiences with electronic briefs and e-filing. California lawyer Marilyn Devin reveals the workings and the effect of the hyper-linked brief.

The Alberta Court of Appeal undertook the challenge of electronically upgrading its appellate processes long before most American courts considered doing so. Former Justice Roger Kerans and barrister Patrick Keys describe Alberta's pilot project and update us on the present state of appellate technology in that province. Wake Forest Professor Deborah Parker, although a self-described "Luddite," outlines the advantages of the State of North Carolina's new e-filing procedures, and in the process, reveals herself as an emerging "techie." Washington practitioner Bradley Hillis, a long-time "techie" by anyone's definition, puts the more esoteric aspects of electronic filing into plain(er) English.

Sometimes we gain a better appreciation for the ways things are changing by placing them in a historical perspective. Professors Lynn Foster and Bruce Kennedy, of the UALR William H. Bowen School of Law and the University of Toledo, respectively, take us from the Year Books of medieval England to the complicated issues surrounding today's web publishing of legal authority. Boalt Hall Professor Robert Berring explores the way computerized research methods are changing—or threatening—our approach to legal reasoning.

Electronic access to the courts, and to the appellate judges, means that no longer must we do business, or conduct oral arguments, face to face. Two interesting points of view, both favorable, on the use of video teleconferencing for oral arguments are presented by Minnesota Court of Appeals Judge Edward Toussaint and Pennsylvania Superior Court Judge Stephen McEwen.

How will these technological developments affect appellate

decisionmaking and the lives and work of appellate judges? One possibility is a change to standards of review. Appellate lawyers Robert Owen and Melissa Mather offer compelling reasons for appellate courts to reconsider their deferential appellate standard of review over a trial judge's exercise of discretion, particularly in capital cases. UALR Professor and *Journal* Editor J. Thomas Sullivan argues that appellate review will benefit when courts begin to offer online previews of their pending opinions. Judge Michael Murphy of the Tenth Circuit Court of Appeals ponders the possible deleterious effect of remote judging upon the court's collegiality. On the other hand, cyberspace is just the place to forge new judicial partnerships, facilitated by the Justice Web Collaboratory and explained by Dean Henry Perritt and Professor Ronald Staudt of the Chicago-Kent College of Law at the Illinois Institute of Technology.

Many of the mechanical aspects of technological change are quite familiar to the editors of *The Journal*, as each manuscript is digitally edited and transmitted electronically to our publisher. So far we haven't found a reliable computerized substitute for human beings carefully checking sources and citation formats. As you read this issue, you may notice slight differences in the formatting of legal citations in the footnotes. These are not errors. Beginning with this issue, *The Journal* joins the growing ranks of law schools, paralegal programs, and law reviews who have adopted the *ALWD Citation Manual*<sup>4</sup> as their authority for legal citation.

I'd also like to remind readers who may be interested in visiting many of the Internet locales cited by our authors that there is an easy alternative to typing in the web site addresses of those sites, when a single misplaced or omitted letter or digit in the address means a failed search. Visit *The Journal's* own web site, at <<http://www.ualr.edu/~appj>>, and click the number of the issue you'd like to read. The site contains an online table of contents, with hypertext links to articles citing Internet sources.

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4. Association of Legal Writing Directors & Darby Dickerson, *ALWD Citation Manual* (Aspen L. & Bus. 2000). The next issue of *The Journal*, volume 3, number 1, will feature a full-length article by Willamette Professor M.H. Sam Jacobson concerning this new citation manual. In light of the theme of this issue, readers may be interested to know that the Association of Legal Writing Directors maintains a web site for the manual's updates, errata, and frequently asked questions, at <<http://www.alwd.org>>.

Click the name of the article you're reading, and for any footnote in that article using a web address, you'll find a hypertext link to the cited Internet source(s) in that footnote, for as long as those web sites remain active.

Finally, I gratefully acknowledge the scores of legal writing professors around the country who requested complimentary copies of this special issue. Those who are teach professional skills understand, perhaps better than many legal academicians, the importance of preparing our students for the challenges and realities of today's—and tomorrow's—law practice. Not only does this group teach law students the basics of persuasive advocacy, we're usually the ones who show our students how to find the courthouse, soon to be located by its URL, not by its street address.

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