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## From Away

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# THE JOURNAL OF APPELLATE PRACTICE AND PROCESS

## FOREWORD

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### FROM AWAY

That's what they say in Maine. If you're not a native, you're from away.<sup>1</sup>

Not that Mainers are unusually xenophobic. I have more than once reminded my husband that back when men busy tending small farms in south Arkansas might never have been to Chicago, men from small harbors along the coast of Maine were busy sailing to China.<sup>2</sup> And Mainers have long recognized that even a small-town harbor “is a good thing, since adventurers come into it as well as go out, and the life in it grows strong, because it takes something from the world and has something to give in return.”<sup>3</sup> A childhood on the coast of Maine offers both a sense of place and a sense of one's place in the world. Yet even a sea captain's daughter cannot if born elsewhere cross the line that separates the Mainer from away.

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1. See, e.g., John Gould, *A Lobsterman's Lines Land a Summercater*, CHRISTIAN SCI. MONITOR (Aug. 23, 1996), <https://www.csmonitor.com/1996/0823/082396.home.home.2.html> (spinning a yarn about a seasonal resident of Maine who uses “They crawling?” to open negotiations over an informal working-boat-to-yacht purchase of lobsters because it is “the summercater's way to show that he knows a garft from a wrinkle and at the same time alerts the Mainer that he is up against somebody from away”). It may bear noting that Gould, famous chronicler of life in rural Maine, was himself from away. He was born in Boston. Of all places. See, e.g., *John Gould, 94, Columnist in the Monitor for 60 Years*, N.Y. TIMES (Sept. 3, 2003), <http://www.nytimes.com/2003/09/03/us/john-gould-94-columnist-in-the-monitor-for-60-years.html>.

2. See, e.g., Mary Saner, *Searsport, Maine, The Home of Famous Sea Captains*, VOICE OF AM. (Oct. 26, 2009), <https://www.voanews.com/a/a-13-a-2002-09-26-11-searsport-66295582/541567.html> (pointing out that “Maine in the 19th century was a big player in global commerce,” for in that era “10 percent of all ships sailing under the American flag were captained by men from Searsport,” some local families including “a dozen or more captains,” and that their square-rigged ships “were designed . . . to sail the trade winds . . . from one continent to another, across the ocean”).

3. Sarah Orne Jewett, *River Driftwood*, 48 ATL. MONTHLY 500, 510 (Oct. 1881).

Having known this all my life, I think now and again of those who are not from away but from far away, who have come to this country from someplace else. Who have fled hard times. Or escaped from war. Or have simply taken this generation's version of the age-old gamble, betting that an unknown American future will be better for their children than the familiar future from which their coming here has diverted those young lives.

I think in concrete terms, considering the inhabitants of a suite of rooms on a college campus. A couple of first-generation Americans. A couple of second-generation Americans. Another whose family tree includes an American hero. And one who came halfway across the world just to attend an American college. Which of them might change the course of history by saving a life? Saving the country? Saving the world? I wonder, in fact, whether we might ask the same questions about every young immigrant whose parents bring her here. Who among us can be sure of knowing who should stay and who should not? And why?

As a lawyer who follows the Supreme Court, I know that the Justices will soon be asked to consider the constitutionality of a travel ban, the constitutionality of an attempt to further the aims of the sanctuary-city movement, or perhaps the constitutionality of the Deferred Action for Childhood Arrivals program. I understand, that is to say, that the Court might eventually have to decide who can come, who can stay, and who must be sent away.

But I am not just a lawyer. I am a first-generation American whose father came to this country as a child. I know that American dreams for their little boy brought his English parents here. And for almost twenty years I have dreamed the same dreams for my son. Who am I—who are we—to say that the time for dreaming is now past?

## THE ISSUE

This issue begins with Professor Sullivan's farewell to one of *The Journal's* founders and continues with Mr. Bashman's inside view of the electronic media's coverage of the appellate courts; Ms. Linsley's insights into the arcane processes involved in one aspect of the Supreme Court's exercise of its original jurisdiction; Judge Morissette's guide to the history behind modern standards of review in Canada; Professor Berger's consideration of

Professor Kahn's absorbing book on judicial opinions; and Mr. Warner's whirlwind tour of the comprehensive new history of the California Supreme Court, a book apparently jam-packed with interesting details. I enjoyed reading each author's work and am inclined to think that you too will find the entire issue to be worth your time.

NBM

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