

## INTRODUCTION

Peter C. Alexander\* and Stephen L. Wasby\*\*

The Southern Illinois University School of Law is pleased to present this Symposium Issue of the *Southern Illinois University Law Journal* on the subject of judicial decisionmaking. This issue was intended to be the written record of a conference that was planned for February 22 and 23, 2008 at our school. Unfortunately, the Symposium did not take place because of an unusually severe winter storm. We are grateful, however, to have this written record of the contributions of several of the talented authors who had planned to participate in the Symposium.

The Symposium was about judging, which makes it appropriate that we begin by looking at the judges. First, Kevin M. Scott and Rorie Spill Solberg examine the process of judicial selection. They call our attention to the factors that limit the ability of presidents to “remake” the federal judiciary in their image. A second paper studies the behavior of judges after appointment. Erin B. Kaheny, Sara C. Benesh and Susan B. Haire look at judges’ voting records during successive stages of their careers.

The Symposium then turns to aspects of the cases decided by the Seventh Circuit. The first of these articles, by one who has been at the center of it all—Collins T. Fitzpatrick, the long-term Circuit Executive for the Seventh Circuit—provides a sense of changes in caseload and in handling of cases. The second article, by Jolly A. Emrey and Stephen L. Wasby, examines whether an individual state or district is dominant within this and other circuits. The third article takes us to the growing world of alternative dispute resolution, which we tend not to think about in connection with appellate courts. Here the Seventh Circuit’s Senior Conference Attorney, Joel N. Shapiro discusses the court’s appellate mediation program.

The Symposium then moves to an examination of cases which result in some sort of opinion by the judges. The first article in this set deals with the so-called “unpublished” nonprecedential dispositions the court of appeals began to use in the 1970s. Recently the Federal Rules of Appellate Procedure were amended so that the courts of appeals can no longer preclude these opinions from being cited, and Seventh Circuit Judge Diane S. Sykes reports

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her study of early experience after this change in the Rules. The other articles deal with the court's published opinions. In the one, Susan B. Haire and Laura P. Moyer have undertaken a study of the extent to which issues the attorneys have raised in their briefs are addressed by the court in its opinions. Next, two different aspects of the law of the circuit are then explored. Seventh Circuit Judge Michael S. Kanne explains his court's practice in which panels, before filing certain types of opinions, circulate them to the entire court under the court's Rule 40(e)—what Judge Kanne calls “the non-banc en banc.” Then Arthur D. Hellman uses the notion of democratic rule to discuss different views on the relation between a court of appeals' three-judge panels and the entire, or en banc, court of appeals.

The concluding set of articles addresses some aspects of constraints—or at least possible constraints—on the lower federal courts. The first, an examination of the Supreme Court's reversals of the U.S. courts of appeals, by Stephen J. Wermiel, and the second, by Sara C. Benesh, who examines a set of actions by the Supreme Court—its granting certiorari, vacating and remanding for reconsideration in light of an intervening decision (GVR)—deal with possible constraints imposed by the Supreme Court, and thus can be said to look vertically. In the third—which looks horizontally at constraints imposed by the legislative branch—Kirk A. Randazzo explores the constraints imposed on the courts by the development of statutes of greater or less specificity.

The Symposium and this edition of the *Southern Illinois University Law Journal* would not have been possible without the guidance and leadership of my Southern Illinois University School of Law colleague Paul McGreal, State University of New York's University at Albany Professor Emeritus Stephen Wasby, and University of Pittsburgh School of Law Professor Arthur Hellman. They were the driving forces behind this endeavor. I also thank my colleague Frank Houdek, who is the faculty advisor to the journal, for his invaluable leadership to our student editors.

In addition to those who prepared for the conference the papers which have become the articles in this Symposium issue, a number of people read the papers closely and provided comments to the authors, who have found their observations very helpful. They are Senior Circuit Judge Richard Cudahy of the Seventh Circuit, Chief Judge David Herndon and Judge G. Patrick Murphy of the Southern District of Illinois, Judge Catherine Perry of the Eastern District of Missouri, and a number of political science professors—Scott Comparato of Southern Illinois University Carbondale, Barbara Hayler of the University of Illinois at Springfield, and Karen Swenson of Eastern Illinois University.

We also want to recognize Ms. Bonnie Miller, who has been our go-to person for the many logistical issues that have arisen, and a number of other people here have worked behind the scenes. They include Ms. Susan Williams (helping with travel and other logistics), Dr. Alicia Ruiz (setting up the CLE and publicity), Ms. Linda Vineyard (making arrangements for the judges and Friday night's dinner), Dr. Tom Furby (setting up the technology), Ms. Kristy White (various logistics), and the editors of the *Southern Illinois University Law Journal*.