
Report on the 2005 National Conference on Appellate Justice

by Past President Arthur J. England, Jr.



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In June 2005, the Academy's Board of Directors adopted a Long Range Strategy Plan. One of the goals in the plan was that over the next 10 to 30 years, AAAL would be broadly recognized as the leading organization for appellate advocacy and process. The Strategy Plan also included as a goal that by 2010, the

Academy would have significantly increased its image and external recognition as the leading organization for promoting excellence in appellate advocacy and process.

Within six months of the adoption of those goals, the Academy took giant strides toward meeting them through its involvement in the 2005 National Conference on Appellate Justice, held in Washington, D.C. on November 4-6, 2005. The Academy was the moving force behind the Conference, and its lead sponsor. Our initiative and active role were well known to the co-sponsors of the Conference – the Federal Judicial Center, the National Center for State Courts, and the Institute for Judicial Administration at the New York University School of Law – and brought us to the attention of federal and state appellate judges, and prominent law school professors from around the country.

Seven of the 13 members of the steering committee for the Conference were Academy Fellows, and it was they – **Ken Bass, Arthur England, David Herr, Wendy Lascher, Kathleen Lewis, Dan Meador and Mike Meehan** – who did the heavy lifting for a year and a half to make the Conference a reality. Four of the 13 panelists and panel moderators for the program were Academy Fellows. A

501(c)(3) foundation was formed to raise money to pay the expenses of state court judges and administrative personnel who were unable to obtain funds from their states, and all of the officers and directors of the Foundation were Academy Fellows. Academy attorneys and their law firms contributed hard cash to the Foundation, amounting to over \$50,000.

The Academy's published position statement on the role of appellate advocacy, developed through the leadership of **Fellow Charles Bird**, was put before all conferees as the first document they were asked to read in preparation for their participation in the conference. The Conference Program, which prominently identifies the Academy and many of its Fellows on the steering committee and Conference panels, was carried back home by 185 of the leading lawyers, judges, attorneys and professors in the world of appellate practice and procedure. This Conference lifted the Academy from an invitation-only membership organization, with some moot court and essay contest outreach, to pre-eminence in national appellate circles.

As for the Conference itself, it consisted as noted of about 185 distinguished participants whose professional careers have centered on appellate justice. Included in the Conference were, in approximate numbers:

- 30 federal circuit judges,
- 30 state supreme court justices and chief justices,
- 25 state intermediate appellate court judges,

[continued on page 10]

- 12 state and federal trial judges,
- 10 state appellate court administrators,
- 18 law professors with distinguished credentials in appellate law, and
- 52 appellate attorneys, including a number of Academy Fellows who served as panelists, discussion leaders for the group breakout sessions, and conferees.

The Conference opened on Friday, November 4, with a reception attended by the Chief Justice, **Fellow John G. Roberts**. After dinner **Fellow Dan Meador** introduced the keynote speaker, Chief Justice Shirley S. Abrahamson of the Wisconsin Supreme Court. After remarks by Justice Stephen Breyer on Saturday morning, the working sessions began with Session One: “The Position of Appellate Courts Today.” The first panel addressed questions of demand and supply for appellate services. The presenters described the changes in the quantity and nature of appellate filings, and discussed allocation of resources (including but not limited to judgeships) and such supply issues as denial of oral argument and disposition by unpublished opinion. Other topics included the growing internationalization of law practice and adjudicative processes, use of alternative dispute resolution mechanisms within and outside the courts, the growth of an appellate bar, and the increased reliance on technology in the legal environment. **Fellow Thomas E. Baker** was the commentator for the panel.

The second panel, “No Court Is an Island,” addressed the relations between appellate courts and other institutions of government and elements of society. Discussion included the politicization of the nomination and election process for appellate judges, the effects of tension between the branches of government, the prospect of reduced or static funding, the increased visibility of the process and easier access to the product due to technological advances, and the effect of these developments on the interests of clients and lawyers. **President**

Kathleen McCree Lewis was the moderator of the panel, and **Fellow Eliot Scherker** was a panelist. Then Tim O’Brien, CNN legal affairs commentator, spoke at lunch; he was introduced by **Past President David Herr**.

Session Two, “The Challenge of Volume and the Promise of Technology,” was moderated by **Past President Arthur England**. It was concerned with the challenge posed by the high volume of cases in intermediate appellate courts and the promise of new technologies. Among the issues discussed were electronic filings and communications, oral argument by video from remote locations, video conferencing for judges, and the question whether streamlining of procedures compromises the appearance of legitimacy of the appellate process and the quality of appellate justice.

Session Three, “Optimizing the Law-Declaring Function,” opened on Sunday morning. **Past President Alan Morrison** was a panelist and **Fellow Paul Carrington** was the moderator. Ideas touched on included consistency, collegiality, the effects of diminished uniformity among the federal courts and within the states, different relationships between the intermediate and upper tiers in an appellate system, the so-called “vanishing trial” due to settlements, ADR and other forums, non-precedential dispositions and dispositions without opinion, the role of *amici curiae*, and best practices for fashioning an appellate opinion. The Conference closed with remarks by Indiana Chief Justice Randall T. Shepard.

Breakout panels followed each session, and the group discussions were recorded. Following each discussion group, the discussion group reporters undertook to summarize their group’s discussion to the Conference Reporter, **Honorary Fellow Professor Arthur Hellman** of the University of Pittsburgh School of Law. His report will be published in the *Journal of Appellate Practice and Procedure*, and disseminated elsewhere to provide thoughtful information and guidance for the improvement of the administration of justice in federal and state courts throughout the country. ❖