

FOREWORD

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The National Center for Justice and the Rule of Law,¹ which is a program of the University of Mississippi School of Law, focuses on issues relating to the criminal justice system. Its purpose is to promote the two concepts comprising the title of the Center. The concept of “justice” appeals to basic notions of equality, equity, and fairness, often with an emotive component. In contrast, the phrase “rule of law” refers to the requirement that certain procedures and principles must be followed in each case to reach a correct result. Neither concept is sufficient; rather, both must be utilized to ensure that the criminal justice system fulfills its function in society. The Center implements its mission through projects, conferences, educational programs, and publications that examine important criminal law and procedural issues.

Based on my experiences in law school, I decided that I wanted to be an appellate attorney, specializing in criminal cases. Exactly how I came to that decision is now lost to a poor memory. After graduation, it should not have been a surprise to me that no one was prepared to hire me for such a

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position fresh out of law school. Yet, I found a way. I learned that the District of Columbia Court of Appeals would appoint counsel to represent indigents on appeal of their criminal convictions. So did the federal appellate courts. After several years, I switched sides and went to work for the Criminal Appeals Division of the Attorney General's Office for the State of Maryland, where I wrote briefs and argued cases for a decade. In all, I have written approximately 900 briefs and have had oral arguments in hundreds of cases in six or seven different appellate courts.

I learned some lessons along the way. First, it's a great way to practice law: no messy evidentiary hearings, which means no need for witnesses, crying mothers, etc. When representing those convicted on appeal, you know where your client is—incarcerated. When representing the state on appeal, it's even better—no "client" to worry about; only the broader idea of representing the state's interests. Second, it's a great way to learn the law and how to litigate: you spend your days scrutinizing transcripts and examining legal principles to determine whether error had been committed. Indeed, appellate practice, with its intensive scrutiny of the trial process, is an excellent—if not essential—way for a *trial* lawyer to improve his or her skills. Third, instead of arguing about what the facts are in a trial, you get to argue about what the law is, or better yet, what it *should be*. Very few lawyers get to do this on a regular basis. Fourth, on the government side at least, you get some broader perspective: sometimes it's more important to get the court to accept a legal principle as valid than it is to win the case so that "justice" can be done in that case and future ones. Fifth, I learned the importance of ethics and credibility: if you misrepresent facts or legal principles in one case, your credibility is shot with the court and it may never accept you as a reliable advocate in future cases.

I also learned how bad many attorneys are who appear in appellate cases. They do not understand the differences between the function of an appellate court and a trial court. They do not write competent briefs, often failing to properly assess the facts, the issues, and the law. They often miss the

essential functions of oral argument, which is to educate the court about the case and to respond to the court's concerns. In short, they cannot effectively do the job they are supposed to do: represent their client—whether that client is the government or the convicted criminal.

Another lesson learned was that appellate judges almost universally take their job very seriously and try to make sure that reversible errors do not go uncorrected. Perhaps the most difficult barrier to achieving that goal is the poor representation of appellate counsel.

When I interviewed for my current position, a core desire was to insure that a Criminal Appeals Program be instituted. Such clinics do so much that is worthwhile: they help the courts by providing quality written and oral products; they provide effective representation to those convicted of crimes, insuring that rights are protected; they foster meaningful relationships between appellate courts and law schools; they provide students with advanced and intensive training, so the students can be effective advocates after graduation, which is to say that the clinics have a long term impact on the quality of appellate and trial practice; and the programs give appellate courts the option of appointing the clinic as *amicus curie* in appropriate cases, providing service to the courts.

For the University of Mississippi School of Law's program, the Center was fortunate to find Professor Phillip Broadhead, who is an experienced appellate and trial advocate. He shares my belief that such programs are fundamentally important as a component of a law school curriculum. Professor Broadhead has single-handedly developed the Criminal Appeals Program into the outstanding program that it is today.

To promote the development of other appellate clinical programs, the Center has sponsored this symposium issue of the *Mississippi Law Journal*, which contains scholarly articles and commentary reflecting on various aspects of making such clinics successful. Hopefully, the ideas expressed in this symposium will provide insights to law school administrators and clinical educators that help them improve existing programs and that underline the benefits of creating such programs

where they do not exist. The National Center for Justice and the Rule of Law is pleased to be able to contribute this symposium to the field of clinical legal education. I and the Center thank each of the authors, who offer considerable insight into the special place in legal education that appellate advocacy training should have. Finally, I thank and commend Professor Broadhead for his tireless efforts in developing and shepherding this symposium issue from its conception to fruition. Without him, this project would not have been possible.