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## Preface

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# THE JOURNAL OF APPELLATE PRACTICE AND PROCESS

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AFTER THE BENCH

PREFACE

D.P. Marshall Jr.\*

*After* the bench? As a new judge—I started work on the Arkansas Court of Appeals in January—I am still trying to find my way around the bench. My mind has been on deciding cases, learning about my Court, and organizing my chambers. If I had any thought about what one does after a career deciding cases, then it was this: A person judges until he or she is unable to do it well any more, and then stops and enjoys being out of harness. That unexamined notion was wrong, as you will learn from the illuminating collection of essays that *The Journal* has gathered here.

Professional mobility now marks our society in profound ways. Three of these essays confirm this truth by demonstrating that even judges are changing careers in mid-life. Professor Geske, formerly of the Wisconsin Supreme Court and that State's trial bench, describes her fascinating journey through the academy, private practice, and Milwaukee County government. Roger Kerans retired from the Alberta Court of Appeals more than a decade before he had to. He reflects on the joy that he has found in the years since by avoiding the golf course and

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mediating disputes all across Canada. And Judge Brock Hornby describes a different kind of move: from appellate work on the Maine Supreme Judicial Court to trial work on the federal bench.

Judges come to the bench fired with the desire to serve the public. The weather eye that Judge Hornby casts on the changing nature of litigation reveals that he retains that fire, albeit on a different kind of court. And Professor Geske's quest for achieving restorative justice, like Judge Kerans's exhilaration at helping parties resolve their disputes short of the courtroom, reminds us that one may live greatly in the law without wearing a robe.

It also turns out that a judge can go home again. Maine's former Chief Justice, Vincent McKusick, tells of his happy return to Pierce Atwood, his once and current law firm. For judges who feel this call, Chief Justice McKusick offers sage advice about how to make the transition free from even the appearance of a conflict of interest. He also describes, with endearing modesty, all that his "antiquity" brings to Pierce Atwood now that the legal profession is tossed in the currents of the twenty-first century. Would that every law firm had a McKusick on deck.

If Judge Aldisert offers a more traditional view about life after the bench, then he does so in particularly vibrant colors. This is the time, he exhorts, "for retired judges to finally do some serious writing on the law." He is right, as usual. Just as the bench and bar have benefited from the steady flow of books and articles from Aldisert, J., we would benefit from more wise words written by former judges. Indeed, the proof is here before us: Without knowing that they were heeding Judge Aldisert's call, the contributors to this special section have done some serious writing that the rest of us ought to read.

All of this brings me to Judge Coffin, who shows us how to begin the end of judicial service. And he has of course given us much more: forty-one years in service; thoughtful consideration of his Court and himself in preparation for retirement; and meticulous planning to ease the transition. Judge Coffin's story reminds us, as does each of these essays, that many paths beckon former judges. There is much to be said for working until the end. Yet turning to what Judge Coffin calls "a serious

avocation” like the sculptures he enjoys creating, and then enjoying the opportunity to ponder the work of a lifetime sounds fulfilling too.

I am just getting started. But these inspiring essays call to me from around the bend: “What path,” they ask, “will you choose when the time comes?” And so they exemplify Holmes’s dictum that some of life’s greatest pleasures are the opportunities that one contemplates and then decides not to seize.

Little Rock  
May 5, 2007

