

“Judges are to have allegiance to nothing except... the effort to find their path through precedent, through policy, through history, through their own gifts of insight to the best judgment that poor fallible creatures can arrive at in the most difficult of all tasks, the adjudication between man and man, between man and state, through reason called law.”

— Justice Felix Frankfurter (1953)

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*presents*

The Second Conversation with  
**THE HONORABLE SAMUEL A. ALITO, JR.**  
*Associate Justice of the United States*

on the Law of the Constitution

"LAWYERING AND THE CRAFT OF  
JUDICIAL OPINION WRITING"

Wednesday, July 30, 2008  
5:30–7 p.m.

Pepperdine University School of Law  
*The Henry J. and Gloria Caruso Auditorium*

*A conversation of special interest to judges  
and those in federal practice with*

The Honorable Samuel A. Alito, Jr.  
*Associate Justice of the Supreme Court of the United States*

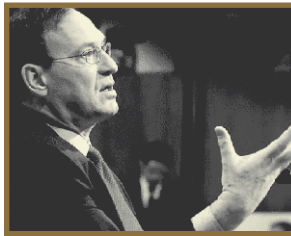
The Honorable Michael W. McConnell  
*Judge, United States Court of Appeals for the Tenth Circuit*

The Honorable Walter E. Dellinger III and Kenneth W. Starr  
*former United States Solicitors General*

The Honorable Douglas W. Kmiec  
*former United States Assistant Attorney General (OLC)*



# THE CONVERSATIONALISTS



**SAMUEL ANTHONY ALITO, JR.**, Associate Justice of the United States was born in Trenton, New Jersey, April 1, 1950. He received an A.B. from Princeton University in 1972 and a J.D. from Yale Law School in 1975. He served as a law clerk for Leonard I. Garth of the United States Court of Appeals for the Third Circuit from 1976–1977. He was Assistant U.S. Attorney, District of New Jersey, 1977–1981, Assistant to the Solicitor General, U.S. Department of Justice, 1981–1985, Deputy Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice, 1985–1987, and U.S. Attorney, District of New Jersey, 1987–1990. He was appointed to the United States Court of Appeals for the Third Circuit in 1990. President George W. Bush nominated him to the Supreme Court, and he took his seat on January 31, 2006.



**MICHAEL W. McCONNELL** was born May 18, 1955 in Louisville, Kentucky. He was nominated by George W. Bush on September 4, 2001, and confirmed by the Senate on November 15, 2002, for the U.S. Court of Appeals for the Tenth Circuit. Judge McConnell was educated at the Michigan State University, B.A., 1976 and the University of Chicago Law School, J.D., 1979. He was a law clerk to the Honorable J. Skelly Wright, U.S. Court of Appeals for the District of Columbia Circuit, 1979–1980 and Associate Justice William J. Brennan, Supreme Court of the United States, 1980–1981. He was assistant general counsel, Office of Management and Budget, 1981–1983 and Assistant to the Solicitor General, U.S. Department of Justice, 1983–1985. Following his federal executive service, Judge McConnell was a professor of law at the University of Chicago Law School, 1985–1996, and is the Presidential Professor of Law at the University of Utah College of Law.



**WALTER E. DELLINGER III** was born May 15, 1941 in Charlotte, North Carolina, and is chair of the appellate practice at O'Melveny & Myers and is the Douglas B. Maggs Professor of Law at Duke University. He served as acting Solicitor General for the 1996–1997 Term of the Supreme Court. He has argued many high-profile cases before the Court, including those dealing with the Second Amendment, physician-assisted suicide, the line-item veto, the Brady Act, and the Religious Freedom Restoration Act. Professor Dellinger received his B.A., with honors, from the University of North Carolina and his J.D. from Yale. A law clerk for Justice Hugo L. Black, he served in the White House in 1993 as a legal advisor to President Clinton, and for three years in the Office of Legal Counsel (OLC), following his confirmation as U.S. Assistant Attorney General.



**KENNETH W. STARR** was born July 21, 1946 in Lockett, Texas, and is the Duane and Kelly Roberts Dean at Pepperdine and of counsel, Kirkland & Ellis. He previously served as U.S. Solicitor General, 1989–1993; Judge, U.S. Court of Appeals for the District of Columbia, 1983–1989, and Independent Counsel, 1994–2001. A George Washington and Duke Law graduate, he has argued more than two dozen times before the High Court. Dean Starr joined the Pepperdine faculty in 2004 and is the author of *First Among Equals: The Supreme Court in American Life*.



*Host and Conversation Facilitator:*  
**DOUGLAS W. KMEC** was born September 24, 1951, in Chicago, Illinois, and is Caruso Family Chair and Professor of Constitutional Law, Pepperdine University. Nominated by President Reagan and confirmed as U.S. Assistant Attorney General and head of the Office of Legal Counsel (OLC), Professor Kmiec served in OLC from 1985 to 1989. Outside of government service, he served as Dean of The Catholic University of America in Washington, DC, and a tenured professor for nearly two decades at the law school of the University of Notre Dame, where he was director of the Center on Law and Government.

Despite the importance of judicial opinion writing to the various constituencies that wait upon the words of judges, very little comprehensive study of this craft occurs in law school or practice. This conversation with a distinguished member of the High Court, an acclaimed legal scholar turned appellate judge, and two prominent law teachers, both of whom have represented the United States and private clients, is a unique opportunity to rectify this oversight.

Lawyers, of course, want to win cases, but they also care deeply about the rule of law. Judicial opinions that are sound in reasoning enhance professional predictability and strengthen the ability of counsel to give reliable advice. Were this otherwise, sophisticated clients might well lose patience with the law and find ways to avoid legal consultation. Lawyers also know there are standards of excellence in legal reasoning and as officers of the bar seek to maintain the law's coherence, which again, is principally advanced or impeded in opinion writing. Come be part of this important and fascinating conversation which seeks to better understand how the Court is perceived by its writing, and will specifically explore questions related to:



## LOCATION AND REGISTRATION

The conversation with Justice Alito will be held on the main campus of the Pepperdine University in Malibu, California. The cost of advanced registration for the program will be \$50.

To register, please call Candace Warren at:

**310.506.4676** or visit  
**<http://law.pepperdine.edu/alito>**

### Continuing Legal Education

This symposium has been approved for Minimum Continuing Legal Education (MCLE) credit by the State Bar of California for 1.5 credit hours. Pepperdine University School of Law certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education.

- What is the primary function of an opinion? (Explanation, justification, rule, result)
- Who is the intended audience? The parties? The media? The political branches? Administrative agencies? How closely does the court follow the understanding of opinions by these audiences?
- Recognizing the duty of fidelity to law; when, if ever, should the court be concerned about the extent to which the exposition in opinions worsens cultural conflict?
- The chief justice has likened judges to umpires, but other judges deny this characterization, insisting that judges must focus on consequences or underlying philosophy. Who is right?
- Does public confidence in the court depend primarily upon the quality of reasoning in opinions or other factors?
- In opinion writing, how serious is the appearance or reality of activism? Is it legitimate to use foreign sources?
- What tools are available to the judge to convey neutrality and empathy both of which have been identified with judicial legitimacy?
- How should scholars and the practicing bar help the bench in bolstering respect for judicial outcome? What criticism of opinions is warranted, what not?
  - Is it important for opinions to reflect the views of popular majorities?
  - Which opinions are exemplars, and why? Should there be a page limit?
  - What are the particular challenges of committee or collegial writing?
  - Should there be a presumption against dissent and separate concurrence?
  - Could opinions be improved by a more uniform briefing by the parties?
- How important is the leadership of the court in conveying a sense of collegiality and a sense of commitment to the overall institutional well-being and identity of the court?

### Advance registration before July 20:

The program is:  
**\$50** for practicing attorneys who did not graduate from Pepperdine  
**\$20** for Pepperdine law alumni  
**\$5** for law students at schools other than Pepperdine  
**free** to Pepperdine students (*must register*)  
**free** to members of the judiciary (*must register*)

### Registration after July 20 or at the door:

**\$75** for practicing attorneys  
**\$10** for law students