the same thing. At the Supreme Court, however, the public record indicates that the Justices continue to labor in the Brandeisian tradition. Once, early in his tenure on the Court, Justice John Paul Stevens noted in a dissent that one of his clerks had done some statistical work, but the Justice did not rely on it. That's about as far as it goes.

With one exception. In the course of our preparation of the multi-volume *In Chambers Opinions of the Justices of the Supreme Court*, we ran across the following line in a footnote in a 1955 opinion by Justice John Marshall Harlan granting an application for bail pending a petition for a writ of certiorari: "The foregoing data comes either from the record in the present case or from the research of my Law Clerk." Justice Harlan had two law clerks that year, so we don't know exactly who should share with the Justice the responsibility and credit for the research in that opinion, but at least we know that it is possible both for a law clerk to do work that merits acknowledgment and for a Justice to acknowledge that work. And as best we can tell, it did not undermine Justice Harlan's reputation or the reputation of the Court.

Alpheus Thomas Mason, The Supreme Court from Taft to Burger 220 (LSU 1979); *Lambert v. Blackwell*, 2003 U.S. Dist. Lexis 5125, at *184 n.70 (E.D. Pa.) (Brody, J.); *EEOC v. Townley Engineering & Mfg. Co.*, 859 F.2d 610, 625 n.* (9th Cir. 1988) (Noonan, J., dissenting); *Hazelwood School District v. United States*, 433 U.S. 299, 318 n.5 (1977) (Stevens, J., dissenting); *Noto v. United States*, 1 Rapp 156 (1955) (Harlan, J., in chambers).

Public Intellectual Expertise

The paperback edition of Judge Richard Posner's *Public Intellectuals* includes a thoughtful new epilogue in which he answers some of his critics. He also shares the following anecdote that nicely captures, we suspect, both the kinds of experiences that moved Posner to write the book in the first place and the kind of behavior that he hopes his book will inspire in readers:

> A story is told about George Wald, a Nobel-prize-winning biologist at Harvard, who in the 1960s had become one of those professors who no longer spoke much about his own field but instead provided ruminations on American foreign policy. After listening to one of these talks, the Columbia physicist I.I. Rabi raised his hand and upon being recognized by Wald asked why homo sapiens had originated in Africa rather than in some other continent. Wald, startled, said, "But that was not at all the subject of my talk." "I know," replied Rabi, "but I thought it might be somewhat closer to your area of expertise."

Richard A. Posner, *Epilogue, 2003*, *in* Public Intellectuals: A Study of Decline 417 (Harvard 2003).

Pronouncing Daubert

Ten years ago, Georgetown Professor Michael Gottesman set the record straight on the question of the proper pronunciation of the last name of the lead petitioner in the most prominent Supreme Court decision on the admissibility of expert testimony. Our limited experience indicates that some people may have missed his explanation the first time around. Here it is again:

> Beware the academic in barrister's garb. When I left private practice five years ago, I imagined that I had become a dispassionate seeker of truth. Then, on rare occasions, folks began to ask me to moonlight as their lawyer. In my earlier career I had understood that I was an advocate whose views were shaped by my client's needs. In my new scholarly mien, of course, that approach would be unthinkable. But, happily, those who've sought me out have wished me to assert dispassionately arrived-at truths.
>
> Among the handful I've been fortunate to represent in this new capacity have been the

> families of Jason Daubert and Eric Schuller, the petitioners in the case that has mistakenly come to be called the "Dough-bear" case. My principal contribution to this Symposium is to report that the folks who brought this case to the Supreme Court pronounce their name "Dow-burt" – or, as some might say, exactly as it's spelled. The penchant for foreign fancies has caused many to show their expertise in French pronunciation at the expense of this all-American family.
>
> The confusion was hardly mitigated during the Supreme Court argument. The first Justice to use the name in framing a question chose "dough-bear," and I faced the tricky tactical question of whether to spend my precious time (and all hope of kindly reception) correcting this judicial mispronunciation. I opted not to, and the rest of the Justices all then assumed, gallingly, that the Gallic was apropos.
>
> Let me, then, use this occasion to make amends to my clients. The family's name is not dough-bear. Whether this will (or should) affect the way people pronounce the name of the Supreme Court's opinion is, of course, another matter. Do the litigants or the Court own title to the pronunciation of the name of a Court opinion?

Michael H. Gottesman, *Admissibility of Expert Testimony After* Daubert: *The "Prestige" Factor*, 43 Emory L.J. 867, 867-68 (1994).

Holmes's Green Bag

We have always liked the idea that the legal giants on whose shoulders our authors and subscribers stand once toted their work around in green bags. And evidence to support that supposition has begun to trickle in. A sketch of Oliver Wendell Holmes, Jr. published in 1933 – shortly after he retired from the Supreme Court of the United States and before he died in 1935 – describes the behavior of a much younger Holmes as he "was preparing the twelfth edition of Kent's *Commentaries*, which was published in 1873":

> There is an interesting story about this work. It was customary in Holmes's day at the [Harvard] Law School, as in ours, to carry one's books in a lawyer's green bag. Very oft there was only a newspaper in the bag, but it was carried just the same – the habit persists today. Holmes devoted a special bag to his growing manuscript of Kent, took it with him each day to the law library, brought it home at night, and before he went to bed placed the bag with its precious manuscripts by the front door. Once a month all the members of the Holmes family, including the servants, had a fire drill whose purpose was to instil[l] in them the fact that on the first sign of fire they should rush to the front door and get that green bag out of danger before doing another thing.

Frederick C. Fiechter, Jr., *The Preparation of an American Aristocrat*, 6 New England Q. 3, 21 (March 1933); *see also* Louis Menand, The Metaphysical Club: A Story of Ideas in America 216 (Farrar, Straus & Giroux 2001).

Military Trials & Tribunals

Last year we noted the publication of the National Institute of Military Justice's *Annotated Guide* to the procedures for trials before United States military commissions. As the military commission process picked up steam, the Department of Defense and a variety of interested groups began to generate more and more paper on the subject, and the NIMJ responded in June 2003 by collecting those materials in a *Military Commission Instructions Sourcebook*. The flow of paper has continued and grown, although, as NIMJ president Eugene Fidell has observed, "[t]he public record remains incomplete." And so the NIMJ has issued a second volume of its *Sourcebook*, which includes the handy flowchart reproduced on the next page.

Commission Annotation, 6 Green Bag 2d 117 (2003); Military Commission Instructions Sourcebook, Volume 2 (NIMJ 2004); www.nimj.org.