

# Separate But Equal – the Clash Between the President and Congress Over the Power to Wage War

Appellate Practice Committee

## **Oral Argument**

Distinguished Supreme Court advocates present oral argument to the Court on the Constitutionality of the IRUN Act.

### The Clash Between the Branches Addressed

“The whole powers of war [are], by the Constitution of the United States, vested in Congress. . . .” *Talbot v. Seeman*, 5 U.S. (1 Cranch) 1, 28 (1801) (Marshall, C.J.).

The purpose of the Commander and Chief clause was to “vest in the President the supreme command over all the military forces – such supreme and undivided command as would be necessary to the prosecution of a successful war.” *United States v. Sweeney*, 157 U.S. 281 (1895).

### Effective Advocacy Techniques Demonstrated

“I should like to leave with you, particularly those of you who are among the younger barristers, the thought that your oral argument on an appeal is perhaps the most effective weapon you have got if you will give it the time and attention it deserves. Oral argument is exciting and will return rich dividends if it is done well. And I think it will be a sorry day for the American bar if the place of the oral argument in our appellate courts is depreciated and oral advocacy becomes looked upon as a pro forma exercise which, because of tradition or because of the insistence of his client, a lawyer has to go through.” Justice John M. Harlan, *What Part Does the Oral Argument Play in the Conduct of an Appeal?* 41 *Cornell L.Q.* 6, 11 (1955).