

THE JOURNAL OF APPELLATE PRACTICE AND PROCESS

FOREWORD

A “NEW NORMAL” FOR *THE JOURNAL*

On January 22, 2020, I received an email that would profoundly impact the course of my year. The email had originated on a library listserv, and it came to me from our director of legal writing, Susie Salmon, who had received it from our interim library director, Shaun Esposito. Normally a double forward like that would receive little attention in my inbox—but this email sparked my interest. It was a call for someone to take over editing *The Journal of Appellate Practice and Process*. Nancy Bellhouse May was retiring from the University of Arkansas at Little Rock Bowen School of Law, and the school was unsure if it could find someone to replace her and continue *The Journal*.

I emailed our director, and she and I started considering if this was something that we could take on at the University of Arizona James E. Rogers College of Law. Within a few days I had exchanged emails with Dean Theresa Beiner at Arkansas and had a phone conversation with Nancy. A few days later I was drafting a memo for our dean, Marc Miller, on acquiring *The Journal*.

If I had to find one word to describe Dean Miller, it would be innovative. He is always open to new ideas. When Susie and I met with him in mid-February to discuss *The Journal*, he was enthusiastically supportive of

acquiring it. But, as is often the case, we all agreed that we needed to think more about how we would fund *The Journal* and a full-time editor.

I started reaching out to a few friends at law firms to discuss funding. I also contacted Marsi Buckmelter at the National Institute for Trial Advocacy to see if NITA would be interested in sponsoring *The Journal*.¹ I had worked with Marsi on revising the classic advocacy text *Winning on Appeal*, and I have tremendous respect for the work that NITA does. NITA was interested—but not in the way we thought. They presented us with a truly innovative offer, where instead of funding the editor they would assist us in the editing process. It was an offer that we could not refuse, so we decided to move forward.

On March 11, Dean Miller, Susie, and I called Dean Beiner with an official offer to take over *The Journal*. That was the same day that the NBA canceled the remainder of its season due to COVID-19.² Closer to home, that same day President Robbins of the University of Arizona announced that our classes would move online.³ Almost overnight, the country came to a standstill.

As I write this foreword, it has been almost nine months since that phone call with Dean Beiner.⁴ Despite the shutdown across the country and the world, we were able to successfully transfer *The Journal* to University of Arizona Law. We are grateful for the work of Thomas Sullivan, Nancy Bellhouse May, and others at UALR in

1. We held one of these meetings via Zoom. Looking back over my email I have to laugh at the exchange that Marsi and I had in late February 2020. She asked if I had used Zoom, and I responded that we “used zoom a lot” at the law school, but then qualified my statement by saying that I wasn’t sure that I had used it on my new office computer. Looking back, I had not used Zoom “a lot,” but I have now!

2. Scott Cacciola & Sopan Deb, *N.B.A. Suspends Season After Player Tests Positive for Coronavirus*, N.Y. TIMES (Mar. 11, 2020), <https://www.nytimes.com/2020/03/11/sports/basketball/nba-season-suspended-coronavirus.html>.

3. Dylan Smith, *University of Arizona to Cancel In-Person Classes Due to Coronavirus*, TUCSON SENTINEL (Mar. 11, 2020), http://www.tucson sentinel.com/local/report/031120_ua_coronavirus/university-arizona-cancel-in-person-classes-due-coronavirus/.

4. Although, admittedly, it seems like six years sometimes.

establishing *The Journal* and shepherding it to this point. We are honored to carry on *The Journal's* legacy.

THE ISSUE

This issue, the first published by University of Arizona Law, epitomizes the year that we have had. Half of the Issue is quite traditional. Our lead article, written by Senior Judge Jon O. Newman of the United States Court of Appeals for the Second Circuit, presents an in-depth look at “reasonableness.” This article is followed by an article from Thomas L. Hudson⁵ on structuring appellate briefs. Finally, Luke Burton critiques the length of judicial opinions.⁶

It is at this point that the Issue pivots to the topic of COVID-19. Professors Timothy R. Johnson, Maron W. Sorenson, Maggie Cleary, and Katie Szarkowicz consider how Justice Thomas’s participation in oral arguments was impacted by the Supreme Court’s COVID-19 argument format. Next, Margaret D. McGaughey⁷ follows up on her article⁸ from Volume 20, Issue 2, with a look at how judges and lawyers view remote oral arguments. Judge Pierre H. Bergeron of the First District Court of Appeals, Ohio, also explores the topic of remote oral arguments and posits that they offer significant, lasting value to the appellate world. The issue ends with a poignant essay by Senior Judge Michael Daly Hawkins of the United States Court of Appeals for the Ninth Circuit, on how the judge–law clerk relationship has changed due to COVID-19.

5. Mr. Hudson is a partner at Osborn Maledon and a graduate of the University of Arizona Law.

6. Mr. Burton is the career law clerk to Judge Morris S. Arnold, United States Court of Appeals for the Eighth Circuit.

7. Margaret D. McGaughey is the former Appellate Chief of the United States Attorney’s Office for the District of Maine.

8. Margaret D. McGaughey, *May It Please the Court—Or Not: Appellate Judges’ Preferences & Pet Peeves About Oral Argument*, 20 J. APP. PRAC. & PROCESS 141 (2019).

The publication format of *The Journal* also reflects the “new normal.” For the first time, *The Journal* will be primarily circulated as a digital publication. It will also be offered free of charge. Digital publications are nothing new, even in the legal arena—I published an article in a digital law journal six years ago.⁹ This digital, open-access format expands the readership and reach of *The Journal*, both domestically and internationally.

Digital delivery and reading also reflect life during a global pandemic. Those of us who are working remotely may not have access to office mail or a reliable printer.¹⁰ Many important documents are reviewed electronically or mailed to personal residences. Although I was an avid online reader pre-pandemic, I have relied even more on e-books and electronic sources over these last few months as public and academic libraries have been temporarily closed.

Only time will tell how many of the profound changes that we have seen will remain when pandemic subsides, but, as several of our authors discuss, we are likely to see real, lasting change in several aspects of appellate practice.

ACKNOWLEDGEMENTS

I would be remiss to end this foreword with a few (ok, more than a few) thank yous. Many of the people who deserve thanks are mentioned on the masthead. But, I would like to mention a few that aren't there. First, thank you to Dean Beiner, Dean Miller, Wendy McCormack, Jennifer Schneider, and Don Tringali for helping facilitate *The Journal* transfer and the partnership with NITA. Second, thank you to University of Arizona Library Team, including Ellen Dubinsky and Teresa Miguel-Stearns, for helping us get *The Journal* online.

9. Tessa L. Dysart, *Child, Victim, or Prostitute? Justice Through Immunity for Prostituted Children*, 21 DUKE J. GENDER L. & POL'Y 255 (2014).

10. My husband and I bought a refurbished laser printer when the pandemic hit. It was a really good decision, as it has already gotten a lot of use!

Finally, thank you to our great student editors who have ensured that the citations in *The Journal* are in tip-top shape—Daniel Bowman, Adam McGovern, John McKelvey, Zeke Peterson, and Tyler Stine. You have also helped me with many other projects that have facilitated *The Journal* transfer, including updating our subscription list. You are the best!

We hope you enjoy this inaugural issue. Stay safe and stay healthy!

TLD

From a spare bedroom in her home in the foothills near
Tucson, Arizona

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