

THE JOURNAL OF APPELLATE PRACTICE AND PROCESS

FOREWORD

SEMPER ANTICUS

Nearly two years and over five million dead.¹

When I wrote my first foreword for *The Journal*, I contemplated a “new normal” both for *The Journal* in its new home at the University of Arizona James E. Rogers College of Law and for the practice of law with the rapid change brought on by the COVID-19 pandemic. While I contemplated broad, systematic changes in the practice of law, I did not imagine how much COVID-19 would be impacting our daily lives now almost two years into the pandemic.

In some sense we have settled into our “new normal.” *The Journal* has flourished as a free, online resource. I appreciate the kind notes I have received from readers about our articles, and I am consistently impressed with the pieces we receive for publication. Likewise, attorneys and courts have settled into new routines—from temperature checks to remote advocacy.

Sure, there are still bumps along the way. A few weeks ago, my students did their final oral arguments at our local state appellate court. Even before I left my house to head downtown, I received emails about

1. *COVID-19 Coronavirus Pandemic*, WORLDOMETER, <https://www.worldometers.info/coronavirus/> (last visited Dec. 31, 2021).

COVID exposures and court protocol. It seemed that our carefully planned schedule was quickly falling apart. In the end, we had to move a few arguments online, but it all worked out. I suspect that nationally trial and appellate courts are dealing with similar issues.

But yet, despite the moves toward normalcy, difficulties still remain. From the pain of lost loved ones to caregiving struggles, from deep divisions in society over race, politics, and emergency powers to mental health problems from isolation and stress, from inflation to long-term unemployment, many people in our country and around the world are struggling.

This issue of *The Journal* tackles some of these difficulties, while at the same time returning to more “normal” topics that appellate judges and attorneys like to debate, such as grammar and citation.

Our first piece by retired Judge Nancy Gertner, remembers someone we lost: Justice Ruth Bader Ginsburg. Justice Ginsburg was truly a trailblazer in the legal profession—both for her advocacy for women’s rights as an attorney and the work that she did on the Court. I am confident that she will remain a role model and inspiration for generations of women to come.

Judge Kermit V. Lipez, in his article on filming the police, continues the discussion started in Volume 21, Issue 2 of this *Journal*. He reminds us that when it comes to addressing race relations in our country “there is so much unfinished business that requires our attention and our action.”²

Two of the articles in this issue touch on issues made more salient by the COVID-19 pandemic. John G. Browning discusses the use of social media by appellate judges, lawyers, and court staff, and the pitfalls that can occur with such usage. He advocates for courts to adopt clear policies and institute training on proper social media usage. Luke Cass addresses the issue of

2. Kermit V. Lipez, *Filming the Police as Citizen-Journalists—A Tale of Two Heroes: What They Did, Why They Could Do It, and the Consequences for the Racial Divide in this Country*, 22 J. APP. PRAC. & PROCESS 29, 48 (2022).

courtroom closures and how such closures impact the Sixth Amendment right to a public trial. While the issue of closed courtrooms certainly predates COVID, courts are now seeing Sixth Amendment claims based on COVID courtroom closures.³

Brent Newton's article raises another aspect of the Sixth Amendment: the right to effective counsel. He argues that, as a part of courts' "supervisory authority over criminal procedure," state and federal courts should permit defendants to raise ineffective assistance of counsel claims on direct appeal, while they still have a constitutional right to counsel.⁴

Mark L. Hanin's article moves us away from criminal procedure and constitutional guarantees to the topic of appellate decision-making on the D.C. Circuit. As a recent clerk on that court, he provides us with an insider view on some key aspects of how the D.C. Circuit decides cases.

This issue also features a couple of book reviews: Judge Pierre Bergeron assesses from the bench the newest edition of the *ALWD Guide to Legal Citation*, while I have a look at Judge Robert E. Bacharach's recent book *Legal Writing: A Judge's Perspective on the Science and Rhetoric of the Written Word*.⁵ Finally, Professors Black and Johnson take us on a lighthearted, but important, journey⁶ into the Supreme Court's use of the single or double *s* for possessive nouns ending in *s*. I highly encourage you to read the footnotes as you peruse this important piece.

3. Luke Cass, *Closed Courtrooms: Sixth Amendment and Public Trial Right Implications*, 22 J. APP. PRAC. & PROCESS 81, 104 n.163 (2022).

4. Brent E. Newton, *Incentivizing Ineffective-Assistance-of-Counsel Claims Raised on Direct Appeal: Why Appellate Courts Should Remand "Colorable" Claims for Evidentiary Hearings*, 22 J. APP. PRAC. & PROCESS 107, 111 (2022).

5. I have been pleasantly surprised at the number of book review requests I have received. In the case of Judge Bacharach, his book had been in my TBR pile since it was published.

6. The importance of this topic is certainly in the eye of the reader. For example, I find the question to be quite serious and weighty, as a reader of the footnotes of that article will discover. It also sparked a minor marital dispute and a robust Facebook discussion.

I hope that this issue allows you to ponder the serious, while still enjoying a robust discussion of the finer points of citation and grammar.

TLD

Tucson, Arizona

December 20, 2021