

THE JOURNAL OF  
APPELLATE PRACTICE  
AND PROCESS

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THE UNIVERSITY OF ARIZONA  
JAMES E. ROGERS COLLEGE OF LAW

Susie Salmon

The (Not Too Serious) Grammar,  
Punctuation, and Style Guide to Legal  
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# THE JOURNAL OF APPELLATE PRACTICE AND PROCESS

## FOREWORD

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### A COMMON THREAD

A few days ago, I received an email from a *Journal* colleague reminding me that my foreword was due. I must admit that I sighed when I read the email. I knew that I needed to pen a foreword, but I was having trouble coming up with a literary “hook.”

I typically start mentally working on these forewords weeks before I sit down at my computer and type something up, but the past few months have been busy for me both professionally and personally. Additionally, I was having trouble finding some sort of thread tying the different articles together. This issue reminds me a bit of a conversation with my five-year-old. We can move from discussing lava to cars to something he sees outside to his latest dream. Really, the only thread that ties our conversation together is that all the thoughts come from his active, imaginative brain.

This issue is similar. The articles address a wide range of topics, but they are all tied to appellate practice in some way.

First, Tribal Judges Carrie E. Garrow and Danielle J. Mayberry provide a look into tribal courts and the issues surrounding self-represented litigants. They outline procedures used in courts to improve procedural fairness for self-represented litigants. Their article

provides appellate practitioners and judges key insight into how tribal courts operate. I was recently appointed as a pro tem judge for the Tohono O’odham Nation, and I learned much in this article.

Next, noted military law expert Eugene R. Fidell makes a compelling case for terminating the United States Court of Appeals for the Armed Forces. As Fidell explains, the court has become “a costly anachronism”<sup>1</sup> and it is high time “to terminate it and transfer its jurisdiction . . . to the United States Court of Appeals for the District of Columbia.”<sup>2</sup> I call Fidell’s case compelling because, in the interest of full disclosure, I was a bit skeptical when I first reviewed his article. However, after reading his article (a few times!), I am convinced, and I hope Congress considers his well-reasoned suggestions.

Elizabeth M. Fritz, with a nod to Harry Potter, takes a look at the courts’ power to recall mandate. She outlines when the courts have exercised the recall power and examines how recall can be used in habeas and post-conviction relief cases even after the passage of AEDPA.

The next three pieces all look at persuasive writing. First, Pamela C. Corley and Adam Feldman explore the influence of party briefs at the United States Supreme Court to answer the age-old question: Does brief quality matter? Using BriefCatch and other sources, Corley and Feldman investigate whether better briefs and oral arguments impact how the justices vote. Their findings might surprise you.

Moving from briefs to opinions, New York State Trial Justice<sup>3</sup> Gerald Lebovits expounds on what trial judges want to see (and don’t want to see) in appellate opinions. As Justice Lebovits explains, appellate judges are often happy to explain what they want in trial court opinions, but rarely do trial judges return the favor. Justice Lebovits, however, takes up the challenge, and

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1. Eugene R. Fidell, *The Case for Termination of the United States Court of Appeals for the Armed Forces*, 23 J. APP. PRAC. & PROC. 263, 267 (2023).

2. *Id.*

3. Remember that in New York the state supreme court is a trial-level court.

his article should be required reading for appellate judges.

Brian Wolfman offers thoughts on how to write a reply brief, an oft-ignored subject in appellate advocacy classes and textbooks. Wolfman backs up his tips with examples from the clinic that he directs: the Georgetown Law Appellate Courts Immersion Clinic. Appellate practitioners and academics who teach brief writing will benefit from Wolfman's insights. I plan on assigning the essay in my brief-writing class.

Finally, two book reviews round out the issue. I have to claim a point of personal privilege when it comes to these reviews, although I do think that both books reviewed will be of great interest to our readers.

First, Maryland Appellate Judge Doug Nazarian reviews my recent book, *The Short and Happy Guide to Judicial Clerkship*. In an effort to be as objective as possible, I have not read the review prior to publication, so I don't have much to write in this foreword. I know that Judge Nazarian is passionate about clerkships and has argued for more transparency about the process. I look forward to reading his review.

Second, my colleague Susie Salmon reviews Diana Simon's book, *The (Not Too Serious) Grammar, Punctuation, and Style Guide to Legal Writing*. Simon, of course, is the managing editor of this *Journal* and a dear friend. Her book, which has received rave reviews, is, as Salmon explains, a delightful look at a seemingly dry topic, and a book that all lovers of legal writing (or writing in general) should keep on hand.

Well, there you have it, a hodgepodge of articles—each important, but not all together related (just like conversations with my five-year-old).

I wish you all happy, relaxing summers!

TLD

Tucson, AZ

June 30, 2023