

THE JOURNAL OF APPELLATE PRACTICE AND PROCESS

FOREWORD

CONFESSION

I have a confession to make: I am a recovering federal court snob. Yes, for my entire pre-law school life and the early part of my legal career, I thought that the federal courts were the only courts that really mattered. They heard the big cases. They made the important decisions. And their judges were, well, the most important in our legal system. I now know that opinion was wrong.

In my defense, it is not surprising that I thought the federal court system to be superior. Growing up in the 1980s as the child of two non-lawyers, most of the court cases that I heard about were ones decided by the U.S. Supreme Court. Likewise, my legal education, like that of many others, focused on U.S. Supreme Court decisions. When it came to clerkships, my law school alma mater had a decidedly federal bent. According to recent statistics, Harvard sends nearly a quarter of its graduating class to federal appellate clerkships and only four percent to state supreme court clerkships.¹ The message we heard on clerkships focused almost exclusively on the federal appellate court system.

1. TESSA L. DYSART, *A SHORT & HAPPY GUIDE TO JUDICIAL CLERKSHIPS* 12 (2023).

Then, after my federal appellate clerkship, I spent the first few years of my career working at the U.S. Department of Justice and the Senate Judiciary Committee on federal judicial confirmations. I vetted federal judicial nominees and shepherded them through the system. While those positions were interesting, and I value the friendships I formed with many federal judicial nominees, those experiences only solidified my focus on the federal court system.

What changed? My perspective. When I moved to Arizona in 2017, I quickly became acquainted with members of our state trial and appellate benches. The judges I met were engaged with the law schools in the state—teaching courses, guest lecturing, and judging competitions. In talking to staff attorneys and clerks at the different courts, I learned what good mentors the judges were and how much they invested in their clerks' success.

I also started paying more attention to the work that state court judges did across the country. I am impressed that the impact many state judges are making on the legal profession—from tweeting about important lawyering topics, to writing practice-oriented articles, to issuing important decisions. Many of these judges are also increasingly accessible to the public through social media and speaking events. They want the non-legal world to better understand the work that they do.

In case you have not guessed it yet, this issue is dedicated to the work of state courts. While not every piece is directly connected to state courts, I did try to curate a state court focus in accepting articles.

Our first piece remembers a remarkable woman—Sandra Day O'Connor—who rose from Arizona's intermediate appellate court to become the first woman United States Supreme Court Justice. Former University of Arizona James E. Rogers College of Law Dean Toni M. Massaro reflects on the late-Justice's career and shares remarks that she made at a lunch given at the law school for Justice O'Connor many years ago.

Next, former Minnesota Supreme Court Chief Justice Eric J. Magnuson and current Arizona Appellate Judge Samuel A. Thumma explore the standard of appellate review for audio and video recordings presented at trial. This work builds off their previous piece in the *Journal*,² where they explored the impact of technological changes in appellate courts and the problems that might arise from such changes. The creative title for their current article gives a strong hint about what they think the appellate standard of review should be—“Same as it Ever Was.”³

North Carolina Appellate Judge Allegra Collins examines a 2016 legislative change that allows the North Carolina Court of Appeals to sit en banc. In the six years following that change, no cases were heard en banc, but there was a noticeable impact on petitions for panel rehearing. She proposes changes to the rules to better align the two processes and to make the process more efficient and transparent.

In an article for both state and federal appellate practitioners, Professor Jeffrey M. Anderson explores how to write briefs for expert readers—judges. Building off the work of Mortimer J. Adler and Charles Van Doren on how to read,⁴ Professor Anderson reviews the differing habits of expert and novice readers. He then offers practical tips for brief writers on making their documents “easier and more satisfying for the judge at every level.”⁵

Next, Professor Peter W. Martin looks at the historic role of the Reporter of United States Supreme Court

2. Eric J. Magnuson & Samuel A. Thumma, *Prospects and Problems Associated with Technological Change in Appellate Courts: Envisioning the Appeal of the Future*, 15 J. APP. PRAC. & PROCESS 111 (2014).

3. Eric J. Magnuson & Samuel A. Thumma, “Same as it Ever Was”: *Why Audio-Video Recordings in and of Trial Court Proceedings Should Not Change the Standard of Appellate Review*, 24 J. APP. PRAC. & PROCESS 213 (2024) (quoting TALKING HEADS, ONCE IN A LIFETIME (Sire Records 1980)).

4. MORTIMER J. ADLER & CHARLES VAN DOREN, *HOW TO READ A BOOK: THE CLASSIC GUIDE TO INTELLIGENT READING* (rev. ed. 1972).

5. Jeffrey M. Anderson, *Writing For Expert Readers*, 24 J. APP. PRAC. & PROCESS 305, 306 (2024).

decisions and explores the challenges facing the current Reporter. These challenges range from adapting to new technologies and reading habits to a substantial delay in the final publication of opinions. Professor Martin discusses the impact of the delay and offers solutions for addressing it.

The final article in this issue offers a structure for appellate opinions. Arizona Appellate Judge Lacey Stover Gard and Staff Attorney Lisa Howell share the opinion organizational structure used by the Arizona Court of Appeals Division II for opinions. And while the acronym ASFLAD doesn't roll off your tongue in the same way that CREAC and IRAC do, it still provides important structural guidelines that can assist new and seasoned appellate judges and clerks in writing clear, concise opinions.

This issue also contains an essay and a book review. As a further confession, I must disclose that I am particularly excited about the essay. It may represent the first time that a 10- and 8-year-old have published an essay in a law journal. Keeping with our state court focus, Emily and James Caughey share with our readers their innovative project to expose more kids to the judiciary. I encourage our readers to not only read their essay, but to also watch the delightful video that they produced.⁶

Finally, Professor Hilary Stirman Reed reviews the second edition of the *Moot Court Advisor's Handbook*. First published in 2015, the new edition covers the extensive changes to moot court since that time, especially in light of the COVID-19 pandemic. As Professor Reed explains, this handbook is an invaluable resource for those who run moot court competitions or advise programs.

6. The url for the video is in the editor's note.

I hope that you enjoy the issue and take a moment to reflect on the important role of state courts in our judicial system. Thank you to all of the judges, clerks, and staff who keep these systems running.

TLD
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