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FOREWORD

LEARNING

Ralph Waldo Emerson is attributed with saying: "Shall I tell you a secret of a true scholar? It is this: every man I meet is my master in some point and in that I learn from him."[1] I have certainly found this maxim to be true in my life. For example, each semester I look forward to not only teaching my students but also learning from them. I learn from colleagues, from CLE presentations, and from reading books and articles. I have even learned from some unusual "masters." Not too long ago, my six-year-old explained to me the details of how our Nintendo Switch works so that we could race in Mario Kart even though my husband (the usual Mario Kart master) was out of town.

Serving as editor-in-chief of the *Journal of Appellate Practice and Process* has given me opportunities to learn from leading scholars in many areas of the law, as well as share that learning to a broader community. As I reflect on our current issue, it provides an opportunity to learn something new about some familiar topics—like conclusions and standards of review—as well as a chance

1. Shanna Peeples, *Yes You Can Get Smarter Every Year*, MEDIUM.COM (Apr. 16, 2017), https://medium.com/student-voices/yes-you-can-get-smarter-every-year-c88db55d9b04.

to gain knowledge in new cutting-edge topics like AI and court performance metrics.

In our first article for this issue, *Accuracy and the Robot Judge*, Professor Michael J. Hasday brings together three interesting topics—AI, judging, and baseball—to explore whether it can be shown that robot judges are more accurate than human judges, thus making the use of robot judges both more accurate and more efficient than human judges. Professor Hasday explores three possible paths to possibly prove the superior accuracy of robot judges, one of which looks at Major League Baseball's experiments with robot umpires.

The second article looks at a familiar topic—standards of review. Brian Sutherland, a noted appellate attorney in California, makes the case for appellate courts to review decisions on class certification as a matter of law instead of as a matter of discretion. Mr. Sutherland explains why class certification is, in fact, a legal issue by exploring the history of the topic, changes to the federal rules, new precedent on the issue of commonality, and how both trial and appellate courts should decide commonality questions in the first instance and on review.

The issue moves from standards of review to federal court quality management practices. Jarrett B. Perlow, the Circuit Executive and Clerk of Court for the Federal Circuit, shares extensive data on federal court performance and quality measures. This data comes both from publicly available sources and a confidential survey of senior staff from the thirteen circuits. Mr. Perlow reviews the data, explores the quality management practices of the Federal Circuit, and offers five recommendations related to quality management practices that other federal appellate courts can adopt.

The next article explores an often-overlooked topic in appellate brief-writing—the conclusion. In her piece titled *"In Conclusion, . . ." Are We Missing an Opportunity to Persuade?*, Professor Colleen Garrity Settineri takes a careful look at the conclusion section of

appellate briefs, including creating the first taxonomy of possibilities for conclusions. To create this taxonomy, Professor Settineri studied merit briefs before the Ohio Supreme Court. The result is fascinating and might just land this piece as required reading for budding appellate attorneys.

The issue concludes with two book reviews. First, Justice Gerald Lebovits reviews the first-ever casebook on legal writing—*The Case for Effective Legal Writing*. Written by Professors Diana Simon and Mark Cooney, *The Case for Effective Legal Writing* uses examples from real cases to demonstrate the importance of grammar, punctuation, and style. The authors make the case for why lawyers should care about writing and provide useful tips for legal writers to follow.

Finally, Professor Sylvia J. Lett reviews Justice Stephen Breyer's latest book, *Reading the Constitution: Why I Chose Pragmatism,* Not *Textualism*. In her review, Professor Lett recounts an earlier experience watching Justices Breyer and Scalia debate constitutional interpretation. Although the Justices were collegial in their discussion, they did not reach an ultimate agreement on the question. In his book, Justice Breyer makes a compelling case for his interpretative approach, noting that he is not completely rejecting textualism, but rather using it as one tool in the interpretative toolbox.

I hope that this issue provides opportunities for our readers to explore something new and to learn from experts on these important topics.

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