Appellate Advocacy

BY DANIEL E. MONNAT AND PAIGE A. NICHOLS

From Cover to Content: Ten 21st Century Tips for Effective Appellate Briefing

In the massive media coverage earlier this year of Supreme Court Justice (then-nominee) Neal Gorsuch — coverage that examined in microscopic detail his decisions, his judicial philosophy, his high school yearbook — only a handful of commenters called attention to Judge Gorsuch's unpublished opinion in the Tenth Circuit case *Allejandre-Gallegos v. Holder*.[1] But Tenth Circuit practitioners know the opinion well. And it makes us quake in our appellate boots. After all, who among us wants to be at the receiving end of an appellate opinion directing the clerk to initiate disciplinary proceedings because, among other sins, we "ha[ve]n't even bothered to alphabetically arrange [our] table of authorities"?[2] It may well be that the lawyer in *Allejandre-Gallegos* had it coming. He represented vulnerable clients in immigration matters, and had, according to the Tenth Circuit, been filing deficient briefs in that court for at least a decade.[3] In this last-straw case, the court counted six rules violations in counsel's "garbled submission," from no record citations in the statement of the case to the aforementioned non-abecedarian table of authorities.[4]

We are confident that no reader of *The Champion* would display such appellate incompetence. But we are also confident that, whether a lawyer's briefing chops go back five minutes, five years, or five decades, a tune-up is always welcome. And so we offer this listicle in hopes of inspiring appellate practitioners of all levels to revisit what they already know, consider what they might not have known, and breathe new life into their appellate briefs.

1. Schedule briefing time.

A lawyer who tries a case will ordinarily meet countless deadlines between entering an appearance and trial. Much of the interim work (discovery, preliminary hearings, motions, pretrial conferences) moves forward according to the court's schedule, which helps keep a busy lawyer on track. But appeals are different. That stretch of weeks between the date the record is ready and the date the brief is due at first seems more than generous, but before you know it that due date once hovering on the horizon is now crashing around the corner and you've barely cracked a transcript. Setting separate deadlines for reviewing the record, researching and outlining the arguments, drafting the brief, and editing is the best guard against that last-minute panicked race against the appellate clock.

2. Follow the rules.

It's great to have powerful facts and a tight, compelling argument, but first things first: If a brief doesn't comply with the appellate court's rules, it's not going to get in the door. Know the rules. Read them and re-read them. What color must the cover be? What are the page (or word) limits? What sections must appear, in what order? Are there any rules addressing font size or footnotes or "scandalous matter"?[5]

While the printed page still calls to many of us, reaching for that dusty, musty rules book on the office shelf is a sure invitation to trouble. The only way to be confident of using the most current version of an appellate court's rules is to consult the digital version on the court's website. And those of us who practice in multiple appellate jurisdictions must be doubly careful that we are following the rules of the court in which we are filing.

3. Judge a brief by its cover (and format, and font, and spacing, etc.).

Want to sour a law clerk or judge even more quickly than by breaking the court's rules? Submit a brief that is visually off-putting. Successful brief writers take care not only to follow the rules, but also to think about typography and layout. This means paying attention to font choice (is it time to retire Times New Roman?),[6] justification (we recommend avoiding full justification unless required by the rules or unless a brief is professionally typeset), white space, widows and orphans, "dumb quotes" (straight apostrophes and quotation marks, which often carry over from Westlaw cut-and-pastes and have to be corrected), spacing (especially in headings and block quotes), tabs (especially in numbered or bulleted lists), and all-caps (PLEASE NO, except for very short headings). Compare, for instance, this fully justified all-caps heading:

> THE DISTRICT COURT VIOLATED THE SPEEDY TRIAL ACT WHEN IT RELIED ON A LEGALLY FLAWED "ENDS-OF-JUSTICE" CONTINUANCE TO DENY THE DEFENDANT'S MOTION TO DISMISS.

with this left-aligned sentence-case alternative:

> The district court violated the Speedy Trial Act when it relied on a legally flawed "ends-of-justice" continuance to deny the defendant's motion to dismiss.

Which would you rather read?

Keeping a brief visually clean can be a challenging word processing task. For WordPerfect users, familiarity with Reveal Codes is key. Word is less transparent, and always seems to be itching for a fight. Invest in a guide book (or check one out of the public library),[7] watch an online tutorial, or phone a friend to learn how to control your word processing program's default options, paragraph styles, and other formatting tools. Start by using QuickCorrect (in WordPerfect) or AutoCorrect (in Word) to turn on smart quotes ("quotation" rather than "quotation"), turn off superscripted ordinals ("10th Circuit" rather than "10th Circuit"), and allow only one space between sentences.[8]

One last note about appearances: Consistency is crucial. Nothing interrupts the flow of text like a sudden change of font or spacing. That paragraph borrowed from a boilerplate district court motion may be in a different font size; the default font for that footnote number may not match the font in the rest of the document; or Word may simply decide sua sponte that it prefers Palatino Linotype for half of the table of contents. Eliminating these distractions is a small chore that makes a big difference to the impression we leave with our readers.

4. Get with the digital program.

We practice law in a world of digital readers, a fact that both poses challenges and offers opportunities to appellate practitioners. To the extent that technology allows us to make the reader's job easier, the digital immigrants among us should not hesitate to embrace it. Navigation aids such as PDF bookmarks and hyperlinks bring joy to a digital reader. And we are all well advised to think about how text reads on a screen, and take thoughtful advantage of graphics, images, and embedded sound and video clips.[9]

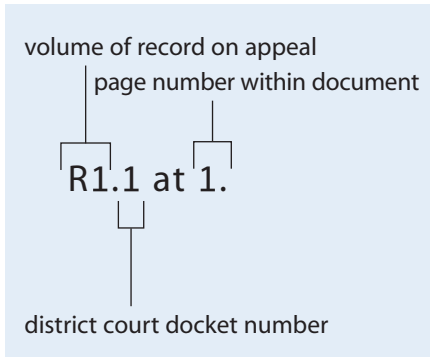
But digital natives and bold digital immigrants must also beware. Many readers still prefer hard copy, and so it is important to make sure that any digital razzle-dazzle in our briefs either works well in black-and-white print, or is accompanied by a short note explaining to the paper reader what extras the digital version provides. And promiscuous hyperlinkers should consider protecting the accessibility of unstable Internet sources by linking to an archival service rather than to the original webpages.[10]

5. Give thought to citation style and placement.

Appellate briefs are made up largely of citations to the record, to cases, to statutes, and to other authorities. And yet we rarely give much thought to whether our citations are doing what they ought to do. Three considerations are important here: Do the citations comply with the court's rules? Can the reader follow the citations to their sources? And are the citations too ungainly — do they take over the page and impede reading?

This last point is often overlooked when it comes to record citations. Record citations should be as compact and unobtrusive as the rules will allow, without sacrificing clarity. Compare, for instance, "Indictment dated January 1, 2017, R. Vol. I, docket number 1, at p. 1" (69 characters), with "R1.1 at 1" (9 characters). While the second, trimmer citation style is unclear in the abstract, it can easily be explained in a footnote. The Tenth Circuit rules encourage counsel "to include a footnote in the briefs at the point of the first record citation to confirm the citation convention."[11] This seems a wise practice in any court. After a short explanation, the convention can be illustrated with a simple image:

> Our citations will take the following form. We will identify titles of documents only if not obvious from the text. *See* 10th Cir. R. 28.1(B).



In consolidated appeals, or multiple-defendant appeals likely to be assigned to the same law clerks and judges, counsel for the defendants might wish to confer and agree on a uniform record citation style.

Citations to authority are more standardized than record citations, but still require care. We offer three rules of thumb. First, the legal writing experts agree that no 21st century appellate practitioner should underline case names (or anything else for that matter).[12] Second, unless the court's rules say otherwise, it does not matter whether we adhere to THE BLUEBOOK, ALWD, or some other citation guide as long as our citations are clear and consistent.[13] If Westlaw's "copy with reference" feature, for instance, generates citations that are inconsistent with the style adopted in a brief, then those cut-and-pasted citations will need to be edited for consistency. Third, the reader's convenience should control our use of short citation forms and "*id.*" Was the last full citation to a source more than a few pages ago? There's no harm in using the full citation again, and the reader will be glad not to have to search the brief to learn what court decided the case in what year. And while "*id.*" is convenient to the writer, it only aids the reader when the source is in fact a clearly defined and immediately preceding authority. Using "*id.*" after a string citation, or after a citation within a citation, or after no citation at all has appeared for one or more pages asks too much of the reader.

Finally, the debate rages on about putting citations to the record and authorities in footnotes. Footnoted citations are an annoyance for digital readers, who are forced to scroll repeatedly up and down between the text and the citations.[14] On the other hand, if the appellate court puts its citations in footnotes, then shouldn't we follow suit? Not necessarily. Courts have a broader audience, including the public at large, which is less interested in reading citations. And their opinions are published in formats such as Westlaw and Lexis that accommodate readers by revealing footnote text in a pop-up box when a reader's cursor hovers over the footnote number. Our primary audience is made up of judges and law clerks who are trained to read around citations, and who may appreciate finding them directly (and more accessibly) in the text.

6. Strive to become a better and better writer.

Much of what we've discussed to this point involves rules, aesthetics, and mechanics. This is not to suggest that these matters are more important than the written content of a brief. But the look of a brief can either invite a reader in or push a reader out. As typography expert Matthew Butterick warns, "Bad typography can distract your reader and undermine your message."[15]

Bad writing can be equally if not more distracting. Here's U.S. Supreme Court Chief Justice John Roberts on the subject: "[W]hen you see something like bad writing, the first thing you think is, 'Well, if he didn't have enough time to

spend writing it well, how much time did he spend researching it? … You don't have a lot of confidence in the substance if the writing is bad."[16]

Everyone has room for improvement when it comes to legal writing. Attending legal writing seminars and building a legal writing library should be a major part of every appellate practice.[17] We can only scratch the surface here (Watch your grammar! Be concise! Avoid clichés! Use lively language!), but wish to emphasize that learning to write well is an essential and career-long project.

7. Just state the (relevant) facts, ma'am.

Accuracy is everything when it comes to the statement of facts. Record citations should be meticulous, and to the primary record source — the exhibit or testimony that supports the stated fact. Shortcut citations to summary sources such as counsel's closing argument or the presentence report will frustrate the law clerk trying to verify the statement, and may result in inaccurate reporting.

"So-and-so testified such-and-such" will rarely, if ever, draw a reader in. Facts should be written in narrative form, and, if possible (and plausible), from the client's perspective. Readers crave a chronologically coherent account, with just enough dates and relative timeframes to anchor the action. But too many dates and facts distract from the story. If the only appellate issue is a claim that the sentencing judge exceeded her statutory authority, the reader does not need to know how the underlying crime was investigated. But say the investigation is relevant. The reader still does not need to know that the car was blue, or the night was rainy, unless that fact makes a difference to the subsequent argument.

8. Respect the reader.

Appellate judges read all day long. They read on their commutes. They read on the treadmill. They read over dinner. They welcome and appreciate a tightly organized, concise brief. Headings, subheadings, and smooth transitions are crucial for guiding the busy reader. Embrace page and word limits; they force us to be pithy.[18] We may have read 50 cases during our research, but this is not the time to show our work.[19] Think nutshell, not treatise.

When drafting an issue, consider whether the claim is really one issue or two. Speedy-trial arguments, for instance, might be statutory or constitutional. These are separate claims that should be set out separately in a brief. Nothing makes a reader's heart sink faster than to reach the end of an argument section and find a secondary claim tacked on but not developed. If a claim is worth invoking, it deserves its own section.

What is the controlling statute or guideline? We are here to help the appellate judges, not to try to sneak something by them. Set out the relevant language in full, or include it as an attachment if it is too long to include in the text, so that the judge has it readily at hand.

Finally, respecting the reader means working within the reader's governing framework. On appeal, that framework is the standard of review. And that standard depends on, among other things, whether the issue was raised and ruled on in the district court. Most appellate rules demand that every argument recite this information along with the appropriate standard of review. But these are not simply tedious boxes to be ticked off on the way to what we *really* want to argue. Rather, our argument must be guided by and give full voice to the appropriate appellate standard. As former Tenth Circuit Chief Judge Deanelle Tacha said it: "Take 'standard of review.' Now to the normal reader that is legalese. To the judge, it is everything."[20]

9. Avoid humor and vitriol.

The days of stuffy, stodgy legal writing are long past. Most experts and judges encourage and appreciate a crisp, lively writing style. But a certain level of formality is still advisable, especially when it comes to humor and vitriol.

We are never as funny as we think we are. Oral humor may work in the courtroom, where it comes across as spontaneous. There, we can discern and correct a bad judgment call immediately because audience reaction is apparent. But we can't so easily retract words on a page, and there's no turning back once we've filed that bawdy brief.[21]

The same holds true for ad hominem attacks. These are no more effective in legal writing than they were on the playground, and the old retort remains true: I'm rubber, and you're glue; your words bounce off me and stick to you. In other words, an attack on opposing counsel or the trial judge reflects more poorly on the attacker than on the target.[22] As with failed humor, a sharp word let loose in the heat of a courtroom battle can be forgiven. But writing is contemplative, and judges rightly expect that cooler heads will prevail in a written brief.

Legal writing consultant Ross Guberman challenges us to ask ourselves when reviewing our own work whether our most creative language appears in potshots at opposing counsel or the court.[23] We should instead channel that energy into advancing our legal arguments, and remember that creativity is for the reader's sake, not for our own therapeutic amusement.

10. Edit till the cows come home (or the brief is due).

Most of us now draft our briefs on computers with a pinkie hovering over the backspace key, revising as we go. Editing is a different matter. By editing we mean the process of proofreading and correcting a fully drafted brief. Is every sentence a sentence? Are the citations all in proper form? Consider multiple readthroughs, each with a specific purpose. One pass to check citations. One pass for spelling and grammar. One pass for formatting. Run the brief by a willing colleague (it's always easier to find someone else's errors). Use Spellcheck, but don't rely on it. It won't flag words that are real, but unintended; next think you now, you half argued that the evident wad insufficient to convince your client of taking in decent liberties with a chili.

Finally, be sure to check the brief again after it is formatted and converted to PDF. This is the time to catch those flaws — like that Word bugaboo "Error! Bookmark not defined" — that only show up after the tables of contents and authorities are generated. If this sounds like a lot of editing, it is. And it's worth it. As Supreme Court Justice Antonin Scalia once put it: "If you see somebody who has written a sloppy brief, I'm inclined to think this person is a sloppy thinker. … Well, my goodness, if you can't even proofread your brief, how careful can I assume you are?"[24]

Conclusion

When lexicographer and usage expert Bryan Garner interviewed the late writer David Foster Wallace, Wallace predicted that if we pay attention to the mechanics of other people's writing, we'll start noticing all kinds of errors. "You start being bugged," he warned, "but you get to be more careful and attentive in your own writing so you become an agent of light and goodness rather than the evil that's all around."[25]

Let us not be writers who bug our readers. Let us be writers who put our readers first in careful, attentive, rules-compliant briefs. After all, isn't it time that we criminal defense lawyers were recognized — through our written work — as the agents of light and goodness that we are?

Notes

1. 598 Fed. Appx. 604 (10th Cir. 2015).

2. *Id*. at 605-06.

3. *Id*.

4. *Id*. *See also Sambrano v. Mabus*, 663 F.3d 879 (7th Cir. 2011) (decrying appellate counsel's "wretched" brief and ordering counsel to show cause "why he should not be subject to monetary sanctions for filing a frivolous appeal and violating Circuit Rule 30, and why he should not be censured, suspended, or disbarred on account of his apparent inability to practice competently and diligently in the federal courts").

5. *See, e.g.,* Sup. Ct. R. 24.6 ("A brief shall be concise, logically arranged with proper headings, and free of irrelevant, immaterial, or scandalous matter. The Court may disregard or strike a brief that does not comply with this paragraph.").

6. *See* Matthew Butterick, Typography for Lawyers 119 (2d ed. 2015) ("It says,'I submitted to the font of least resistance.' … If you have a choice about using Times New Roman, **please stop**.") (emphasis in original). Butterick explains that Times New Roman is outdated and overused. *Id.* He recommends a number of other system fonts, including Garamond and Century Schoolbook. *Id.* at 79.

7. Most public libraries carry a variety of word processing guidebooks. For the basics, consider Elaine J. Marmel, Teach Yourself Visually Word 2013 (2013). For a deeper dive, try Lisa Bucki, Microsoft Word 2013 Bible (2013). Guides to the 2016 version of Word are rolling out, but the 2013 guidebooks remain sufficient for all but the newest (mostly cloud-oriented) features.

8. Butterick, *supra* note 6 at 41-44 ("[O]ne space is the well-settled custom of professional typographers. You don't need to like it. You only need to accept it.").

9. *See* The Leap from E-Filing to E-Briefing: Recommendations and Options for Appellate Courts to Improve the Functionality and Readability of E-Briefs (2017), *available at* https://perma.cc/S66Y-H8JU; Steven J. Johansen & Ruth Anne Robbins, *Art-Iculating the Analysis: Systemizing the Decision to Use Visuals as Legal Reasoning*, 20 Legal Writing 57 (2015); Ellie Margolis, *Is the Medium the Message? Unleashing the Power of E-Communication in the Twenty-First Century*, 12 Legal Comm. & Rhetoric: JALWD 1 (2015).

10. One such service is Perma.cc, a free webpage archive run by the Harvard Library Innovation Lab. Perma.cc notes on its website (https://perma.cc/) that "[o]ver 50% of cited links in Supreme Court opinions no longer point to the intended page."

11. 10th Cir. R. 28.1(B).

12. Antonin Scalia & Bryan A. Garner, Making Your Case 122 (2008) ("As for underlining, it's a crude throwback: that's what writers used in typewriting — when italics weren't possible. Nobody using a computer in the 21st century should be underlining text."); Butterick, *supra* note 6 at 74 ("In a printed document, don't underline. Ever. It's ugly and it makes text harder to read.").

13. Two free online citation guides worth exploring are The Indigo Book ("a free, Creative Commmons-dedicated implementation of *The Bluebook's* Uniform System of Citation"), *available at* https://law.resource.org/pub/us/code/blue/IndigoBook.html#R11, and Legal Information Institute's [LII's] Introduction to Basic Legal Citation, *available at* https://www.law.cornell.edu/citation/.

14. Margolis, *supra* note 9 at 24-25 ("Regardless of which is preferable in a print-reading environment, the era of electronic reading puts this issue to rest. … Any legal writer who has considered the issue of electronic reading has concluded that citations are best placed in text.").

15. Butterick, *supra* note 6 at 24.

16. Bryan A. Garner, *Interview with Chief Justice John G. Roberts Jr.*, 13 Scribes J. Legal Writing 5, 6 (2010).

17. No appellate practitioner's bookshelf should be without the most recent Black's Law Dictionary and a good general dictionary such as The American Heritage Dictionary. Also highly recommended: Antonin Scalia & Bryan A. Garner, Making Your Case (2008); Bryan A. Garner, The Winning Brief (3d ed. 2014); Ross Guberman, Point Made (2d ed. 2014); Ross Guberman, Point Taken (2015); and Matthew Butterick, Typography for Lawyers (2d ed. 2015).

18. Garner, *Interview with Chief Justice John G. Roberts*, *supra* note 16 at 35 ("I have yet to put down a brief and say,'I wish that had been longer.'").

19. Bryan A. Garner, *Interview with Justice Clarence Thomas*, 13 Scribes J. Legal Writing 5, 120 (2010) ("Some people can beat a dead horse until it turns to glue. And I just think that at some point … come on, you don't have to give me 20 authorities for an obvious point. You can cite one case to say that statutory construction begins with the words of the statute. One case. Move on.").

20. Harry T. Edwards & Linda A. Elliott, Federal Courts Standards of Review v (2007).

21. *See United States v. Luna*, 332 Fed. Appx. 778, 783 n.6 (3d Cir. 2009) (government's ostensibly humorous use of defendant's name in subsection heading "Luna(cy)" did not "reflect the seriousness of purpose warranted by this case"); *The Florida Bar v. Solomon*, 711 So.2d 1141, 1143 n.1 (Fla. 1998) ("[i]n his initial brief in that case, Solomon inappropriately noted, apparently in an attempt at humor, that the appellee's attorney had the same last name as person in a cited case who was convicted of burglary and assault with intent to commit rape with a deadly weapon"); *but see Beta Steel v. Rust*, 830 N.E.2d 62, 69 (Ind. App. 2005) (rejecting appellant's request to strike footnote in appellee's brief analogizing appellant's arguments to the Wizard of Oz: "This is a unique characterization of an opposing party's position, but not one that we can label 'scandalous,' 'impertinent,' or 'immaterial.' We do not automatically condemn an attempt to place some light humor into a brief, albeit at the expense of opposing counsel, and decline to strike the footnote."). *See also In re: Rome*, 218 Kan. 198 (1975) (censuring Kansas district court judge for writing lengthy sentencing opinion in humorous verse form).

22. *See Bennett v. State Farm Mut. Auto. Ins. Co.*, 731 F.3d 584, 584-85 (6th Cir. 2013) (noting "the near-certainty that overstatement will only push the reader away … and that, even where the record supports an

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About the Authors

Daniel E. Monnat has been a practicing criminal defense lawyer for 41 years. He is a past president of the Kansas Association of Criminal Defense Lawyers, a former member of the NACDL Board of Directors, and a Fellow of the American College of Trial Lawyers.

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nonviolent crimes who are serving life sentences with no possibility of parole — people like Ronald Washington of Shreveport, who shoplifted two $50 Michael Jordan jerseys.

I understand how hard it is to do what you do every day; I once represented a defendant in a murder trial, and found it too gut-wrenching to attempt ever again. Although what each of you, and what NDS, does every day — the representation of criminal defendants at trial — is vitally important, you — and all of us — have a broader challenge to face. We are unnecessarily and unjustly depriving defendants of their lives. We are overincarcerating hundreds of thousands of people at a rate unmatched by any other country, and no decent society would imprison people merely because they are destitute, mentally ill, or addicted.

How did we get to six years in prison for eight cans of salmon? Of course, no one person is responsible, but often cited as the start of this catastrophe is the "broken windows" theory of law enforcement, invented by my late Harvard professor James Q. Wilson. His theory is that, by failing to enforce petty crimes, society demonstrates its acceptance of criminal behavior generally, which increases crime. But that's not really what's going on here. Seven years before publishing his "broken windows" tract, Professor Wilson, in his book "Thinking About Crime," proposed that punishment should not mostly be about rehabilitation or retribution, but what he called "incapacitation": criminals are recidivists, and the longer you lock them up, the fewer crimes they commit. Of course, if you don't count crimes that occur in prisons, you might as well lock everyone up for life, and reduce the crime rate to zero. That is the path we've been on; "broken windows" is just window dressing for incapacitation. A recidivist turnstile jumper or shoplifter is more likely to commit an armed robbery than you or I, so three strikes and they're in.

Courts, even ones populated by progressive jurists, can only do so much because judges must be faithful to statutes and chary in departing from precedent. I know all of you are busy fighting for the defendants you represent, but you need to do more. You need to work with state legislatures to change sentencing laws, work with local prosecutors and politicians to cease prosecuting infractions as if they were horrible crimes that can be cumulated to justify life imprisonment, and bring cases to state appellate courts to make some inroads in the overincarceration problem. Ironically, James Q. Wilson, when discussing the evils of drug use, lamented that "many educated people still discuss the drug problem in almost every way except the right way. They rarely speak plainly — drug use is wrong because it's immoral and it is immoral because it enslaves the mind and destroys the soul." Imprisoning Mr. Washington for life, for stealing two jerseys, destroys not just his soul, but ours as well.

Although the moral point here is fundamental, I think back to NDS's genesis: its original premise was that, by placing a public defender service into the neighborhood from where its clients came, the lawyers would be better able to obtain lower bail or releases on one's own recognizance because of their ability to have retained clients and more information about community ties. That was pitched, successfully, to NYC not so much on the idea of the presumption of innocence or fundamental fairness, but on the ground that NYC would save money by avoiding pretrial detention costs.

The same is true with prison. Locking up Mr. Smith, my homeless check-cashing defendant, for his 16-year minimum sentence, will cost about $1 million. The eight cans of shoplifted salmon cost about $40; if we gave the defendant eight cans a day, it would cost a small fraction of what it costs to lock him up. Of course there are violent criminals who must be imprisoned. But we must also recognize that some fraction of our population will not be able to function as productive members of society, whether because of mental illness, physical illness, addiction, or otherwise. The question is not whether our society is going to spend money on such people; it is how we want to spend it — by incarcerating them or by caring for them in a more civilized way — and whether we want to spend more money to treat them cruelly rather than compassionately.

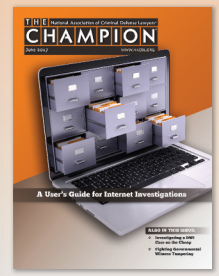
I hope, in the 13+ years I have left to serve on the court, to make some difference in that regard. But as Teddy Pendergrass ad-libbed at the end of *Wake Up Everybody*, "Can't do it alone — need some help y'all." I know Rick can count on all of you, and you on him, to make justice a reality for those farthest from its reach. It is my immense honor to swear in my friend, Rick Jones, as NACDL's president.

The Honorable Rowan D. Wilson is an Associate Judge of the New York Court of Appeals, the highest court in the state of New York. ■

ERRATUM

In: Barry J. Pollack, **Heroes**, THE CHAMPION, June 2017 at 5-6.

In reference to a list of historical leaders considered to be heroes by university students, NACDL President Barry Pollack stated that "Abraham Lincoln is the only lawyer/politician on the list." In fact, Mahatma Gandhi and Nelson Mandela were both on the list and were also lawyers. Much appreciation to *The Champion* Magazine Advisory Committee Member Tom P. Conom for pointing out the oversight.



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extreme modifier, 'the better practice is usually to lay out the facts and let the court reach its own conclusions.'"); *Christopher v. Liberty Mut. Ins. Co., No. 308568*, 2013 WL 3198134 (Mich. App. June 25, 2013) (sanctioning appellant $2,000 for vexatious reply brief); *Boczar v. Meridian Street Foundation*, 749 N.E.2d 87 (Ind. App. 2001) (noting court's plenary power to strike briefs containing "impertinent, intemperate, scandalous, or vituperative language … impugning or disparaging this court, the trial court, or opposing counsel"); Steven Wisotsky, *Incivility and Unprofessionalism on Appeal: Impugning the Integrity of Judges*, 7 J. APP. PRAC. & PROCESS 303 (2005) (summarizing cases in which lawyers were disciplined or scolded for badmouthing judges in motions and briefs).

23. Ross Guberman, *The Role of Personality in Appellate Writing*, Appellate Judges Education Institute 2016 Summit (Philadelphia, Nov. 10, 2016).

24. Bryan A. Garner, *Interview with Justice Antonin Scalia*, 13 SCRIBES J. LEGAL WRITING 5, 71-72 (2010).

25. Bryan A. Garner, *Interview with David Foster Wallace*, *available at* https://lawprose.org/interviews/David-Foster-Wallace.php. ■