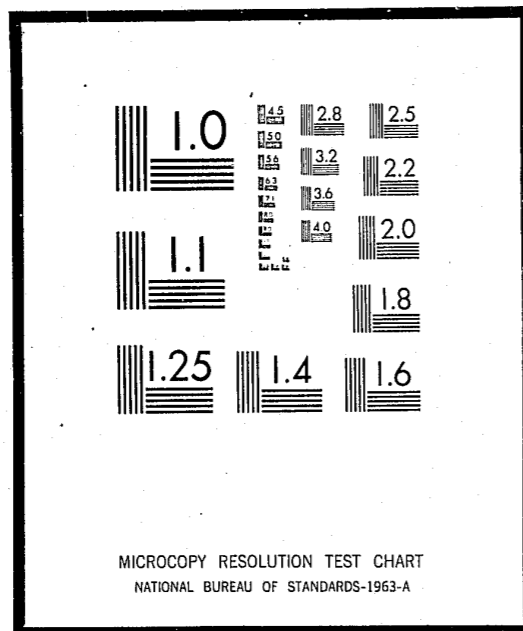


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ANNOTATED BIBLIOGRAPHY ON APPELLATE PROCEDURE

III

I. INTRODUCTION TO THE PROBLEMS INVOLVED

- American Bar Association. The Improvement of the Administration of Justice. (Los Angeles: 1961). pp. 83-88.
Presentation and explanation of ABA proposals for court reforms; summary of their adoption through 1960.
- American Bar Association. Internal Operating Procedures of Appellate Courts. (Los Angeles: 1961). 68 p.
Analysis of a 1957 appellate court study; major emphasis on the manner in which judicial opinions are written and adopted.
- "Cost of Appeal." 27 Montana Law Review 49-54 (1965).
Short study of the cost of appeal in Montana before and after adoption of permissive rules for the form of briefs and records.
- Karlen, Delmar. Appellate Courts in the U.S. and England. New York University Press (New York: 1963). 180 p.
Separately analyzes American and English appellate practices then compares the two systems. Summarized in "Appeals in England and the U.S." 78 Law Quarterly Review 371-387 (1962).
- Magruder, Calvert. "Trials and Tribulations of an Intermediate Appellate Court." 44 Cornell Law Quarterly 1-13 (1958).
Speech in which Chief Justice Magruder describes his court's decision-making process and its attitude toward being reversed.
- Ogurek, John P. "Right to Appeal." 14 Journal of Urban Law 505-19 (1967).
Deals with the indigent's right to appeal in civil as well as criminal cases.
- Ruppin, R. "One Lawyer's Dissent: American vs. English Arguments." 45 American Bar Association Journal 1257-9 (1959).
Advocates adoption of England's emphasis on oral appellate arguments.
- Sunderland, Edson R. "Improvement in Appellate Procedure." 25 Journal of the American Judicature Society 79-84 (Parts I, II), 123-6 (Part II), 150-2 (Part IV) (1941).
Classic article on major areas needing reform, emphasizing the requirement of assignment of error and the mechanics of presenting briefs and records.

Traynor, Roger J. "Some Open Questions on the Work of State Appellate Courts." 24 University of Chicago Law Review 211-224 (1957).

Short speech describing areas needing reform and some possible solutions.

Vanderbilt, Arthur T. Improving the Administration of Justice: Two Decades of Development. University of Cincinnati (Cincinnati: 1957). pp. 100-123. Also in 26 University of Cincinnati Law Review 155, 252-275.

Deals with problems of "undue delays, disposition of appeals on procedural or jurisdictional technicalities, one-man opinions which do not reflect the considered judgment of the entire court, and the almost prohibitive expense."

Wiener, Frederick B. "English and American Appeals Compared." 50 American Bar Association Journal 635-637 (1964).

Short description of some essential differences between English and American systems of appeal, plus critique of Karlen's book (op sit).

Wigginton, John T. "General Aspects of Appellate Practice." 33 Florida Bar Journal 421-33 (1959).

General advice for lawyers.

Wilcox, Bertram; Karlen, Delmar; and Roemer, Ruth. "Justice Lost -- By What Appellate Papers Cost." 33 New York Law Review 934-974 (1958).

Results of survey indicating that the high cost of appeal, especially in printing briefs and records, is the largest single barrier to meritorious appeals; suggests remedies.

II. THE SCOPE OF APPEAL

"Appellate Review in the Federal Courts of Orders Granting New Trials." 13 Stanford Law Review 383-389 (1961).

Argues that trial judges' determinations of motions for new trials should only be reversed where there is no sound reason for the decisions.

Austin, Philip B. "Criteria Employed by Appellate Courts in Determining Adequacy of Damages." 51 Kentucky Law Journal 762-70 (1963).

Describes factors considered by judges when reviewing the reasonableness of an award.

Conklin, Francis. "Appellate Courts and the Quest for Just Compensation: Additur and Remittitur." 42 North Dakota Law Review 397-407 (1966).

Argues that courts should use considerable self-restraint in the application of the devices of additur and remittitur.

Currie, George R. "Appellate Court Use of Facts Outside of the Record by Resort to Judicial Notice and Independent Investigation." 1960 Wisconsin Law Review 39-53 (1960).

Discusses advantages and dangers of the procedure of noticing facts outside the record.

Hamley, Frederick G. "Selecting Cases for Appellate Review." Report 5-U, Institute of Judicial Administration (July 24, 1956).

Suggests points to be considered in judging the merits of a discretionary appellate-case-selection procedure.

Louisell, David W., and Degnam, Ronan E. "Rehearing in American Appellate Courts." 44 California Law Review 627-662 (1956). Condensed in 25 Federal Rules Decisions 143-168 (1960).

Describes grounds for rehearing in both state and federal courts, devices for limiting the petitions and procedures on rehearing; suggests solutions to some of the problems involved.

Millar, Robert Wyness. "New Allegation and Proof on Appeal in Anglo-American Civil Procedure." 47 Northwestern University Law Review 427-442 (1952).

Traces history of the rule that no new evidence may be introduced on appeal; suggests solutions to problems raised.

Mooney, William. "Additur -- A Court's Power to Increase the Amount of Verdict in a Negligence Case." 1966 Insurance Law Journal 389-393 (1966).

General summary of the law in various jurisdictions.

Piersol, Lawrence L. "Certifying Questions to State Supreme Courts as a Remedy to the Abstention Doctrine." 9 South Dakota Law Review 158-176 (1964).

Describes situations in which the Supreme Court uses the Abstention Doctrine to Decline Jurisdiction in Cases properly before the court; suggests solution.

Shaffer, T. L. "Appellate Courts and Prejudiced Verdicts." 26 University of Pittsburgh Law Review 1-63 (1964).

Examines sources of jury prejudice as they appear in appellate arguments, and shields used by appellate judges to avoid reversal; investigates possible solutions.

Thompson, Marcus L. "Reviewing Denied Motion for Summary Judgment by Appellate Court." 20 Southwestern Law Journal 922-32 (1966).

Discussion of federal and Texas cases.

III. MECHANICS OF APPEALS

"Ad Hoc Relief for Untimely Appeals." 65 Columbia Law Review 97-108 (1965)

Discussion of three recent decisions in which the Supreme Court allowed relief despite untimely appeals to avoid "obvious great hardships" in dismissing an appeal.

Appleman, Jean. "The Written Argument on Appeal." 41 Notre Dame Lawyer 40-8 (1965).

Short article on effective writing and use of briefs.

Fine, Robert P. "Civil Procedure -- Specific Exceptions to Charge Needed to Raise Points of Appeal." 16 Buffalo Law Review 415-420 (1967).

Deals with rule that an appellate court will not review a lower court's refusal to grant a new trial if only a general exception was made to the jury charge.

Honigman, Jason L. "Art of Appellate Advocacy." 64 Michigan Law Review 1055-68 (1966).

Deals with general aspects of appellate advocacy.

Hurley, Walter J. "Perfecting Case for Appeal." 48 Massachusetts Law Quarterly 256-77 (1963).

Outline of necessary steps in Massachusetts.

"Judicial Rule Making: Propriety of Iowa Rule 344 (f)." 48 Iowa Law Review 919-938 (1963).

Discussion of legislative vs. judicial rule-making; comparison with the process in other jurisdictions.

Knapp, Whitman. "Why Argue an Appeal? If so, how?." 33 Oklahoma Bar Association Journal 1945-1954 (1962).

Short but extremely useful general introduction.

Mehrens, Duane L. "Waiver of Right to Appeal." 39 Nebraska Law Review 739-756 (1960).

Suggests an alternative to the rule that acceptance of money damages awarded by lower court is a waiver of the right to appeal.

Pinsky, Philip C. "Necessity of Excepting to an Erroneous Charge to the Jury." 11 Syracuse Law Review 234-44 (1960).

Deals with the discretionary power of New York courts to grant new trials even where no exception was made to the jury charge.

Prettyman, E. Barrett. "Uniform Appellate Rules: A Pending Venture in the Federal Judiciary." 52 American Bar Association Journal 123-126 (1966).

Judge Prettyman discusses the basic structure of the proposed rules.

Proctor, Edward O. "Brief and Argument on Appeal." 48 Massachusetts Law Quarterly 278-292 (1963).

Brief description of appellate advocacy techniques, with specific reference to Massachusetts procedures.

Stern, Robert L. "Changes in the Federal Appellate Rules." 41 Federal Rules Decisions 297-309 (1967).

Description of important changes in the method of taking an appeal and the record on appeal.

Symposium. "The Advantages and Disadvantages of the Abstract of Record." 54 Illinois Bar Journal 780-794 (1966).

Discussion of the merits of substituting excerpts from record for the abstract of record.

Wilson, Paul E. "Assignment of Error in Appellate Practice." 9 University of Kansas Law Review 165-177 (1960).

Advocates simplification of common law requirement of assignment of error.

IV. THE FINALITY RULE

"Appealability in the Federal Courts." 75 Harvard Law Review 351-382 (1961).

Discusses appealable types of interlocutory orders; analysis of relatively recent trends.

Bartke, Richard W. "'Finality' Four Years Later -- Some Reflections and Recommendations." 19 Baylor Law Review 340-370 (1967).

Discusses current trends and proposes a clarification of the finality test.

Crick, Carleton M. "The Final Judgment Rule." 41 Yale Law Journal 539-565 (1932).

Discussion of the meaning of the final judgment rule, with historical analysis.

Dyk, Timothy B. "Supreme Court Review of Interlocutory State Court Decisions: the Twilight Zone of Finality." 19 Stanford Law Review 907-946 (1967).

Analyzes questions raised by recent Supreme Court Decisions; proposes standard.

Feigenbaum, Bennett. "Interlocutory Appellate Review via Extraordinary Writ." 36 Washington Law Review 1-49 (1961).

Discusses lawyers' use of writs of mandamus and prohibition to combat the problem of appellate delay, with emphasis on Washington.

Frank, Theodore D. "Requiem for the Final Judgment Rule." 45 Texas Law Review 292-320 (1966).

Analyzes the expanded scope of the Supreme Court's finality rule, pointing out its dangers.

McKelvy, Donald D., and Phillips, Marshal A. "Appealability of Interlocutory Decisions by the Use of Statutory Authority and Mandamus in Oregon." 4 Willamette Law Journal 54-63 (1966).

Concludes that despite recent legislation, the final judgment rule still controls in most Oregon cases.

"Procedure -- Failure to Exhaust Appellate Remedies as a Bar to Relief." 3 William and Mary Law Review 199-202 (1961).

Short treatment of federal requirement that appellate remedies be exhausted before collateral attack is available.

Silva, Michael B. "Appeal and Error: Appealability of Orders Affecting Less than All the Parties." 13 Oklahoma Law Review 41-44 (1960).

Proposes test for the allowability of appeal.

"The Requirement of Final Judgment or Decree for Supreme Court Review of State Courts." 73 Yale Law Journal 515-532 (1964).

Approves of the new approach to the finality rule and the Court's tendency toward increased use of interlocutory review.

"The Value of the Distinction Between Direct and Collateral Attacks on Judgments." 66 Yale Law Journal 526-544 (1957).

Analyzes various state criteria for distinguishing direct from collateral attacks; suggests remedy for the resulting irrationality.

Wright, Charles Alan. "The Doubtful Omniscience of Appellate Courts." 41 Minnesota Law Review 751-782 (1957).

Describes procedural devices being adopted by appellate courts to gain more control over trial courts; points out inherent dangers.

V. CRIMINAL APPEALS

"Appellate Review of Sentencing Procedure." 74 Yale Law Journal 377-389 (1964).

Analyzes exceptions to rule that a federal appellate court will not review a criminal sentence, arguing that procedural review of sentencing is desirable.

Bowman, Addison M. "Appeals From Juvenile Courts." 11 Crime and Delinquency 63-77 (1965).

Points out the desirability of appellate review of juvenile court dispositions, describing appropriate scope and methods.

Mayers, Lewis. "Federal Review of State Convictions: Some Proposals for Change." 50 Judicature 168-71 (1967).

Advocates creation by federal statute of a uniform post-conviction proceeding in the state courts for the convict alleging a denial of federal rights.

Orfield, Lester Bernhardt. Criminal Appeals in America. Little, Brown & Co. (Boston: 1939) 305 pp.

Classic survey of criminal appeal procedures in the United States, tracing their historical roots in English law through procedures and reforms of the late 1930's.

Schimberg, Michael J. "Failure to File Timely Notice of Appeal in Criminal Cases: Excusable Neglect." 41 Notre Dame Lawyer 73-87 (1965).

Analyzes recent cases and proposes both federal and state adoption of rules providing for an extension of the period in which an appeal may be filed when excusable neglect is the cause of delay.

Skelton, William H. "State Appeals in Criminal Cases." 32 Tennessee Law Review 447-71 (1965).

Argues that states should have the same right to correct errors by appeal as allowed defendants.

Symposium. "Appellate Review of Sentences." 32 Federal Rules Decisions 257-321 (1963).

Presentation by a judge, a professor and a lawyer of arguments for and against allowing review of sentences.

VI. GENERAL REFERENCE WORKS

Appleman, John Alan. Approved Appellate Briefs: Text and Forms. West Publishing Co. (St. Paul: 1958). 939 p.

Appleman, John Alan. Successful Appellate Techniques. Bobbs-Merrill (Indianapolis: 1953). 1081 p.

Goodrich, Herbert Funk. A Case on Appeal. (3rd ed). Committee on Continuing Legal Education (Philadelphia: 1957). 111 p.

James, Fleming Jr. Civil Procedure. Little, Brown & Co. (Boston & Toronto: 1965). pp. 50-53; 517-533.

Joiner, Charles W. Trials and Appeals: Cases, Text, Statutes, Rules and Forms. Prentice-Hall (Englewood Cliffs, N. J.: 1957). 594 p.

Llewellyn, Karl Nickerson. The Common Law Tradition: Deciding Appeals. Little, Brown & Co. (Boston: 1960). 565 p. Reviewed in a symposium, 1962 Washington University Law Quarterly 1-72 (1962).

Moore, James William. Federal Rules. M. Bender (Albany: 1956).

Moore, James William. Moore's Manual: Federal Practice and Procedure. M. Bender (Albany: 1962-). Looseleaf.

Pound, Roscoe. Appellate Procedure in Civil Cases. Little, Brown & Co. (Boston: 1941). 431 p.

Stern, Robert L. and Gressman, Eugene. Supreme Court Practice (3rd ed.). BNA (Washington: 1962). 691 p.

Wiener, Frederick Bernays. Briefing and Arguing Federal Appeals. BNA (Washington: 1961). 470 p.

Wright, Charles Alan. Handbook on the Law of Federal Courts. West Publishing Company (St. Paul, Minnesota: 1963). 496 p.

END