

CONTENTS

Preface	<i>xi</i>
Acknowledgments	<i>xv</i>
1 Prefer humanity to complexity	1
2 Rethink 90 percent of the typical complaint; make it about key facts, not law	34
3 Address basic pleading and proof deficiencies with a single motion	44
4 Decide cases once; use agency remands sparingly	50
5 Reconsider standing challenges; they invite more lawsuits	54
6 Reduce fighting over subject matter jurisdiction; the unheard will not remain unseen	57
7 Order discovery when a case begins; police it without written motions	59
8 Creatively manage complex cases; no case should be too big to try	66
9 Mediate, but don't delay the case for it	71
10 Streamline trials; they'll be more final, more credible	73
11 Directly involve judges in jury selection	75
12 Increase juror numbers and diversity with remote jury trials	78
13 Question the number of motions <i>in limine</i>	80
14 Most exhibits prove undisputed facts; we don't need them	82
15 Actively oppose cumulative and time-wasting testimony	87
16 Too much expert testimony is discrediting experts	93

17	Consider common sense first in family court	97
18	Introduce time clocks to encourage efficient trials	100
19	Needless objections annoy judges and jurors	103
20	Make a point, not a muddle, with prior testimony	105
21	Punish misconduct when it happens rather than in a separate proceeding	107
22	Cross-examine crisply, crushingly, or not at all	110
23	Humanize overstuffed, bewildering jury charges and interrogatories	113
24	Save time in court trials by substituting longer closing arguments for posttrial briefing	119
25	Keep cases in the hands of a single judge from start to finish	121
26	Speed cases to trial with judicial administration instead of slowing them down	123
27	Accelerate and simplify justice with technology	126
28	Virtual proceedings should be the rule	129
29	As a judge, prefer the model of a village elder	130
30	Cases are better resolved on their facts than on the law	133
31	Deploy canons of construction sparingly— only when they have a compelling reason to exist	136
32	Rarely resort to legislative history; it's often unreliable	140
33	Reduce distractions by identifying fallacies	144
34	Don't blur laws to conquer facts	148
35	Endless consumer disclosures aren't doing us any good; they are just low-hanging fruit	150
36	Reduce judicial testiness; use multipoint tests only when each point has meaning	153
37	Similar-sounding cases aren't precedent	157
38	The best legal writing is literature, not formula	163

39	Don't plod through the history of the case and familiar standards	166
40	Junk the jargon	168
41	Needless detail is . . .	170
42	The best appellate decisions deeply and plainly explain the law	172
43	There is a better home for law clerks outside of busy work and junior judging	187
44	Appellate courts should reform rusty rules	191
45	The best trial court decisions get straight to saying who wins and why	200
46	Needless complexity obscures our basically honest courts	216
47	Lawyers must discard outdated business models	219
48	Courts must reimagine themselves	226
49	Rethinking law clerking can remake the future	228
50	Recognize needful complexity and meaningful formality	231
51	Steady courts may mean a steadier country	234
	Illustration Credits	241
	Notes	243
	Index	257