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When Materials You Need for Appeal Are Not in the Record

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By Mr Jeffrey Pollock

Litigation is the successor to trial by combat. If trial practice is fought with a broadsword, appellate practice uses a stiletto knife. Unfortunately, in the heat of in limine motions, trial and post-trial motions, even the best of us may overlook whether what is needed for an appeal has been preserved in the record. This article addresses the options that an appellate lawyer faces when the record on appeal does not contain everything he needs.

When Materials You Need for Appeal Are Not in the Record - Fox Rothschild LLP (United States) 19 April 2016

To avoid this uncomfortable problem of failing to protect the appellate record, some clients involve appellate lawyers at trial. Although this is a significant expense, avoiding a failed appeal may well justify that cost. In hindsight, it is easy to criticize the trial counsel. The reality is that a critical issue on appeal may not be crystallized until appellate briefing. It is not surprising that many appellate judges familiarize themselves with the case before them by reading the appellant's reply brief first even though it is filed last-it is at that point, the filing of the reply brief, that the issue before the court is really laid bare.

[View the full article .](#)

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The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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