

# THE JOURNAL OF APPELLATE PRACTICE AND PROCESS

---

## INTRODUCTION AND DEDICATION

The first issue of a new scholarly publication is an occasion for great pride and celebration: pride in work accomplished, celebration of the translation of idea into product. This issue represents the culmination of seven or so years of memos and proposals suggesting the value of an academic vehicle for discussing the work of appellate courts and practitioners. For me, the appointment of Rodney K. Smith as Dean of the UALR School of Law marks an important turning point at which the proposal was transformed into a work in progress. *The Journal* exists because of his willingness to support intellectual entrepreneurship, and because of the enthusiasm and cheerful optimism of my valued faculty colleagues, Coleen Barger and Theresa Beiner, and our most capable executive editor, Lindsey Gustafson. Together with Dean Smith, we have learned the frustrating lessons of striking out with a new venture, and the satisfaction of collective decision-making within the institution. We have enjoyed the support of our other faculty colleagues, whose encouragement and sharing of ideas and experience reflect the best intention of an academic community in fostering a spirit of innovation and risk-taking. We especially want to thank our Faculty Appointments Committee, whose diligent work enabled us to hire Lindsey Gustafson for a position with a job description almost designed to frighten away qualified candidates.

*The Journal* staff also expresses deep appreciation to the Donaghey Foundation of Arkansas, long-time benefactors of the

University of Arkansas at Little Rock, whose generous matching gift gave us the fiscal base to go forward.

We trust this publication will serve an important purpose within the community of its intended audience. If it does so, however, it will be because that audience utilizes *The Journal* as a point of exchange in the marketplace of ideas.

\* \* \*

For me, personally, *The Journal* reflects twenty-plus years of experience as an appellate lawyer—usually an unsuccessful one, perhaps because of my particular caseload, perhaps because of my own lack of expertise. I have long thought that the law schools focused too little attention on the process by which appellate lawyers and appellate courts interact to decide, produce, discern, create, or—in some cases—ignore the law. I have enjoyed the privilege of arguing before the United States Supreme Court, although I lost cases that did not result in dramatic or profound statements of law, and the opportunity to argue before state and federal courts of appeals, with occasional victories. Some of my writing has focused directly on the appellate process, but virtually all of my writing comments at least indirectly on the way in which appellate courts resolve issues and questions before them. As an appellate lawyer, I believe that there are matters unique to this work that warrant a publication national in scope and specialized in content.

I want to acknowledge the three men who have had profound influence on my life as a lawyer. My maternal grandfather, Allen Dickinson Dabney, practiced law in Eastland, Texas, from his graduation from the University of Texas School of Law in 1904 until shortly before his death in 1962. He was an unsuccessful candidate in 1948 for a position on the Texas Court of Civil Appeals for the Eleventh Supreme Judicial District, which still sits in Eastland, probably the smallest community in the nation that boasts an appellate court. Nevertheless, as a child, I always knew that he was “Judge Dabney” in West Central Texas, and I still recall spending days visiting him in his office overlooking the square as he read from the reporters. When Grandpa died, the black community gathered at the cemetery and, as his casket was lowered into the earth, sang an old Negro spiritual that included the line, “We have lost a dear, dear friend.” My grandfather was

the Atticus Finch of his community, the lawyer who stood up to the Klan, undertook representation in unpopular cases, and whose fees were often paid in crops. One morning I remember a farmer brought some cantaloupes to my grandparents' house to pay for some work my grandfather had done, a scene I would later find described in *To Kill a Mockingbird*. I learned a great deal about justice and nobility from my grandfather, who exemplified the traditional ideal of the community lawyer whose professionalism was not tied to business, but to people and the law.

My father-in-law, Floyd A. Shumpert, continues to this day to practice law in Terrell, another small Texas town. He is the most compassionate lawyer I have ever known, and his strength within his community is drawn from the common perception that he gives excellent counsel and does not deviate from what he knows to be right in his practice. He served as an associate justice of the Texas Court of Appeals for the Fifth Judicial District, in Dallas, from his appointment in 1983 until the Republican landslide in the 1984 general election. Judge Shumpert was awarded the Silver Star for Gallantry in Action, the Combat Infantry Badge, the EAME Medal with three Bronze Stars, and the Purple Heart for injuries sustained in the Hurtgen Forest in December, 1944, just prior to the German counteroffensive now known as the Battle of the Bulge. Though burdened by the partial loss of his leg due to a land mine explosion and repeated post-war surgeries, Judge Shumpert has maintained the dignity and honor of his profession. Despite the pain and physical inconvenience, he has suffered without complaint. His ability to treat others with a rare combination of strength and mercy exemplifies the character we can only hope for in our trial judges, and which often sets apart refreshing appellate decision-making from sterile adherence to precedent. I will always be awed by his courage.

Finally, I treasure memories of my father, Melvin C. Sullivan, who had the sharpest mind for legal analysis I have known. Yet, he was not a lawyer. Despite, or perhaps because of, the fact that his own opportunity for a legal career was compromised by the Great Depression and the "economic whip of necessity" that so dominated the thinking of his generation, I was well aware of the great opportunity that I had to attend law school at Southern Methodist while living at home with my mother and dad. My dad taught me to think critically as a boy,

and I found nothing particularly novel in the way law faculty approached their subjects. Once, as he was nearing the end of his life, I asked him if he regretted not having been able to go to law school or practice law. His response was clear and to the point: He would have enjoyed the profession but he had no regrets. As he said, "After we had you boys, you became my life." Now, years later, I can understand what he meant when I think of my own life with our two daughters, and I realize that the lessons of fatherhood that he taught me are the most important lessons of all. My work is intended for Molly and Bonnie, and for Suzy, who makes everything possible. They are what really matter.

JTS, Editor

Little Rock

Thanksgiving Day, November 26, 1998