

THE FOUNDERS, OR *THE JOURNAL'S* EARLY YEARS AND WHAT THEY MEANT TO ME

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Being asked to write a short essay regarding the founding and early years of *The Journal of Appellate Practice and Process* is a little like being asked to attend a reunion with dear friends. The mere thought of such an event or assignment brings back a flood of memories, particularly when the editors of *The Journal* remain largely the same, and its founder, Professor Tom Sullivan, continues to be very involved.

As I reflect on *The Journal*, and its early years, I can still feel the blood, sweat, and tears—mostly sweat, I confess—that went into the launching of a new journal that, from the beginning, was founded with the intent of providing a major scholarly voice in the world of appellate practice and process.

But even the building of a scholarly journal is, after all, much about relationships. This essay is therefore being written in the spirit and very personal form of a reunion, because for me that is what it is. Indeed, the word “I” appears far too often in this essay, but that is a reflection of the depth of the feelings that I have for the founding and success of *The Journal* and does not reflect in any measure a sense on my part that I played much of a role in the founding. Frankly, I merely did what deans often do, when fulfilling their highest and best use: I facilitated and then cheered the work of able colleagues and friends.¹

I first heard of the concept of *The Journal* when I was interviewing in the dean search process at the School of Law at

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1. In the course of this essay, after formally introducing the founders of *The Journal*, I choose to refer to them by their first names, because the founding of *The Journal* and my respect for them remains a very personal matter for me.

the University of Arkansas at Little Rock in 1997. In a meeting with faculty members, Professor Tom Sullivan suggested the idea of *The Journal*. At the time he reminded me a bit of a good fly fisherman—he picked the right fly and then let it drift down stream right before my nose. Nevertheless, I think Tom was a bit surprised when I took the bait by saying, “I think that is a great idea.” Indeed, I am convinced that Tom was dubious, wondering if I was just a candidate in search of a job, seeking to say that which would please those involved in the hiring process. In truth, however, the fact that there were faculty members, like Tom, with great ideas and a desire to make a difference at the Law School, made the position of dean of what is now the William H. Bowen School of Law at the University of Arkansas at Little Rock appealing.

As I recall, the conversation with Tom became a significant part of the dialogue during that interview session with faculty. It was evidence to me of a creative spark on the part of the faculty. I knew that there was no such journal in the legal academy, and it was clear that, if it could be done right, it would make a real contribution to the world of appellate advocacy. In doing so, it would also cast the Law School in a very favorable light, both nationally and internationally. Knowledge of such possibilities and promise necessarily begets a dialogue—I had my set of questions, and Tom had his answers; Tom had his set of questions, and I had my tentative answers. What was clear at that first meeting, however, was that it was an idea whose time had come. In fact, I remember returning home after the visit and telling my wife about Tom’s great idea, as I discussed the high caliber of colleague I would have at the Law School if I became dean.

Once I was named as dean, I was quickly cornered by Tom, who began pressing me to keep my word and help him get *The Journal* up and going. Our first major problem, from my perspective, was funding. Tom, of course, was undeterred by a response that all faculty members hear with regularity, “It is not in the budget.” In my opinion, however, we needed to get funding in the form of a donation to help defray the cost of the first issue. If we could do that, then I strongly believed that *The Journal* would prove its value and become a regular part of the Law School’s budget.

Tom worked hard to develop a strong proposal, and we began to think of funding possibilities among the law firms in Little Rock. We tested the water a bit and then met with partners at the Williams & Anderson firm in Little Rock. They were impressed by the proposal Tom had developed and agreed to fund our first issue.

With concept and dollars in hand, the work began in earnest. When it came to work, Tom soon was able to persuade two colleagues to join in the project: Coleen Barger and Melissa Serfass. Tom, with the able efforts of Coleen and Melissa, began working through the mechanics of developing a journal—finding a printer, developing a format, and putting together a list of possible contributors. In considering the possibilities for *The Journal's* format, Tom and Coleen decided to permit essays as a way of encouraging leading jurists and scholars to share their ideas without being hampered by a need to provide endless footnotes.²

With that idea in hand, Tom and Coleen decided that, as dean, I should help develop a potential list of authors and added that I was the one who should personally contact those initial authors, beginning with the Chief Justice of the United States. My job, therefore, was to contact the Chief Justice and ask him to do an essay for a new journal. As it turned out, he had recently given an excellent speech that could be developed into a great essay, and when his office passed the request on to him, he was happy to work with us in turning his talk into an essay.

You can imagine how thrilled I was that Tom and Coleen wanted to shoot high and ask for the Chief Justice to provide the lead essay in the first issue. I was also a bit apprehensive, because they gave me the assignment to make the ask, expecting that I would deliver. You can imagine our collective elation, and my personal relief, when the Chief Justice agreed to participate. We knew it would be easier to encourage participation by other distinguished authors when the Chief Justice had agreed to contribute, so we made a list of some other distinguished jurists who might write for the first issue that included Judge Patricia Wald of the D.C. Circuit, Justice Stanley Mosk of the California

2. This idea proved to be critical to providing a forum for leading jurists and scholars, and as this essay demonstrates, it has remained a constant throughout the life of *The Journal*.

Supreme Court, and Judge Myron Bright of the Eighth Circuit, all of whom agreed to write for the inaugural issue. My friend, Professor William Richman, also agreed to do an essay. Substantive articles were also prepared by Brent Newton, a friend of Tom's who has remained devoted to *The Journal*, Paul J. Spiegelman, another acquaintance of Tom's, Carl Tobias, a friend and former colleague of mine, and of course Coleen, who always seemed to find ways to say yes to everything asked of her. Needless to say, we were deeply gratified by the response of the authors who agreed to write for what we now knew would be an excellent first issue.

We wanted to use the first issue, as well, as a tribute to Chief Judge Richard Sheppard Arnold of the Eighth Circuit. We all greatly admired Judge Arnold and were persuaded that he deserved to be honored by *The Journal*. Not surprisingly, it was easy to get a strong line-up of distinguished jurists and lawyers to write tributes to Judge Arnold.

At this juncture in the development of *The Journal*, my role really became one of cheering on the editing and production processes. Most journals have extensive staffs, but this was not the case for *The Journal*. The work on those early issues was the result of long hours of labor on the part of Tom, Coleen, Melissa, Professor Lindsey Gustafson (who served as *The Journal's* first second-in-command to Tom), and a few other dedicated individuals, including Professor Theresa Beiner and a number of able students who worked behind the scenes checking citations and keeping track of business matters.

The first issue of *The Journal* finally was published. The memories of handling the first issue are ones that will remain with all who were associated in its founding. It was a tender moment. The response to that issue was also deeply heartening. We had obtained funds to send the issue to courts and judges throughout the United States. We received letters from throughout the United States and even some foreign countries praising *The Journal* and inquiring about subscriptions. As I recall, the Australian Supreme Court, for example, wanted copies for their library. In short, *The Journal* was launched in a way that exceeded everyone's expectations, although I had come, along the way, to have great faith in Tom, Coleen, Melissa, Lindsey and the team.

At this stage in its development, I became less involved in the work of *The Journal*. Tom, Coleen, Melissa and Lindsey would share what they were doing, and I would cheer them on, but my involvement was minimal, until I was able to persuade them to do a series of tributes to my former dean, and one of the most successful Supreme Court advocates in the twentieth century—Rex E. Lee, who had served as Solicitor General. These tributes appeared in Volume 3, Issue 2. That issue, like those that preceded it and those that have followed it, was superb.

Shortly after the publication of that issue, I moved to Memphis, Tennessee, largely for family reasons, and then from Memphis to Virginia and my current position. As I have written this essay, I have been awash with fond memories. As I reflect on my tenure as dean at the law school of the University of Arkansas at Little Rock, I have concluded that three of the most significant contributions made during my service were to encourage the founding of *The Journal*, to help in the initial planning for the William J. Clinton School of Public Service, and to preside over the naming of the Law School after William H. Bowen.

As wonderful as each of those accomplishments may be—and they certainly become more noteworthy with time—I am actually most grateful for the associations I enjoyed, and still enjoy in the form of fond memories, with colleagues and friends nourished during my service as dean. Just recently, one of my former students at UALR phoned to discuss the possibility of becoming a college president—a possibility that became a reality in his life. Another colleague recently called to tell me of the passing of a friend. Even though I am somewhat distant, I continue to rejoice in the Law School's successes and occasionally share the pain of my friends and colleagues in Little Rock. In that spirit, I close by saying thank you to Tom, Coleen, Melissa, and Lindsey for your efforts as founders and offer my heartfelt gratitude for all who made *The Journal* a reality, realizing that successes of this sort come into being through a crucible of sacrifice.

As I observe the continuing commitment to high quality in the pages of *The Journal*, I feel to compelled to add my vote of appreciation for the efforts of Jessie Wallace Burchfield, as an

Articles Editor, and especially to Nancy Bellhouse May, who now serves so ably as Editor of *The Journal*. When I left the Law School, I paused to look back and bow my head and express my thanks for the Law School and all the good that occurs within its four walls—not the least of which is the continuing contribution to the scholarly dialogue made by *The Journal of Appellate Practice and Process*.

