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Creating a Journal: Two Perspectives

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CREATING A JOURNAL: TWO PERSPECTIVES

Coleen M. Barger* and Lindsey P. Gustafson**

PERSPECTIVE ONE: THE MEDIUM

"I think we could start an appellate journal. A faculty-edited journal. No one else is doing anything like that." Tom Sullivan made the pitch to then-dean-candidate Rod Smith in an informal meeting in the faculty lounge that afternoon. I could tell Rod was intrigued, although whether it was the idea itself or Tom's enthusiasm that had gripped him, I wasn't sure. I like to think that one of the reasons Rod accepted our offer was that he wanted to be a part of that new journal and faculty enterprise.

But it is one thing to have (or to recognize) a good idea, and it is another thing to find a way to realize it. We were fortunate: Once he became dean, Rod supported the creation of *The Journal*, both financially and in terms of the academic recognition he could garner for a fledgling publication.

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There were so many things to decide in those early days:

- Who is our target audience? That was an easy question to answer, and we are glad that you are reading *The Journal* and this essay.

- How many issues can we realistically publish a year? Having a small staff, we figured two a year was doable; it was and is.

- Where will we find our articles? From our own experience looking for these kinds of articles in the general-interest law reviews, we knew that bringing such works together in a single publication would be a service to the bench, the bar, and the academy. We were sure that a journal like this would be the ideal vehicle for both theoretical and practical scholarship on the foremost issues facing appellate judges and practitioners. But this was in the days before BePress and Express*O*, and it wasn't as if we could advertise. We had to go begging—at first. Former Dean Larry Averill had served as Administrative Assistant to then-Chief Justice William Rehnquist, and so the Chief Justice gave us permission to publish one of his speeches in our first issue. We all called judges and professors we knew, and Tom even sweet-talked me into writing an article about an interesting development in "vendor-neutral" citation. Eventually, as authors discovered that publishing their work here assured them of getting their ideas before their most desirable readers, submissions started coming in over the digital transom. But when we were soliciting articles for that first issue, all we had was hope.

- How is this journal going to look? We wanted a journal with an attractive, reader-friendly layout. We were more concerned about having an issue that a busy judge or lawyer could toss in a briefcase for leisure (or airplane) reading than we were in conforming to the bulky approach so popular in the student-edited

reviews. Tom did a mock-up of the front cover that we still have on the wall of the Journal office. It had just the right look. I photographed one of the Art Deco-style vents on our beautifully renovated 1930s building and we used that as the graphic that marked the end of each article. That worked too. And the colophon on the back cover featured a digitally modified picture of the sculpture that graces the front lawn of the law school. It too was just the thing. These subtle markers of *The Journal*'s origin are still part of our distinctive look.

• Who will print this journal? This was a bigger question than many might realize, given the State of Arkansas's low-bidder preference. Rod authorized the use of private funds so we could hire Joe Christensen, Inc., the law-journal printer recognized as the best in the business. This is one of the wisest decisions we made.

• Speaking of private funds, how will we pay for this new journal? Williams and Anderson, a prominent Little Rock law firm, agreed to sponsor the first issue of the Journal; this generous gift got us off the ground. Rod persuaded the Donaghey Foundation to match gifts from other donors. Tom contributed proceeds from the Death Penalty Institute programs he organized and presented, and then he and I started the Eighth Circuit Appellate Practice Institute, and we contributed all our profits from those many programs to help fund *The Journal.*

• An enormous question: How are we going to staff this enterprise? What money we had needed to go into production costs and postage, not salaries. We were dependent upon faculty colleagues whose law review experiences were many years behind them. And unlike the staff members on typical law reviews, our staff wasn't going to be putting in a couple of years and then graduating. The commitment was long-term, so we were worried about asking our fellow faculty members

to help. But they came through when we needed them and have continued to support us.

- An even more enormous question: Who will negotiate the contracts with Christensen, with Westlaw and Lexis, with the authors themselves? We needed a professional editor. We advertised for the position of Executive Editor and were blessed beyond measure when a highly qualified Brigham Young graduate, Lindsey Gustafson, accepted our offer. Lindsey brought youthful (or was it naïve?) enthusiasm to our enterprise, and even better, she brought a merciless editor's pen.

- And the biggest question of all: Can we attract and keep an audience of justices, judges, advocates, and academics? To do that, we needed to publish meaningful essays and articles that were current, relevant, and readable.

Somehow it all came together. We identified our primary audience—every appellate judge in the United States (and we have since been fortunate to add many judges from around the world to our subscriber list). What appellate judges want to read, appellate lawyers will want to read too, so the American Academy of Appellate Lawyers and the ABA's Council of Appellate Lawyers became early supporters of *The Journal* and still furnish subscriptions to their members. Other appellate lawyers also subscribe, as do many court libraries, and of course *The Journal* is now available in most law school libraries, making it available to law students and law professors across the country.

PERSPECTIVE TWO: THE AUTHORS AND ARTICLES

It is a rare opportunity to be present at the birth of a new legal journal, especially a legal journal edited by experienced, dedicated faculty members. By the time I was hired by the law school to edit *The Journal*, the hard work of selling the idea of an appellate journal to the administration and to fundraisers was done, but there was still work that needed doing. I could, for

example, devote part of this essay to describing our initial efforts building the physical structure of *The Journal*—a long day spent cleaning out a storage room and converting it to an office; hours spent choosing paper type, font style and size, and cover color; and surprisingly quick decisions on author and publisher contracts. But the best story of *The Journal*'s beginning can be told through the contents of our first issue.

My first day on the job I was handed a list of essays and articles lined up for the inaugural issue that was a legal journal's jackpot. (I stared at the handwritten list so long I can still picture it.) Essays were promised and timely delivered by Chief Justice William Rehnquist; Judge Patricia Wald of the D.C. Circuit; Justice Stanley Mosk of the California Supreme Court; Judge Myron Bright of the Eighth Circuit; and Professor William Richman. Professor Carl Tobias contributed an article, as did Professor Paul Spiegelman; Brent Newton, a federal public defender; and our own Professor Coleen Barger.[1] A final, touching close to the first issue was a tribute to Richard Arnold for his service as Chief Judge of the Eighth Circuit.

This remarkable line-up was the most obvious benefit of working for a faculty-edited journal. Our faculty was heavily involved in building this inaugural issue, using their reputations and their influence to reach out to these authors, who then graciously agreed to participate. Although student-edited journals often receive strong faculty support too, this high level of faculty involvement in article solicitation, and its fantastic results, promised great things for this journal.

But having faculty editors not only increases the quality of the articles coming in, it changes the kind of editing that can be performed on articles. As we settled in to edit that first issue, it became clear that the editing was improved, if complicated, by our professional backgrounds and interests. In that first issue, Tom Sullivan, an experienced criminal defense attorney and the mastermind behind the journal, and I, fresh from a judicial clerkship and only three years out of law school, squared off over Paul Spiegelman's article, *Prosecutorial Misconduct in Closing Argument: The Role of Intent in Appellate Review.*

1. Authors are given the titles they held in 1999, when *The Journal*'s first issue was published.

Both of us recognized the promise of the article's thesis—that the law surrounding prosecutorial misconduct at trial lacks a coherent rationale and consistent doctrine and that it should include a consideration of the prosecutor's intent—but we differed on the structure and amount of detail necessary in an article intended to prove that thesis. Professor Spiegelman, who also has a practitioner's background, had filled the many footnotes with cases, some directly supporting the thesis, some providing interesting background, and some (in my estimation) exploring claims only tangentially related to the thesis. I grabbed my red pen and began cutting anything that looked to be off the direct path of a proof; Tom, an academic who is also a practitioner, understood the value of this research to the practicing appellate attorney, and wanted it all to stay in. Our back-and-forth edits, and justifications for those editing choices, filled folders, then notebooks, then a box, as we worked towards compromise—footnote by footnote and case by case.

The end product pleased us both, and its usefulness to appellate practitioners validates Tom's insistent inclusion of those research trails. And that validation itself reveals the wisdom of his insisting that *The Journal* be a faculty-edited publication. Students can be effective editors of an article's classic proof of a thesis—this is, after all, what they spend law school practicing—but faculty editors like Tom, who bring a vast substantive knowledge to an edit, are able to provide a level of informed review that student editors, with all their talents, cannot yet offer.

What a thrill to have been there at the beginning, and to see *The Journal* flourishing now just as we all knew it could.