Reflections on My Short Tenure as the *Iowa Law Review* Faculty Advisor

*Tung Yin**

If you were to create a timeline of the faculty advisors to the *Iowa Law Review* ("*ILR*"),[1] there would be legendary names like Willard "Sandy" Boyd, Bill Buss, Randy Bezanson, and Todd Pettys, who has held the position since 2001, with the exception of 2007 to 2009. For those years, I was privileged enough to serve as the faculty advisor. While my brief stint may appear as just a coffee break for Professor Pettys' marathon-like presence, I have vivid and warm memories from those two years, and indeed, had my wife and I not decided to move back to the West Coast, it's very likely that I would be playing faculty host to this Centennial celebration. I'm honored and delighted to be able to share those memories.

TAKING OVER AS FACULTY ADVISOR

One spring day in 2007, the outgoing Editor in Chief ("EIC") of the Volume 92 board, Ozan Varol, stopped by my office to ask if I would be interested in taking over as the *ILR* faculty advisor.[2] I agreed immediately. For one thing, my experience on the *California Law Review*, first as a member and then as a Notes & Comments Editor, was perhaps my top highlight of law school, and I still felt the respect and awe for an institution that had thrived for over 90 years.

Also, I felt a special bond with many of the Volume 92 board members. I had inherited Federal Courts from Professor Pettys the previous fall semester, and the EIC, a Managing Editor, and the entire Articles Department were all in the course, which had a total enrollment of under 20. There's nothing like

* Professor of Law, Lewis & Clark Law School. From 2002 to 2009, I was a law professor at the University of Iowa College of Law, and from 2007 to 2009, I was the faculty advisor to the *Iowa Law Review*.

1. *See* Willard L. Boyd & Randall P. Bezanson, *Ninety Years of the* Iowa Law Review*: The Personalities, Policies, and Events that Shaped an Enduring Tradition in Iowa Legal Education*, 91 IOWA L. REV. 1, 5–30 (2005); *see also* Willard L. Boyd & Randall P. Bezanson, *Iowa Law Review Centennial: Its Mission, History, and Future*, 100 IOWA L. REV. 455, 459 (2015).

2. By coincidence, or perhaps not, Ozan Varol now sits two doors up from me as a colleague at Lewis & Clark Law School.

the combination of a small course, the massive Hart and Wechsler casebook,[3] and arcane topics like congressional authority to strip federal courts of jurisdiction over hot button issues to forge that kind of special bond.

I had another link with those board members, as I had been serving as the Faculty Judicial Clerkship Advisor since 2005. I had observed *ILR* board members to be active and ambitious clerkship applicants, generally speaking, and the Volume 92 board was no exception. When all was said and done, they had locked up clerkships with judges from the Second, Eighth, and Ninth Circuits, the District of Columbia Court of Appeals, and district court judges, too.

The 2006–2007 academic year was also the one time during my Iowa career that I was on the Student Honors and Awards Committee. I rather enjoyed being on that committee, as it was a chance to hear about great things that Iowa law students were doing, and to advocate for campus-wide recognition of deserving students, which ended up being many of the Volume 92 editors whom I had gotten to know and whose accomplishments I had marveled at.

THE EIGHTH CIRCUIT SYMPOSIUM

The Volume 92 board laid the groundwork for the winter 2008 symposium, which was titled "Procedural Justice: Perspectives on Summary Judgment, Peremptory Challenges, and the Exclusionary Rule." Participants in the symposium included Suja Thomas (University of Illinois College of Law), Ed Brunet (Lewis & Clark Law School[4]), William Nelson (New York University School of Law), Camille Nelson (Saint Louis University School of Law), David Moran (Wayne State University School of Law), Albert Alschuler (University of Chicago Law School), and James Tomkovicz (University of Iowa College of Law). It fell to the Volume 93 board to host the symposium and edit the ensuing articles. It is a testament to the dedication and skill of those two boards that my primary contribution to the symposium consisted of moderating the lunch panel consisting of federal judges from Iowa, such as Eighth Circuit Judge Michael Melloy (J.D., University of Iowa College of Law, 1974).

Iowa law students have generally had opportunities to see federal judges, as the Eighth Circuit has regularly held oral arguments for live cases on campus, but I saw the lunch panel as offering a chance to see federal judges in—should I say—a less structured environment. To prepare for the panel, I tried to come up with questions and topic areas that I thought might stir up some spirited conversation among the judges. For example, given that a good number of students in the audience were at least thinking about applying for

3. RICHARD H. FALLON, JR. ET AL., HART AND WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM (5th ed. 2003).

4. Professor Brunet sits two doors down from me now.

clerkships, I asked the panel members what they thought of Judge Richard Posner's criticism that law clerks have contributed to what he saw as the regrettable practice of turning judicial opinions into mini-law review articles.[5] The most colorful personality that day was Judge Mark Bennett (Northern District of Iowa), who is known for his lengthy and painstakingly detailed (but not mini-law review) opinions. He jumped in, smiled broadly, and said, "Sounds great to me!" Needless to say, that was not exactly the response that I was trying to elicit.

Meanwhile, Judge Pratt (Southern District of Iowa) took advantage of another of my questions to bring up the recently decided case of *Gall v. United States*, in which the Supreme Court held that a sentence could not be presumed unreasonable solely because it fell outside the calculated federal sentencing guideline range.[6] This decision further unshackled district judges from the sentencing guidelines, a process that had begun with the *Apprendi–Blakely–Booker* trio of cases.[7] *Gall* was a case full of Iowa connections: the petitioner had pleaded guilty to participating in a drug distribution ring that operated when he was a student at the University of Iowa; the district judge who had sentenced him to three years of probation (as against a calculated sentencing range of 30 to 37 months) was Judge Pratt; and the Eighth Circuit panel that had reversed him included Judge Melloy. As I recall, Judge Pratt even had a slip copy of the Supreme Court opinion with him that day, which he waved with gusto.

The third panel of the symposium focused on the exclusionary rule. Jim Tomkovicz's contribution foreshadowed his subsequent book, *Constitutional Exclusion*,[8] but the most striking observation from that panel came from David Moran, who had argued the petitioner's case in *Hudson v. Michigan*.[9] At issue was whether the exclusionary rule applied when police officers obtained a valid search warrant but failed to comply with the knock and announce rule—that is, instead of waiting an appropriate amount of time after announcing themselves, the officers in this case opened the door almost immediately.

---

5. *See* RICHARD A. POSNER, THE FEDERAL COURTS: CHALLENGE AND REFORM (1996).

6. Gall v. United States, 552 U.S. 38, 41 (2007).

7. *Apprendi* held that any fact increasing a defendant's sentence above a statutory maximum had to be proven beyond a reasonable doubt to a jury. Apprendi v. New Jersey, 530 U.S. 466, 490 (2000). *Blakely* extended *Apprendi* to Washington's state sentencing guidelines, Blakely v. Washington, 542 U.S. 296, 305 (2004), and *Booker* followed suit with respect to the federal guidelines. United States v. Booker, 543 U.S. 220, 226, 243 (2005). However, *Booker* did not strike the guidelines down; rather, it held that district judges still had to perform an accurate calculation of the guideline range and to consider it before pronouncing sentence. *Id.* at 245–46.

8. JAMES J. TOMKOVICZ, CONSTITUTIONAL EXCLUSION: THE RULES, RIGHTS, AND REMEDIES THAT STRIKE THE BALANCE BETWEEN FREEDOM AND ORDER (2011). I highly recommend this book, not just because Jim is a good friend, but because I found it extremely helpful when I started teaching Criminal Procedure as a new professor at Lewis & Clark.

9. Hudson v. Michigan, 547 U.S. 586 (2006); James J. Tomkovicz, *Hudson v. Michigan and the Future of Fourth Amendment Exclusion*, 93 IOWA L. REV. 1819, 1821–35 (2008) (examining the majority, concurring, and dissenting opinions in *Hudson*).

Consistent with its post-Warren Court trend of reducing the exclusionary rule to a strictly deterrence-based remedy, the Court held that there would be no deterrent effect in excluding evidence obtained in violation of the knock and announce rule, as the officers had already obtained a warrant and were entitled to be in the home. Professor Moran began his article as follows:

> I have no idea whether my death will be noted in the *New York Times*. But if it is, I fear the headline of my obituary will look something like: "Professor Dies; Lost *Hudson v. Michigan* in Supreme Court, Leading to Abolition of Exclusionary Rule." The very existence of this Symposium panel shows, I think, that my fear is well-grounded.[10]

The exclusionary rule hasn't been abolished yet, but there certainly aren't any indications that it's due for large-scale revival any time soon; the Court has continued to limit its application to instances when it would achieve some deterrent effect, and when there would be no such perceived deterrence, it has refused to exclude evidence.[11] Yet, this symposium panel ably demonstrated the *ILR*'s ability to contribute to a real world issue in a way that was scholarly and relevant.

THE VOLUME 94 BOARD

Without a major symposium to prepare for, the Volume 94 board seemed to have as normal a time as could be expected, although, of course, in the world of law review publishing, normal is a purely relative term. One of the innovations of EIC Matthew Donnelly was arranging for law firms to sponsor source check nights, which resulted in greatly improved food options for the second-year law student members.

As I did with the Volume 93 board, I tried to play a supportive role with the Volume 94 board. On occasion, I dropped by the *ILR* office unsolicited to see if there was any advisor-like assistance I could provide, and on other occasions, after Federal Courts, the EIC or another board member would ask if I had a few minutes to offer some feedback on an issue they were dealing with, such as, for example, a difficult author. What made my job easy was that the board members had nearly always worked out the approach they wanted to take already; they were, I think, looking for a sanity check from me.[12] One of the unacknowledged values of the *ILR* board experience, I came to realize, was developing or honing the editors' effective, real-life problem solving abilities.

* * *

10. David A. Moran, *Waiting for the Other Shoe:* Hudson *and the Precarious State of* Mapp, 93 IOWA L. REV. 1725, 1726 (2008) (footnote omitted).

11. *See, e.g.*, Herring v. United States, 555 U.S. 135, 147–48 (2009).

12. Needless to say, they were always sane.

I hope these brief remarks convey a sense of the genuine affection that I felt for the Volumes 93 and 94 boards and members. It's no secret that the typical law professor enjoys teaching classes and writing scholarship but tends to look at service commitments as something to be tolerated. Being the *ILR* advisor, however, was anything but an imposition, and I will carry the fond memories of those two years to the end of my academic career.