

## JOURNALISM AND THE LAW

Catherine Crier<sup>†</sup>

### CONTENTS

I.	OUT OF THE LAW, INTO JOURNALISM.....	387
II.	THE STATE OF TELEVISION NEWS .....	389
III.	CHALLENGES FACING LEGAL JOURNALISM .....	391
IV.	SOLUTIONS AND PROPOSALS FOR THE FUTURE.....	396

I am an accidental journalist. As a child, I was inspired by great lawyers like Atticus Finch, as portrayed by Gregory Peck in *To Kill A Mockingbird*, or Clarence Darrow, as portrayed by Spencer Tracy in *Inherit the Wind*. These characters convinced me that lawyers were the noble guardians of the rule of law in our democracy. I wanted that job. Now, if you asked my mother, she would say I'd argue with a post and had to find a career that would pay me to do that. I like my story and I'm sticking to it!

Today, though, I am a journalist. I have spent more professional time with media reporters than court reporters. I am now with Court TV News and have a unique position from which to observe the American legal system and to speak my mind when I see trouble on the judicial horizon. As a lawyer, judge, and journalist, I try to be an honest broker that can offer criticism and helpful recommendations in an area that means so much to me.

### I. OUT OF THE LAW, INTO JOURNALISM

I wanted to be a lawyer from the time I was a kid. Heading off to college at sixteen, I focused on politics, history, and international affairs, in-

---

<sup>†</sup> Catherine Crier is the host of "Catherine Crier Live" and Executive Editor, Legal News Specials at Court TV. She has been an Emmy award-winning investigative journalist for ABC News and evening news anchor for both CNN and Fox News. She has also been a *New York Times* bestselling author. Prior to her career in journalism, the author was a Texas state district court judge, as well as a chief prosecutor and a civil litigator. The author would like to thank Craig Linder, Court TV's 2005 John H. Mason Fellow in Law and Public Service, J.D. candidate, University of Pennsylvania Law School, 2007, for his research assistance.

tending to pursue a career in international law. However, I began cutting law school classes to hear great final arguments at the Dallas County courthouse, and I found myself drawn into litigation. My first job as a lawyer was as a Dallas County Assistant District Attorney prosecuting crimes from muggings to murders. While working to protect our streets, I also learned about serious problems within the legal system. That early experience made me particularly attuned to the reality of justice in America.

As a prosecutor, I had few interactions with the local press. Occasionally, I would pick up a copy of the *Dallas Morning News* or *Dallas Times Herald* and see a story about some cases I handled; but I rarely spoke to reporters, either on or off the record. My job was to make my case in a court of law, not in the court of public opinion; I didn't believe in trying my case in the press. But there was another reason that I didn't speak with reporters—I just didn't trust them. I saw them as searching for the scandalous or titillating at the expense of the substantive; most legal coverage was too superficial for my tastes.

My study of the system continued as a corporate litigator from 1982 through 1984. In November of that year, I was elected to a civil trial bench, the 162nd District Court. As a judge, I believed my responsibility was to run a courtroom to protect the judicial process and the rights of the parties. I recognized the tenuous balance between the media's First Amendment right to observe and report, and a litigant's Sixth Amendment right to a fair trial. If the press had to wait on details to protect the integrity of a trial, so be it.

At the same time, I agreed with Supreme Court Justice Byron White's decision in *Cox Broadcasting Corp. v. Cohn*,<sup>1</sup> when he wrote:

Without the information provided by the press most of us and many of our representatives would be unable to vote intelligently or to register opinions on the administration of government generally. With respect to judicial proceedings in particular, the function of the press serves to guarantee the fairness of trials and to bring to bear the beneficial effects of public scrutiny upon the administration of justice.<sup>2</sup>

A Christmas party in 1988 provided the springboard for my leap from law to journalism. A few days after that event, another partygoer, a former recruiter for CBS News, called to ask if I might be interested in doing a political issues show. I said "I can take a joke with the best of them, so sure." I made a test tape, and within six months, I was hired as the co-anchor of

---

1. 420 U.S. 469 (1975).

2. *Cox Broad.*, 420 U.S. at 492.

CNN's premiere evening newscast. Since that propitious moment, my journalism career has taken me to four television networks as a news broadcaster, political anchor, documentary correspondent, and talk show host. Today, I have the opportunity to examine the nation's pressing legal issues on my Court TV News program, "Catherine Crier Live," and wonderfully, I have no pressure from corporate executives to appease political sensibilities or deal solely with the "issue of the day" when I report on current events.

## II. THE STATE OF TELEVISION NEWS

Having entered this profession in an unusual fashion, I may have some nontraditional attitudes about the television news business. I have been very critical of the quality of reporting and the many pressures on television broadcasters to succumb to financial and political considerations in a manner that subverts the serious purpose of the Fourth Estate. The long-time broadcast evening news shows deliver about twenty-two minutes of news in their half-hour windows. That is equivalent to less than two-thirds of a single page of the *New York Times*. Soaring costs and ratings pressures have worked to water down the substance, as producers push reporters to deliver instantaneous information without time to digest or investigate and to emphasize those stories that people will watch, regardless of their importance.

Television is a binary medium. It does a better job with "good and bad," "right and left," "pro and con," rather than the legitimate complexities that attend important issues. Often times, balanced reporting means including sound bites from the far left and right rather than emphasizing those voices that put the subject in appropriate context. This would be fine if television news was merely an adjunct to other reporting. For most people, however, it is their primary source of information and public debate. The more complex the topic, the less likely television will handle it in a meaningful manner.

The horse race approach to critical issues has been devastating to substantive reporting. Arianna Huffington recently logged an entry to her website, the *Huffington Post*, about an episode of NBC's "Meet the Press."<sup>3</sup> She described the "debate" about then-current Supreme Court nominee Harriet Miers between the Southern Baptist Convention leader, Richard

---

3. Arianna Huffington, *Russert Watch: 'Meet The Press' Running on Fumes*, THE HUFFINGTON POST, at [http://www.huffingtonpost.com/arianna-huffington/russert-watch-meet-t\\_b\\_8582.html](http://www.huffingtonpost.com/arianna-huffington/russert-watch-meet-t_b_8582.html) (Oct. 9, 2005).

Land, and Republican firebrand, Pat Buchanan.<sup>4</sup> This was not an illuminating conversation about Miers' legal qualifications or judicial philosophy. Instead, the country was treated to another rant about her religious affiliation and possible judicial take on abortion. As Huffington noted:

For the record, Land's "prediction" is that there will be at most a one percentage point "disagreement rate" between Miers and [Chief Justice John] Roberts after her first term. Where did [Land] get that assurance? From God? From the Holy Ghost? From Karl Rove? (a.k.a. the new Holy Trinity.) It's unclear, because Tim [Russert] couldn't be bothered to ask.<sup>5</sup>

Her real bullets were saved for the roundtable discussion that followed. With a panel of experts including David Broder, E.J. Dionne, and Ron Brownstein, there were many critical topics to address.<sup>6</sup> Huffington described the interchange:

Small matters like the war and Plamegate each got one very brief mention. . . . So what did they talk about for twenty minutes? Judging by Tim [Russert]'s questions, the biggest issue facing our country right now—a country currently at war . . . , a country about to undergo an unprecedented rebuilding effort, a country with historic levels of debt, a country with an administration that's imploding from its own hubris, incompetence, and cronyism—is what "the fallout" will be on the 2006 election with special reference to the turnout on the right.<sup>7</sup>

Over the last twenty-five years, our television news sources have expanded dramatically. Yet despite the addition of three major cable news channels and myriad other outlets, the depth and breadth of coverage has not expanded. On any given day, these organizations will cover the same three or four stories *ad nauseam*, ignoring the countless other critical stories at home and around the world. Constrained by shrinking resources, an almost hourly news cycle, and enormous pressure to "get it first," news organizations are compromising quality for immediacy and commercial appeal.

With our own shortened attention spans and a desire to be "entertained" by even the most important reporting, we have helped to create news that is better labeled "infotainment." Cable news shows thrive on shouting matches rather than intelligent conversation. I have had guests

---

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

ask “how much fighting do you want?” when they join me on set. News alerts about critical events like car chases on the Los Angeles freeway garner hours of soaring ratings. Ted Koppel packed up his cameras and left our national presidential conventions in protest over the Kabuki theater that was playing out in prime time.

Finally, the consolidation of news outlets under large corporate umbrellas adds an ominous concern to the equation. When a news organization negotiates for interviews by offering up TV, movie, and book deals to the principals, we should get irate. When corporations are major political contributors lobbying for their financial concerns on Capitol Hill, when a single entity controls radio, newspaper, and television outlets informing large segments of the country, when our only public broadcasting organization, PBS, is run by one party’s political cronies, we should be very afraid. The independence of our news gathering process, in my opinion, is being seriously compromised. Obviously, the American people are the ultimate losers in this picture, but what about the legal system?

### III. CHALLENGES FACING LEGAL JOURNALISM

Many of the problems in traditional journalism now infect legal reporting. Today, the quality of legal journalists is, perhaps, as good as it has ever been, but the pressures they feel to simplify, to accommodate political power, or even to incite rather than inform, means that the American public receives an incomplete, even inaccurate, portrait of the legal and political system in a way that injures our entire democracy.

Attorneys understand the intersection of law and journalism. Many law and journalism schools now offer courses on this subject, such that their graduates will recognize and integrate this reality into their practice. When Bob Bennett was hired to represent President Bill Clinton in the Paula Jones debacle, the *Washington Post* quoted a White House official as saying that this was “part of an aggressive public relations and legal strategy” to fight the charges.<sup>8</sup> “Bennett is . . . savvy about both the law as well as the ways of Washington and the press. . . . He brings a lot of assets to this type of case.”<sup>9</sup>

The White House was simply acknowledging reality. Today, attorneys handling relatively minor trials or legal altercations will often hire public relations personnel to “spin” issues in a favorable light. Even judges

---

8. Michael Isikoff, *Clinton Hires Lawyer as Sexual Harassment Suit Is Threatened; Bennett Opens an Aggressive Campaign on Public Relations and Legal Fronts*, WASH. POST, May 4, 1994, at A1.

9. *Id.*

are doing so when a case with public appeal pops up on the docket. While this tactic may protect parties, or politicians, or the courts, it does not encourage better coverage of the stories. Given the reporting constraints I mentioned earlier, journalists often rely on these sources in lieu of more in-depth research of the facts and circumstances.

The stories that play out, particularly on television, are overly simplified and often described in terms more appropriate to a horse race or political election. Most sensational courtroom battles fall into this category. Whether it be the celebrity cases of O.J. Simpson or Michael Jackson, or the more intricate prosecution of a corporate CEO, most stories describe who got the “dig” in on cross-examination or how well the witnesses “played” before the jury on any given day. But this type of reporting infects all aspects of legal coverage.

Take the Supreme Court’s decision in *Gonzales v. Raich*,<sup>10</sup> in which a six-to-three majority determined that Congress did not exceed its powers in passing a federal law banning the intrastate cultivation and possession of marijuana.<sup>11</sup> To lawyers, professors, and others who closely watch the court, the case was a fascinating debate over federalism, states’ rights, and the limits of the Constitution’s Commerce Clause. For many journalists, though, *Raich* was simply a battle between liberal advocates of medical marijuana and those conservatives who believe such use is a slippery slope to legalization.<sup>12</sup>

Less visible were the stories and editorials that focused on the legal considerations in the case; namely, the extent to which the Commerce Clause allows Congress to regulate the purely local activity involved. Most of the coverage was no different than that analyzing congressional politics or sports. The winners in *Raich* were law-and-order types; the losers were NARAL and company. Often minimized was any serious discussion of whether the Controlled Substances Act was outside the scope of Congress’ authority, or the value of using the states as laboratories of democracy.

Similarly, television and newspaper reporters moved into horse race mode in their coverage of the high court vacancies this summer. First, reporters jockeyed with each other to be the first to report that one of the Supreme Court justices would soon step down. Normally, competition makes journalists better, but in this case, only one well-known commentator, William Kristol of the *Daily Standard*, accurately reported that Justice

---

10. 125 S.Ct. 2195 (2005).

11. *Raich*, 125 S.Ct. at 2201.

12. See, e.g., *Marijuana Is No Rx*, INVESTOR’S BUS. DAILY, Dec. 3, 2004, at A16; *NewsNight with Aaron Brown* (CNN television broadcast, June 6, 2005) (featuring interview with U.S. Drug Enforcement Agency Administrator Karen Tandy).

O'Connor would retire from the court.<sup>13</sup> Most of the pundits focused on Chief Justice Rehnquist. Second, Justice O'Connor's announcement produced little but a flood of political coverage. In much the same way that reporters sought to learn who then-Governor Bush would select as his vice presidential running mate in the 2000 presidential election, they jostled for the claim of "best picker" for the next court slot.<sup>14</sup> However, just as they were caught off-guard by the selection of Dick Cheney, most reporters were surprised when President Bush selected Judge John G. Roberts Jr. as his nominee to the Supreme Court.<sup>15</sup>

Few stories plumbed the important depths about the effect his appointment would have on the nation as a whole, but we certainly learned about the political realities of the Roberts nomination: Would Senate Democrats object? How would the President's conservative base respond? Are female voters upset that the President did not pick a woman to replace Justice O'Connor?<sup>16</sup> If issues were discussed, they rarely moved beyond abortion. The major economic, regulatory, and executive power concerns, to list but a few, were rarely tackled, although they will affect every single American in their daily lives.

Lyle Denniston, who runs the *SCOTUSblog* website for Washington litigation firm Goldstein & Howe, said it best to CNN:

Editors of major newspapers and other news organizations have already turned this story over to their political reporters, and the political community . . . [is] going to cover this as if it were a sporting contest, or perhaps slightly more dignified, a presidential contest, with all the focus on which interest group is going to prevail and which not. The substance and the significant institutional and historic importance of this story I'm afraid is going to get lost in the horse race coverage.<sup>17</sup>

Of course, the American media has long performed a less-than-stellar job when covering courts at all levels, including the Supreme Court. A 1989 survey by the *Washington Post* revealed that only nine percent of re-

---

13. William Kristol, *O'Connor, Not Rehnquist? And Gonzales to Replace O'Connor?*, THE DAILY STANDARD, at <http://www.weeklystandard.com/Content/Public/Articles/000/000/005/758akmdq.asp> (June 22, 2005). It is worth noting that Kristol predicted in the same article that President Bush would nominate Attorney General Alberto Gonzales to replace O'Connor. Kristol did, however, prominently label both the O'Connor and Gonzales predictions as speculation.

14. See Sarah Wyatt, *'Rampant' Speculation Pointed to Clement*, N.Y. SUN, July 20, 2005, at 5.

15. *Id.*

16. See, e.g., *Larry King Live* (CNN television broadcast, July 19, 2005).

17. *Reliable Sources* (CNN television broadcast, July 3, 2005).

spondents knew that Justice Rehnquist served as the Court's Chief Justice, and less than one percent of respondents knew that John Paul Stevens served as one of the Court's eight Associate Justices—yet fifty four percent of respondents knew that Judge Joseph Wapner presided over the television courtroom on “The People's Court.”<sup>18</sup> Imagine, though, what those numbers might look like if reporters told the public how the courts really impacted their daily lives in the world of individual rights, property issues, or workplace concerns. Maybe I am too optimistic, but I would like to believe those numbers would improve.

One of the most incendiary issues in recent years is the debate over inclusion of “under God” in our Pledge of Allegiance. Ultra-conservatives have used a ruling by the Ninth Circuit Court of Appeals in *Newdow v. United States Congress*<sup>19</sup> to rally supporters in their assault on so-called activist judges. It would be invaluable for reporters to explain the history of the Establishment Clause and the rulings that gave rise to this controversial decision. People should understand how the courts have long struggled with the so-called “wall” between church and state, how rulings have been weakening this partition for many years now, and how the Supreme Court's current use of a “neutrality” standard has dramatically shifted the effect of legal decisions in this area. When the High Court refused to hear the *Newdow* appeal due to lack of standing, most people did not understand the consequences—that the lower court's decision would stand, and thus bind further decisions in the Ninth Circuit. So when the second case with new litigants began to move through the courts, many people believed that more radical judges were attacking their cherished Pledge. Few people knew that Judge Lawrence Karlton did *not* rule that the Pledge was unconstitutional, nor did they learn that he was required to follow existing precedent and enter a new order preventing the Elk Grove Unified School District (and others) from requiring the plaintiffs' children to recite the Pledge.<sup>20</sup>

I anticipate the Supreme Court will grant *certiorari* in this new case and will likely find the words to be a ceremonial reference to religion within an otherwise patriotic pledge. However, few reporters (and almost no television journalists) bothered to explain the progress of these cases and the present constraints on federal judges within the Ninth Circuit. By not doing so, the latest decision made headlines as another example of “out-of-control” judging by the far left, an inappropriate conclusion at best.

---

18. Richard Morin, *Wapner v. Rehnquist: No Contest; TV Judge Vastly Outpolls Justices in Test of Public Recognition*, WASH. POST, June 23, 1989, at A21.

19. 292 F.3d 597 (9th Cir. 2002).

20. See generally *Newdow v. Congress of the United States*, 383 F. Supp. 2d 1229 (E.D. Cal. 2005).

The news media would better serve its readers if journalists acknowledged that the decisions issued by courts at all levels do not necessarily break down along the narrative lines that serve as a template for political stories.

Ironically, even when horse race reporting is somewhat appropriate, members of the media still do the audience a disservice. In their coverage of Congress, state legislatures, and administrative agencies—the very institutions that create the laws and rules at the core of most legal disputes—journalists often fail to explain the real issues.

The controversy over recent federal legislation overhauling our bankruptcy laws is a good example. For a time, this critical story became, ironically, an abortion debate.<sup>21</sup> New York Senator Charles Schumer sought an amendment that would prevent violent anti-abortion protestors from discharging fines in bankruptcy court that arose from anti-abortion activities.<sup>22</sup> Reporters focused on this hot topic while avoiding the drier, but more critical effects of the primary legislation. Lost, at least initially, was the true impact of this bill on the average American. There was a strong paternal component to the debate, as lawmakers saw themselves restoring the moral character of an America that had allowed itself to slip too far into debt. More importantly, the bill rewarded credit card companies at the expense of people that, most often due to job loss or medical emergencies, needed the ability to restructure or discharge their debts in bankruptcy court.<sup>23</sup> Would the resulting legislation have been different if the media really exposed the debate and the real interested parties? We will never know.

Also, the legal issues that reporters and editors should be investigating do not just exist in courthouses and capitols. There are good, substantive stories generated by the thousands of state and federal regulatory agencies that are rarely covered. Each day, regulators determine consumer safety standards, how clean our air and water should be, even what the proper balance is between liberty and security. Over the last few decades, however, coverage of administrative agencies has declined precipitously. Once, teams of independent reporters covered this beat, but now, just the occasional wire service reporter or trade-publication journalist bothers to chronicle these decisions.

The Department of the Interior is a superb example of this trend. The agency controls 500 million acres of public land and oversees federal agencies like the U.S. Fish and Wildlife Service and the Bureau of Land Man-

---

21. David Espo, *Vote Suggests Abortion Shift*, PITT. TRIB. REV., Mar. 9, 2005, available at 2005 WLNR 3614646.

22. *Id.*

23. Judy Holland, *Senate Republicans are Ready to Make it More Difficult to Use Bankruptcy Laws to Erase Debt*, HOUS. CHRON., Feb. 14, 2005, at 5.

agement. News organizations used to assign reporters to cover the actions of this sprawling agency. Now, none of them do.<sup>24</sup> This is now the status quo across the spectrum of federal agencies. What is more, as with Congress and the courts, when journalists do cover these institutions, they focus solely on the superficial winners and losers in a regulatory dispute rather than on the backroom players, who, often with covert interests, manipulate the system or the very real long-term effects of the rule-making process.

#### IV. SOLUTIONS AND PROPOSALS FOR THE FUTURE

The political and economic pressures facing journalists mean that reporters must become more creative in informing their audience; they must find ways to present important information in a manner that will compel viewers to choose real news over celebrity gossip. It is a reporter's job to translate issues into stories that are engaging and meaningful to their audience.

Of course, responsibility must be shared. Judges, lawyers, and courthouse staff rarely make a concerted effort to encourage honest coverage of their activities. While most courts (with the possible exception of the Supreme Court) are not altogether hostile to media coverage, they could take significant steps toward helping reporters cover assigned cases.

For instance, too many court public information officers do little more than provide reporters with case names and docket numbers. For a reporter who has no legal training or background in the field, it is all but impossible to make sense of a criminal indictment or civil complaint. Instead, the court officials charged with working with the media should take time to explain to reporters the various steps in a case, what they mean, and what is likely to follow. Courts must make it easier for reporters to obtain the primary documents in a case, and staffers should realize that reporters generally work under deadlines that are hours or minutes away—not days. Opinions, briefs, and schedules should all be easily accessible. The online Public Access to Court Electronic Records (PACER) service from the Administrative Office of the United States Courts is a promising step in this direction, and all state and local courts should consider creating similar systems.<sup>25</sup>

Judges—particularly those sitting on the Supreme Court—do not make it easy to cover their institutions.<sup>26</sup> Yet the judiciary's reticence is no

---

24. See John Herbers & James McCartney, *The New Washington Merry-Go-Round*, AM. JOURNALISM REV., Apr. 1999, at 50; Lucinda Fleeson, *Who's Got The Beat?*, AM. JOURNALISM REV., Oct. 2002, at 26.

25. The PACER Service Center is available at <http://pacer.psc.uscourts.gov>.

reason for reporters to ignore the substantive issues in favor of the political results of those decisions. Indeed, at least one study has concluded that the more reporters seek to cover the courts, the more likely they are to obtain cooperation from lawyers and judges.<sup>27</sup> As we look to the future of legal journalism, we must collectively acknowledge that there is a problem here; Americans are not getting the sort of compelling, informative, substantial news coverage of the legal system that they need and deserve. Journalists who regularly cover courts and judicial proceedings must focus more on the legal matters at issue and less on the easy horse race analysis of superficial winners and losers. It matters not whether the defense team had a good day or a bad day, or what hairstyle the district attorney has chosen; instead, reporters should look at the larger picture to explain to their audience how the legal system affects their lives.

Coverage that focuses on the theater of the courtroom rather than the substance of the case fails Americans for two reasons. First, the adversarial process is reduced to a sporting event, in which personal antics become fodder for chattering commentators who are more akin to ESPN sportscaster Linda Cohn than *New York Times* Supreme Court reporter Linda Greenhouse. Americans then view our courts as a perverse form of entertainment, rather than a hopefully fair and civil means of dispute resolution. Second, a focus on the legal play rather than the issues at stake deprives Americans of the important education that news coverage should provide.

Actually, journalists should also focus on important legal issues long before they reach the courtroom or a vote in Congress. By nature, reporters look for conflict, for clashes between ideas, between people, and between institutions. After all, consensus is rarely news. Yet it is necessary to scout concerns on the horizon, before they are the subject of every headline and talk show. That means focusing on matters as the problems arise and using the power of the press to elevate public attention before a crisis or conflict emerges. Following legislation as it moves through the governmental process, covering activities in the countless state and federal agencies whose rules control much of our daily lives, and highlighting concerns within the traditional legal system are all necessary steps to effectively report on law in America. It may be tough to sell an editor or producer on a story that flies under the radar; that lacks “heat” in more journalistic jargon.

---

26. Recall Supreme Court Justice David Souter’s comments in 1996. The case against permitting cameras into courtrooms was “so strong . . . that I can tell you the day you see a camera come into our courtroom, it’s going to roll over my dead body.” *On Cameras in Supreme Court, Souter Says, ‘Over My Dead Body’*, N.Y. TIMES, Mar. 30, 1996, § 1, at 24.

27. RICHARD A. STACK, COURTS, COUNSELORS & CORRESPONDENTS: A MEDIA RELATIONS ANALYSIS OF THE LEGAL SYSTEM 83 (1998).

But early, consistent coverage of these issues is mandatory if we are to encourage an informed citizenry to engage in meaningful public debate before the politicians and lawyers take control.

Editors and producers also have a responsibility to give reporters the time, space, and resources they need to adequately cover the nation's justice system. By giving their reporters such support, editors and producers will do more than better serve their community. Studies of newspapers have shown that readers flock to the media outlets that they find most credible and thereby reward newspapers that have made a commitment to quality journalism with higher circulation.<sup>28</sup> By improving the quality and coverage of their journalism, newsroom executives will also improve their bottom line.<sup>29</sup> By improving the resources dedicated to coverage of the legal system, editors and producers may truly be doing well by doing good.

One of the best suggestions for improving media coverage of the legal system has come from Ronald T.Y. Moon, the Chief Justice of the Hawaii Supreme Court. In a 2004 speech to the Honolulu Community-Media Council, Chief Justice Moon called on courts and the media to build a partnership to improve public knowledge of the justice system.<sup>30</sup> Under his proposal, judges should provide the public and reporters with more information about judicial proceedings and court procedures, and reporters and editors should make a greater effort to ensure that the public understands not only the actions a court takes but the reasons why it does so.<sup>31</sup> Moon's proposal is a sensible one that courts would do well to implement. The challenges facing legal journalism today are as frustrating to court officers whose work is scrutinized as to the journalists who generate the coverage. Only if these two groups work together to build a meaningful partnership will we be able to tackle these troubling issues.

Finally, let's be clear—this is not a conversation solely for lawyers and journalists. Americans have a responsibility here, too. Our founding fathers devised a government that required engaged citizens. Remember the exchange between a woman who approached Benjamin Franklin as he emerged from the Constitutional Convention in 1787? She asked him, "What type of government . . . have you delegates given us?" He simply replied, "A republic, madam, if you can keep it."<sup>32</sup>

---

28. See Philip Meyer, *Finding the 'Sweet Spot'*, POYNTER ONLINE, at [http://www.poynter.org/content/content\\_view.asp?id=29042](http://www.poynter.org/content/content_view.asp?id=29042) (Apr. 9, 2003).

29. *Id.*

30. Ronald T.Y. Moon, *Together, Courts and Media Can Improve Public Knowledge of the Justice System*, 87 JUDICATURE 205, 205-06, 260-61 (2004).

31. *Id.*

32. WALTER ISAACSON, BENJAMIN FRANKLIN: AN AMERICAN LIFE 459 (2003).

2006]

**Journalism and the Law**

399

To keep this magnificent democracy, we must stay informed about the issues and controversies that face our nation, whether they arise in Congress, the courts, or our communities. It is tempting to fall for bread and circuses, to become captivated by the travails of starlets and singers, but it is the serious social, legal, and political challenges that shape the nation we have today and the one we bequeath to the next generation. Americans must insist that journalists focus less on the tantalizing tidbits, or the loud debates from the right and left that offer no substance or meaningful resolution, and we must require legitimate coverage of important matters rather than the political winners and losers of the day. And critically, we must shoulder our duty to become informed citizens by actually paying attention. When journalists heed this request and deliver real information, we should appreciate such work by reading and watching the reporting. Without our personal input, which requires both attention and action, we cannot sustain the system of laws and government that so many have fought and died to provide to us. It is a small price to pay for the rule of law and for a democracy that remains the envy and dream of people the world over.