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## Setting the Docket: News Media Coverage of Our Courts – Past, Present and an Uncertain Future

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## Setting the Docket: News Media Coverage of Our Courts – Past, Present and an Uncertain Future

*Gene Policinski\**

News reporting on the business of the courts and judiciary has a long history – and an uncertain future.

Reporting on the courts has changed with the times, technology and tastes of the American press and of the public – the latter being the ultimate target of reports on the functions and the institution of our judicial system.

News coverage of judicial proceedings at all levels, nationwide, may well have peaked – in quantity, quality and reach – in the early 1990s, when a declining economy kicked off dramatic cutbacks in newspaper news staffing, reductions later amplified by the drop in the news media’s own financial models.

At the outset, it’s appropriate to note that this seminar and subsequent series of articles in the *Missouri Law Review* is intended to explore the legacy of quality, clarity and breadth of Anthony Lewis, the longtime *New York Times* reporter and columnist who died in 2013.

A legendary figure in legal affairs journalism, Lewis covered the U.S. Supreme Court for *The New York Times*, and in addition to his Pulitzer Prize winning newspaper work, he published seminal books on landmark cases and issues stemming from those reports, including *Gideon’s Trumpet* and *Make No Law*.<sup>1</sup>

To be sure, news coverage of the nation’s premier court, the U.S. Supreme Court, continues at a high level. Most major news operations continue to staff the Court on a regular, if not daily, basis. Reports on major decisions are virtually instantaneous on multiple news platforms, and the quality of those reports remains high. But apart from staffing and news reports devoted to the ninety or fewer opinions issued each year by SCOTUS (the industry acronym for the Supreme Court of the United States), there has been a steady erosion of the amount of staff, staff time, and news coverage devoted to the

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1. Bryan Marquard, *Anthony Lewis, Winner of Two Pulitzers, Dead at 85*, BOS. GLOBE (Mar. 25, 2013), <http://www.bostonglobe.com/metro/2013/03/25/former-new-york-times-columnist-anthony-lewis-dies-winner-two-pulitzer-prizes/ZURycIZ30IG-VrY1pg3nSNI/story.html>; see ANTHONY LEWIS, *GIDEON’S TRUMPET* (1964); ANTHONY LEWIS, *MAKE NO LAW: THE SULLIVAN CASE AND THE FIRST AMENDMENT* (1991).

courts at all levels in newspapers – traditionally the source of such news for the general public.

Middle-sized newspapers that once had more than one reporter covering local, state, and federal courts now are more likely to have reporters occasionally assigned to cover specific trials or other proceedings.<sup>2</sup> Where once “beat” reporters developed over time the knowledge, sources, and trusted contacts in courthouses to improve their reports, reporters now “parachute” into courthouses with little preparation and no opportunity to cultivate relationships and perspective.

Still, all is not lost. The double-barreled shock of the unprecedented drop in staffing and the rise of new technology replacing the century-old printing press and paper product also have provided new opportunities to rethink the methods of coverage and the nature of the court and free press relationship to reach the common goal of a better-informed public.

Legal blogs and bulletins fill some of the gap, at least at the national level. But we’re in transition from a system of news coverage in place for nearly a century to . . . well, the unknown.

## I. HOW WE GOT HERE

On August 4, 1735, the printer of the *New York Weekly Journal*, John Peter Zenger, was brought to trial on a charge of seditious libel.<sup>3</sup> The crown’s prosecutor argued that publication alone was sufficient to convict – a long-standing precept of English law.<sup>4</sup> Zenger admitted publishing stories that criticized the governor of New York, but maintained that they could not be libelous unless proven false.<sup>5</sup> A jury agreed with the defendant.<sup>6</sup>

Zenger’s own newspaper first reported the verdict in the *New York Weekly Journal* of August 11, 1735. There was a small printers note near the end of the final column on page four: “The Printer, now having got his liberty again, designs God willing to Finish and Publish the Charter of the City of New York next week.”<sup>7</sup>

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2. See generally Joshua Gerstein, *Have the Media Stopped Covering Courts?*, CRIME REP. (Nov. 1, 2012, 4:26 AM), <https://www.prisonlegalnews.org/news/issue/24/3/#article-16450> (discussing the general decline of media coverage of the courts and providing specific examples).

3. Elizabeth Samson, *The Burden to Prove Libel: A Comparative Analysis of Traditional English and U.S. Defamation Laws and the Dawn of England’s Modern Day*, 20 CARDOZO J. INT’L & COMP. L. 771, 779 (2012).

4. See Aaron T. Oliver, *Jury Nullification: Should the Type of Case Matter?*, 6-WTR KAN. J.L. & PUB. POL’Y 49, 51 (1997).

5. Samson, *supra* note 3, at 779-80.

6. *Id.* at 780.

7. Steve Goldman, *The Acquittal of John Peter Zenger: The First, First Report*, HISTORYBUFF.COM, <http://www.historybuff.com/library/refzenger.html> (last visited Nov. 6, 2014).

The *Journal* of August 18, 1735, carried a front-page story with details of the trial, and the notation that “*The jury returned in Ten Minutes, and found me Not Guilty.*”<sup>8</sup> From a Twenty-First Century perspective, one may note that Zenger’s second report also effectively produced the first news media “Tweet” – the succinct closing item comes in at just fifty-five characters.

Fast-forward a half-century to the Federalist Papers, which Alexander Hamilton, John Jay, and James Madison wrote under pseudonyms as the new nation was debating how best to govern itself.<sup>9</sup> In Federalist No. 83, the author, later identified as Hamilton, makes a case to fellow citizens against the idea of civil trials by jury.<sup>10</sup>

If Zenger gets faux credit for the first Tweet, perhaps Hamilton and his colleagues – by including the courts in their seminal Federalist discussions – can be credited with one of the earliest examples of “blogging” about the courts. The Federalist Papers were intended to shape opinion, not to relay news of the day-to-day business of the judiciary.

In the first decades following the adoption of the U.S. Constitution in 1787 and ratification of the Bill of Rights in 1791, what we would call “hard news coverage” of most subjects was limited by several factors – but mainly by the very purpose of publishing them.

Most newspapers well into the 1830s were more journals of opinion than the news item-focused reports of today.<sup>11</sup> Reporting on events often came in the form of reprints of highly-personalized letters, or in vitriolic opinion pieces targeting political opponents of the editor or of the paper’s financial backers.<sup>12</sup>

As cities grew in size, and the telegraph allowed for timely transmission of correspondents’ accounts, newspapers moved from weekly to daily in major cities.<sup>13</sup> The scope of “news” widened to include commerce, then national events – most significantly, news around the Civil War. In the latter half of the nineteenth century, so-called “penny dailies” emerged in the largest cities, with sensationalized news reports of crime helping drive circulations to record heights.<sup>14</sup>

Much of the news of the courts initially was taken in first-hand by the public itself. “From colonial times to the early 1900s, Americans routinely

8. *Id.* (internal quotation marks omitted).

9. See *The Federalist by Alexander Hamilton, James Madison, and John Jay*, SAGAMORE INST. (Aug. 29, 2013), <http://www.sagamoreinstitute.org/library-article/the-federalist-by-alexander-hamilton-james-madison-and-john-jay/>.

10. See THE FEDERALIST NO. 83 (Alexander Hamilton).

11. See THE OXFORD HANDBOOK OF NINETEENTH-CENTURY AMERICAN LITERATURE 311-12 (Russ Castronovo ed. 2012).

12. THE CONCISE PRINCETON ENCYCLOPEDIA OF AMERICAN POLITICAL HISTORY 398-99 (Michael Kazin et al. eds. 2011).

13. THE OXFORD HANDBOOK OF NINETEENTH-CENTURY AMERICAN LITERATURE, *supra* note 11, at 312.

14. Mitchell Stephens, *History of Newspapers*, N.Y. UNIV., <https://www.nyu.edu/classes/stephens/Collier%27s%20page.htm> (last visited Nov. 9, 2014).

sat in the back of courtrooms watching the day-to-day developments of the latest criminal and civil cases. They headed to the courthouse for the same reason people head to movie theaters today – for entertainment,” wrote Debra Baker in a 1999 report published by the American Bar Association (“ABA”).<sup>15</sup> But as newspapers presented more news of court activities driven by sensational crimes or legal items involving business, information from the courts themselves about their workings was scarce or non-existent.

According to a report by the Federal Judicial Center,

[p]rior to the establishment of the Department of Justice in 1870, the federal government did not regularly collect data on caseloads in the federal courts. During the first 80 years of the federal government, the Congress or the executive branch only occasionally initiated surveys of the business of the federal courts throughout the nation.<sup>16</sup>

Such reporting began with relatively simple statistical submissions.

In December 1801, at the request of President Thomas Jefferson, Secretary of State James Madison sent to Congress the first report of nationwide federal caseloads. . . . Over the next 70 years, usually in response to resolutions of the Senate or the House of Representatives, the secretary of state or the secretary of the interior prepared reports on the business of the federal courts.<sup>17</sup>

The Center’s article notes that “[i]n 1859, the Department of the Interior, which then provided administrative support for the federal courts, on its own initiative distributed interrogatories to court officials to determine caseloads and other court business conducted in 1857 and 1858.”<sup>18</sup> But the report acknowledges that the clerks, marshals, and district attorneys of the time, with little administrative support, often provided incomplete data.<sup>19</sup>

With the rise of mass media, in the form of big city daily newspapers in the late 1800s and early 1900s, came the flowering of news media coverage of the public business of the courts – trials and their outcomes. A major signature of that news coverage still exists today, the oft-tagged “Trial of the Century,” used when a case combines multiple factors that may include sex, murder, money, spectacular venues and elite or famous victims or defendants.

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15. Debra Baker, *Disorder in the Court: America’s High-Profile Trials*, UPDATE ON LAW-RELATED EDUC., Winter 1999, at 5, available at [http://www.americanbar.org/content/dam/aba/publishing/insights\\_law\\_society/update23\\_1.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publishing/insights_law_society/update23_1.authcheckdam.pdf).

16. *History of the Federal Judiciary*, FED. JUD. CENTER, [http://www.fjc.gov/history/caseload.nsf/page/caseloads\\_historical\\_overview](http://www.fjc.gov/history/caseload.nsf/page/caseloads_historical_overview) (last visited Nov. 9, 2014).

17. *Id.*

18. *Id.*

19. *Id.*

The ABA report on high-profile trials describes what it calls the first “Trial of the Century” as the 1907 prosecution of Harry K. Thaw, a Pittsburgh millionaire and son of a wealthy industrialist who shot and killed prominent Stanford White, a New York City architect, at a party on the rooftop terrace of Madison Square Garden.<sup>20</sup> Thaw believed White was having an affair with Thaw’s wife.<sup>21</sup>

An account of the crime and resulting news coverage of the time, published in 2012 in the online magazine *AWL*, says that

[t]he high society murder, with whispers of a lurid back story, drove the press and the public into a true frenzy, with every shred of speculation and embellishment deemed worthy of a report. Thomas Edison’s studio turned out a film version of the *Rooftop Murder* only a week after the crime, . . . and it hit number one at the box office. The trial, when it finally arrived, was the first in American history in which the jury had to be sequestered, and some 600 potential jurors were interviewed to settle on 12 uncorrupted souls.<sup>22</sup>

The ABA report lists other “Trials of the Century.” In order, the list begins with the civil proceedings that broke up the great Trusts of the era, including Standard Oil; the 1925 Scopes “Monkey Trial” in Tennessee (which featured the first glimmers of broadcast news coverage of the courts, via occasional live radio broadcasts from the courtroom); and the trials of the “Scottsboro Boys” from 1931 to 1937.<sup>23</sup> The “Lindberg Baby” trial in 1935 drove media outlets’ construction of the largest telephone exchange to-date to connect reporters to their newsrooms.<sup>24</sup>

A benchmark of sorts came with the 1954 Sam Sheppard trial, in which a prominent physician was convicted of murdering his wife.<sup>25</sup> The massive news media coverage resulted in the U.S. Supreme Court thirty years later overturning the verdict, noting “[t]hroughout the pre-indictment investigation, the subsequent legal skirmishes, and the . . . trial, circulation conscious editors catered to the insatiable interest of the American public. In this atmosphere . . . [a man] stood trial for his life.”<sup>26</sup>

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20. Baker, *supra* note 15.

21. Russell D. Covey, *Temporary Insanity: The Strange Life and Times of the Perfect Defense*, 91 B.U. L. REV. 1597, 1646 (2011).

22. Evan Hughes, *The Architect, the “It” Girl and the Toy Pistol That Wasn’t*, THE AWL (Jan. 17, 2012), <http://www.theawl.com/2012/01/the-architect-the-it%E2%80%9D-girl-and-the-toy-pistol-that-wasnt>.

23. Baker, *supra* note 15, at 8.

24. *Id.*

25. *Id.*

26. *Id.* at 8-9 (second alteration in original).

In the past thirty-five years, beginning with the thirteen-week trial of Wayne Williams in 1981-82 for the so-called “Atlanta Child Murders”<sup>27</sup> (which spawned not only daily news reports but multiple books and at least one made-for-TV movie), sensational trials have ranged from the Rodney King beating trial in 1993 in Los Angeles to what perhaps was the so-called “Trial of the 20<sup>th</sup> Century” – the O.J. Simpson murder trial in 1995.<sup>28</sup>

News coverage of lurid murder trials continued past the Millennium mark, of course; and trials continue to drive news reporting, right through to 2013’s massive coverage of the George Zimmerman trial in Florida for the murder of teenager Trayvon Martin.<sup>29</sup> Such news media court coverage may well provide much of what the public is told of how the courts operate – and certainly includes highly dramatized or inaccurate accounts.

“Fellow travelers” in the media information environment include any number of cable news talk shows and segments that are focused on legal proceedings, often built around talk and commentary led by controversial “stars” such as Nancy Grace, a former government attorney and prosecutor in Atlanta-Fulton County, Georgia.<sup>30</sup>

And then there are the faux “reality” programs such as *Judge Judy*, set in simulated courtrooms and generally involving limited claims, which give the appearance of actual judicial proceedings (as opposed to entertainment programming, such as *Law and Order* and its prime-time companions).<sup>31</sup> In the “reality court shows,” parties involved must sign contracts agreeing to arbitration and to abide by the “verdict.”<sup>32</sup> In reality, such shows provide a skewed sense of how courts actually function. The programs typically feature a retired or former judge presiding, seemingly chosen as much for their dramatic flair as legal knowledge.<sup>33</sup> Justice is dispensed after “testimony”

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27. See *Serial Killers: Part 5: Wayne Williams and the Atlanta Child Murders*, FBI (Feb. 7, 2014), <http://www.fbi.gov/news/stories/2014/february/serial-killers-part-5-wayne-williams-and-the-atlanta-child-murders/serial-killers-part-5-wayne-williams-and-the-atlanta-child-murders>.

28. Baker, *supra* note 15, at 9.

29. Erhardt Graeff, Matt Stempeck & Ethan Zuckerman, *The Battle for ‘Trayvon Martin’: Mapping a Media Controversy Online and Off-line*, FIRST MONDAY (Feb. 3, 2014), <http://firstmonday.org/ojs/index.php/fm/article/view/4947/3821>.

30. See, e.g., Nancy Grace, CNN, [http://www.cnn.com/CNN/anchors\\_reporters/grace.nancy.html](http://www.cnn.com/CNN/anchors_reporters/grace.nancy.html) (last visited Nov. 9, 2014).

31. See, e.g., S.E. CUPP & BRETT JOSHPE, WHY YOU’RE WRONG ABOUT THE RIGHT: BEHIND THE MYTHS – THE SURPRISING TRUTH ABOUT CONSERVATIVES 93 (2008); Jared Bloch, Note, *From The People’s Court to American Idol: The Relationship Between Reality Television and Arbitration*, 14 CARDOZO J. CONFLICT RESOL. 503, 505-06 (2013).

32. See Bloch, *supra* note 31.

33. See *id.*

and with procedures that are edited and designed to fit into a thirty-minute program length. Generally, the parties are not represented by counsel.<sup>34</sup>

Added to the less-than-informed stew of public knowledge about the judiciary and attempts at court coverage in 2014 is an overt attempt by some groups to paint courts high and low as “activists,” operating according to political whim rather than precedent and objective decision-making.<sup>35</sup> The result is confusion about the real business of the courts, even as the number of journalists factually reporting on the courts is fading.

## II. WHERE IS “HERE”?

No association of journalists who reported on the courts was ever created, so no actual, annual count of that professional subset exists.

There were 1,730 daily newspapers in 1981, a number which by 2014 was down to 1,382, according to Statista.<sup>36</sup> Newsroom staffing in newspapers declined by about 29% between 1990 and 2013, from 56,900 to about 38,000 jobs, according to the annual report by the American Society of News Editors.<sup>37</sup>

Within newsrooms, specialists in court coverage were squeezed out in at least two ways. With sizeable job reductions in many newsrooms, focused “beat” assignments have been replaced by general assignment positions, offering more flexibility to accommodate breaking news of the day. And, since many buy-out offers and layoffs targeted higher-paid staffers, journalists covering the courts likely took a higher “hit” along with other specialty areas of daily news gathering often filled by newsroom veterans.

Anecdotal evidence of this disproportionate impact of job losses on quality reporting in specific “beats” is available.

In the *Columbia Journalism Review*, in 2009, veteran journalist Len Downie and Columbia University journalism professor Michael Shudson wrote,

In most cities, fewer newspaper journalists were reporting on city halls, schools, social welfare, life in the suburbs, local business, culture, the arts, science, or the environment, and fewer were assigned to

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34. See Erika Lane, Note, *The Reality of Courtroom Television Shows: Should the Model Code of Judicial Conduct Apply to T.V. Judges?*, 20 GEO. J. LEGAL ETHICS 779, 783 (2007).

35. See generally Alan C. Kohn, *A Legal Essay: The Judicial Activism Myth*, 67 J. MO. B. 106 (2011) (describing judicial activism generally and questioning its utility in legal scholarship).

36. *Number of Daily Newspapers in the United States from 1985 to 2011*, STATISTA, <http://www.statista.com/statistics/183408/number-of-us-daily-newspapers-since-1975/> (last visited Oct. 3, 2014).

37. Alan D. Mutter, *Newsroom Staffing Hits 34-Year Low*, REFLECTIONS OF A NEWSOSAUR (Apr. 4, 2012), <http://newsosaur.blogspot.com/2012/04/newsroom-staffing-hits-34-year-low.html>.



investigative reporting. Most large newspapers eliminated foreign correspondents and many of their correspondents in Washington. The number of newspaper reporters covering state capitals full-time fell from 524 in 2003 to 355 at the beginning of 2009. A large share of newspaper reporting of government, economic activity, and quality of life simply disappeared.<sup>38</sup>

Other journalists also have reported on the decline of specific beat assignments, especially in beats related to court coverage. In 2012, Josh Gerstein, a reporter for the online news operation Politico, covered the White House, the Justice Department, and the courts.<sup>39</sup> Gerstein wrote a column on the subject of news media coverage of the courts, published November 1, 2012, in *The Crime Report*, adapted from remarks he delivered September 27 in Washington, D.C., while accepting a First Amendment Award from the Reporters' Committee for Freedom of the Press. In part, he wrote:

As a reporter who has covered courts for more than two decades, it's my distinct impression that nuts-and-bolts reporting on the courts has taken a huge hit in the current economic climate.

Newspapers that used to have a reporter in every courthouse in their communities are now lucky to have a single reporter covering the dozen or so courts in their coverage zone. Some papers used to try to cover every murder trial in their region.

Policies like that seem to have fallen by the wayside.

Here are a few examples:

- Four years ago, the St. Louis Post Dispatch had five reporters covering courts in their area. Now, it has the equivalent of about three.
- The News Journal of Wilmington, Del. used to have a reporter for state courts and another for federal. Now, one reporter covers both[.]
- A reporter for a Midwestern daily newspaper says she has been discouraged from reporting on preliminary hearings or guilty pleas in a number of major cases because of staffing shortages.

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There are some bright spots out there.

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38. Leonard Downie, Jr. & Michael Schudson, *The Reconstruction of American Journalism*, COLUM. JOURNALISM REV. (Oct. 19, 2009, 1:00 PM), [http://www.cjr.org/reconstruction/the\\_reconstruction\\_of\\_american.php?page=all](http://www.cjr.org/reconstruction/the_reconstruction_of_american.php?page=all).

39. Gerstein, *supra* note 2.

Bloomberg, Law360 and Reuters have all stepped up their coverage of the legal system, which is good news – particularly for those of us who do that kind of reporting. But much of the Bloomberg and Law360 coverage goes behind pay walls and tends to focus on cases of national or business significance, not necessarily the meat and potatoes of the criminal justice system.<sup>40</sup>

### III. WHY ARE WE HERE?

The nation’s founders clearly saw a free press as part of the concept of checks and balances built into the three branches of government. The independence of this “Fourth Estate” was guaranteed by the First Amendment in the Bill of Rights, and the “watchdog” role of American journalism has been a public and professional expectation since colonial times. But what of the legal right for the public to know the business of its courts, embodied in the ultimate experience of being in the courtroom during trial? Was such access – for public or its surrogate, the press – a legal right?

This question was first addressed when then-Massachusetts high court Justice Oliver Wendell Holmes suggested in the 1884 case of *Cowley v. Pulsifer* that the public had a right of access to civil trials.<sup>41</sup> Holmes noted that it was not so much that such trials were a matter of public concern but that “. . . every citizen should be able to satisfy himself with his own eyes as to the mode in which a public duty is performed.”<sup>42</sup>

Nearly a century later, the U.S. Supreme Court held for the first time in 1980 that the public enjoyed a First Amendment right of access to criminal proceedings in *Richmond Newspapers, Inc., v. Virginia* – a right to be overcome only by a finding of certain specific threats to a fair trial that cannot otherwise be overcome.<sup>43</sup> In *Richmond*, Chief Justice Warren Burger noted:

The First Amendment, in conjunction with the Fourteenth, prohibits governments from “abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” These expressly guaranteed freedoms share a common core purpose of assuring freedom of communication on matters relating to the functioning of government. Plainly it would be difficult to single out any aspect of government of higher concern or importance to the people than the manner in which criminal trials are conducted . . . .<sup>44</sup>

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40. *Id.*

41. 137 Mass. 392, 394 (1884).

42. *Id.*

43. 448 U.S. 555, 580-81 (1980).

44. *Id.* at 575.

In 1984 and again in 1986, the Court similarly extended public access to jury selection<sup>45</sup> and pre-trial proceedings,<sup>46</sup> thereby continuing the rationale that access bolstered public confidence through reports by its surrogate in the seats, the news media in the courtroom.

As the Court stated in *Richmond*: “People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing.”<sup>47</sup> And in 1966, Justice Tom C. Clark said even more directly about the value of news reports about trials: “The press does not simply publish information about trials but guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism.”<sup>48</sup>

#### IV. WHAT CAN BE DONE TO IMPROVE COVERAGE?

Since 1999, the First Amendment Center and the Judicial Branch Committee of the Judicial Conference, with support from the Administrative Office of the U.S. Courts, have conducted regional and national seminars entitled “Justice and Journalism,” which involve meetings between print and broadcast journalists and federal judges at all levels.<sup>49</sup>

The seminars originated in conversations between Judge Joyce Hens Green, U.S. District Court for the District of Columbia, who chaired the Judicial Branch Committee – which represents all federal district and appellate judges – and the First Amendment Center senior staff. Judges Deanell Tacha, Brock Hornby and Robert Katzmann, as succeeding chairs of the committee, each helped shape the direction of the program. What followed for the first ten years, in meetings in all of the federal circuits, was a day-and-a-half meeting combining informal conversations and structured meetings with opportunities for private conversation to discuss issues of access, information, and accountability between the news media and courts. The sessions featured morning presentations and an afternoon “roundtable” discussion. Beginning in 2010, the sessions switched to topic-based presentations, ranging from the then-new presence of bloggers in federal courtrooms to new newsgathering equipment.

Over time, trends emerged – including the eventual difficulty in identifying and recruiting working journalists who primarily report on the courts.

The difficulty emerged about 2004. We went from having a surplus of reporters wanting to attend the meetings in the early years, to difficulty in

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45. *Press-Enter. Co. v. Superior Court*, 464 U.S. 501, 505 (1984).

46. *Press-Enter. Co. v. Superior Court*, 478 U.S. 1, 10 (1986).

47. *Richmond*, 448 U.S. at 572.

48. *Sheppard v. Maxwell*, 384 U.S. 333, 350 (1966).

49. Ken Paulson, *Judges, Journalists Talking to Each Other Is Good for Public*, FIRST AMENDMENT CTR. (Oct. 27, 2011), <http://www.firstamendmentcenter.org/judges-journalists-talking-to-each-other-is-good-for-public>.

meeting a self-imposed participant goal of twelve judges and twelve journalists.

By 2008, as organizers, we accepted the likelihood of the meetings would have an approximate 2-1 ratio tilted toward the judiciary: thirteen to fifteen judges and seven to eight journalists, including journalism school educators.

The Administrative Office, for much of the time led by director James Duff, invited the judges, a mix of trial and appellate level jurists, judges from bankruptcy court, and magistrates. The First Amendment Center invited the journalists. The goal – not always achieved – was to have at least one senior editor, an editorial writer, and a broadcast news director in addition to reporters and a mix of print, broadcast and online journalists.

Judicial participation and presentations by judges or other judicial experts were organized by the Administrative office – again, for much of the time, by David Sellers, public affairs officer, and now-retired assistant general counsel Steve Tevlowitz.

A predetermined aspect of the sessions has been not to attempt to develop a joint plan of action – rather, each meeting produced a series of fifteen to twenty “observations” on current court-press relations in each area.

The most common of the news media observations was a need for timely access to a court official for explanation and information. Yet, reporters, editors, and broadcasters were quite aware of the restraints on judicial speech regarding pending cases or matters on appeal.

Also common: Reporters new to the court coverage generally acknowledged a lack of legal training, which required follow-up conversations about legal tactics and rulings. Experienced reporters participating in the seminars wanted to find ways to explore nuances that they saw as bringing meaning or context to the case.

A possible solution suggested during the conferences was to have an experienced member of the local Bar periodically serve as a “resource person” for the court to respond to inquiries – either on or off the record – on matters of procedure and basic legal information.

The Administrative Office of the U.S. Courts responded by creating “A Journalist’s Guide to the Federal Courts,” which detailed procedures, court rules and legal terminology.<sup>50</sup>

Some circuits began conducting annual or more frequent meetings between court staff, judges, and journalists from all media to discuss news coverage.

Judicial participants often were surprised to learn that journalists also wanted to hear criticism and complaints from the courts – from court clerks, circuit executives, and occasionally from judges themselves. Time and again,

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50. See ADMIN. OFFICE OF THE U.S. COURTS, A JOURNALIST’S GUIDE TO THE FEDERAL COURTS (2011), available at <http://www.uscourts.gov/uscourts/News/docs/JournalistGuide2011.pdf>.

reporters, editors, and broadcasters told judges that such constructive advice and comments were useful and welcome.

At an early session in the series, a bankruptcy court judge told her judicial colleagues and journalists of a report in a legal publication that incorrectly stated that she had filed a bankruptcy petition. Neither the judge nor her spouse sought correction of the story, or even contacted the legal journal reporter regarding the error – fearing even a correction would widen the audience for the original mistaken report. Even participating judges not inclined to talk with media representatives suggested to her that this gross error demanded direct and specific action to seek correction. The judge offered the explanation that she and her spouse feared even greater exposure of the flawed story if a correction or correcting article was published.

At the conclusion of the ten-year circuit cycle, it was a fair observation that the impetus for increased and improved news coverage of the courts had switched 180 degrees. In 1999, journalists were clamoring for broader and deeper access from a sometimes reluctant judicial establishment. In 2009, it was the judiciary challenging journalists to return to courthouses and courtrooms, and to do a better and more thorough job of providing the public with both regular reports on the business of the courts, and also of the judicial institution itself.

There are new news products and programs – legal blogs and in-depth news sites – being introduced that provide expanded reporting on the U.S. Supreme Court, which supplement the extensive, quality reporting on the high court.

Among innovations at the district and appellate levels: A program to improve news coverage at the District Court level was created in Nashville, Tennessee, in the United States Court of Appeals for the Sixth Circuit. Named *The Seigenthaler News Service*, students from the Middle Tennessee State University (“MTSU”) School of Journalism report on the courts, the federal grand jury, and the federal public defender’s office.<sup>51</sup> The project was created by First Amendment Center founder John Seigenthaler and directed by Pulitzer Prize winning journalist Wendell L. Rawls, an MTSU journalism professor who also served as director of the news service.<sup>52</sup>

The program initially had strong support from the courts and from the major newspaper in the area, Nashville’s *Tennessean*. In the first semester of the program, in 2012, Rawls reported that the students produced seventy-plus published stories, and in the spring semester in 2013 (with a smaller staff) logged close to fifty stories. Of those 120-plus stories, only one had a minor error – a misspelling of a name. The experimental program closed down at the end of the Spring 2014 semester.

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51. See John Seigenthaler: ‘Cherished Friend’ of Judges and Journalists, THIRD BRANCH NEWS (July 17, 2014), <http://news.uscourts.gov/john-seigenthaler-cherished-friend-judges-and-journalists>.

52. See *Journalism*, MIDDLE TENN. STATE UNIV., <http://mtsu.edu/programs/journalism/> (last visited Nov. 9, 2014).

As part of an often-quoted set of articles about “Covering the Courts” in a 1998 edition of *Media Studies Journal*, federal judges Gilbert S. Merritt and Richard S. Arnold discussed why, in their view, increased coverage of the courts is as good for the judiciary as it is for the press and public. “Judges need to understand better that we operate only by the consent of the governed. And the press is a major part of the consent of the governed,” Merritt said, in asking courts to take into account the need to better educate the press and public about court activities.<sup>53</sup> Noting that he was a former newspaper reporter, Arnold said judges would do well to cultivate a good relationship with the press: “We can’t control them. We can’t manipulate them. But we can at least give them the tools that they can use, if they’re well-disposed, to explain the subject better to the public.”<sup>54</sup>

Sixteen years later, even a “well-disposed” press may lack the resources to fully report on its own the activities of our courts – making an active and open press-judicial partnership even more essential in bringing that information to the public.

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53. COVERING THE COURTS: FREE PRESS, FAIR TRIALS & JOURNALISTIC PERFORMANCE 97 (Robert Giles & Robert W. Snyder eds., 1999).

54. *Id.* at 96.