

# Mercer Law Review

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Volume 50  
Number 3 *A Proposed Code of Ethics for Legal  
Commentators: A Symposium*

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Article 2

5-1999

## Symposium Introduction

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### Recommended Citation

Motos, Jennifer L. and Daly, Jacob E. (1999) "Symposium Introduction," *Mercer Law Review*. Vol. 50 : No. 3 , Article 2.

Available at: [https://digitalcommons.law.mercer.edu/jour\\_mlr/vol50/iss3/2](https://digitalcommons.law.mercer.edu/jour_mlr/vol50/iss3/2)

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# **A Proposed Code of Ethics for Legal Commentators: A Symposium**

## **Symposium Introduction**

We live in the day of high-publicity trials. With the introduction of cameras into the courtroom and the proliferation of trial-related media, the American legal system has never before been so exposed. This exposure has sparked an intense need for explanation. Americans want to understand the intricate and somewhat elusive system they are now viewing firsthand.

Hence the evolution of legal commentary and legal commentators. Legal commentators—that is, lawyers who explain legal proceedings in the media—have become a necessary link between the courtroom and the American household. From the Rodney King beating case and the O.J. Simpson murder trial to the Independent Counsel's investigation of President Clinton, legal commentators have assumed a pivotal role in reporting cases and decisions.

Yet, because of their visibility, legal commentators have been the subject of intense scrutiny and, at times, harsh criticism. Many question whether legal commentators enhance or distort the public's view of the American legal system. Others question what ethical standards should guide their work. Recognizing that professional codes of conduct that guide the work of lawyers do not adequately address the unique ethical issues confronting legal commentators, Laurie Levenson, Associate Dean for Academic Affairs at Loyola Law School in Los Angeles, and Erwin Chemerinsky, Professor of Law and Political Science at the University of Southern California Law School, suggested that legal commentators should adopt a voluntary code of ethics to assist them in dealing with

difficult issues that arise in their burgeoning field. Having offered legal commentary on television and radio in numerous "trials of the century," Dean Levenson and Professor Chemerinsky experienced first-hand how good legal commentary can aid the public's understanding of legal proceedings and how bad legal commentary can destroy the public's confidence in our legal system.

In a series of law review articles, *The Ethics of Being a Commentator*, 69 S. CAL. L. REV. 1303 (1996), and *The Ethics of Being a Commentator II*, 37 SANTA CLARA L. REV. 913 (1997), Dean Levenson and Professor Chemerinsky laid the groundwork for a code of ethics for legal commentators by posing timely questions about the desired role of commentators and their relationship with the media and the public. Soon, distinguished organizations, such as the American College of Trial Lawyers (ACTL) and the National Association of Criminal Defense Lawyers (NACDL), developed standards and guidelines for their members who offer legal commentary.

This national debate over the need for tougher standards for legal commentators was the focal point of this year's *Mercer Law Review* Symposium. We were extremely honored to have a panel of the nation's finest lawyers, academics, legal commentators, and journalists participate in a discussion at the historic Douglass Theatre in Macon, Georgia. Participating were Raymond M. Brown, Court TV Anchor and Host of New Jersey Network's *Due Process*; Paul Butler, Associate Professor of Law at George Washington University Law School; Erwin Chemerinsky, Professor of Law and Political Science at the University of Southern California Law School; Johnnie L. Cochran, Jr., Host of Court TV's *Johnnie Cochran Tonight*; Laurie L. Levenson, Associate Dean at Loyola Law School in Los Angeles; John H. McElhaney, Member of the Ethics Committee of the American College of Trial Lawyers; Barry C. Scheck, Professor of Law at Cardozo Law School; and Mary Tillotson, Host of CNN's *CNN & Company*.

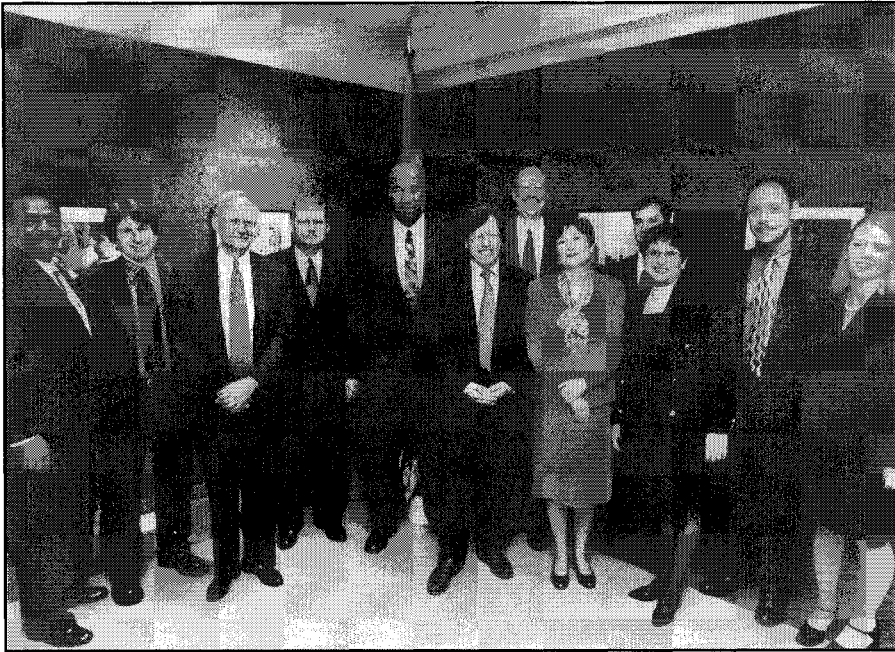
We are also honored to put together this Symposium issue, which features a full transcript of the lively panel discussion, the most recent article by Dean Levenson and Professor Chemerinsky in their thought-provoking series on commentator ethics, an excellent responsive article by Raymond Brown, and excerpts from proposed ethical guidelines by ACTL and NACDL.

On behalf of the Mercer Law School and the *Mercer Law Review*, we believe that this Symposium marks another forward step in the challenge to enhance reporting of trials and to improve the public's understanding of the legal system and their confidence in the work of lawyers and legal experts. Again, we would like to express our gratitude to the panelists, each of whom already represents precisely what a code

of ethics for legal commentators hopes to achieve and without whose participation this Symposium would not have been a success.

Jennifer L. Motos  
*Lead Articles Editor*

Jacob E. Daly  
*Member, Mercer Law Review*



Pictured at the Mercer Law Review Symposium on *A Proposed Code of Ethics for Legal Commentators* in Macon, Georgia, on January 23, 1999 from left to right: *Johnnie L. Cochran, Jr.*, Trial attorney and host of Court TV's "Johnnie Cochran Tonight"; *Barry C. Scheck*, Professor of Law at the Benjamin N. Cardozo School of Law; *John H. McElhaney*, Partner in the Dallas firm of Locke, Liddell & Sapp; *James P. Fleissner*, Associate Professor of Law at the Walter F. George School of Law, Mercer University; *Paul Butler*, Associate Professor of Law at George Washington University Law School; *Erwin Chemerinsky*, Sydney M. Irmas Professor of Law and Political Science at the University of Southern California Law School; *R. Lawrence Dessem*, Dean of the Walter F. George School of Law, Mercer University; *Mary Tillotson*, Host of CNN's morning talk show "CNN & Company"; *Jeffrey R. Harris*, Editor in Chief of the *Mercer Law Review*; *Laurie L. Levenson*, Associate Dean for Academic Affairs at Loyola Law School in Los Angeles, California; *Raymond M. Brown*, Court TV Anchor and host of "On Appeal"; *Jennifer L. Motos*, Lead Articles Editor of *Mercer Law Review*.

# **A Proposed Code of Ethics for Legal Commentators: A Symposium**

## **Biographical Information of Participants**

RAYMOND M. BROWN - Court TV Anchor and host of *On Appeal* (1996-present) . . . host of the New Jersey Network's two-time Emmy Award winning program, *Due Process* (1995-present) . . . graduate of Columbia University (1969) and Boalt Hall School of Law, University of California at Berkeley (1974) . . . partner in the Newark, New Jersey firm of Brown & Brown . . . member of the New Jersey Bar (1974) and the New York Bar (1983) . . . fellow of American College of Trial Lawyers . . . faculty member of the National Criminal Defense College at Mercer University in Macon, Georgia (1993-97) and the Intensive Trial Advocacy Program at Cardozo Law School in New York, New York (1993-96) . . . appeared as a guest on numerous television programs on Court TV, ABC, BET, BBC, CNBC, CNN, and Fox, including *Prime Time Justice*, *Cochran & Co.*, *Rivera Live*, *AM Philadelphia*, and *Sonya Live*, and on several radio programs on ABC News Radio, and CBS Radio Network . . . joined Court TV in 1996 . . . anchored the Court TV program *War Crimes on Trial*, which focused on the anticipated trials of the International Tribunal for Rwanda (1996) . . . offered legal commentary on a number of high profile trial including the O.J. Simpson criminal and civil trials, the Rodney King beating trial, the Jenny Jones talk show-murder trial, the Louise Woodward nanny trial and the Oklahoma City bombing trial . . . authored numerous book reviews and articles on trial advocacy, ethics, international law, and racial and social issues . . . served as a lecturer, speaker and panelist at more than 200 events,

addressing such issues as trial advocacy, ethics, human rights and international law, and problems of race and the criminal justice system.

PAUL BUTLER - Associate Professor of Law at George Washington University Law School, faculty member since 1993 . . . graduate of Yale University (1982) and Harvard Law School (1986) . . . law clerk to Judge Mary Johnson Lowe of the United States District Court for the Southern District of New York . . . attorney with Williams & Connolly in Washington, D.C. (1988-90) and with the United States Department of Justice (1990-93) . . . Special Assistant United States Attorney . . . regularly lectures on law and public policy issues for the American Bar Association and the NAACP and at colleges, law schools, and community organizations throughout the country . . . teaches courses in criminal law, criminal procedure, and race and law . . . publications include several law review articles, newspaper articles and chapters in books . . . columnist for *The Legal Times* . . . frequent commentator on CNN and National Public Radio . . . recipient of the Teacher of the Year Award from the George Washington University School of Law Class of 1996.

ERWIN CHEMERINSKY - Sydney M. Irmis Professor of Law and Political Science at University of Southern California Law School, faculty member since 1983 . . . graduate of Northwestern University (1975) and Harvard Law School (1978) . . . trial attorney with the United States Department of Justice (1978-79) and with Dobrovir, Oakes & Gebhardt in Washington, D.C. (1979-80) . . . law professor at DePaul College of Law (1980-83) . . . regularly lectures to attorneys and judges in programs for the Federal Judicial Center, the National Judicial College, the American Bar Association, and various state and federal courts . . . teaches courses in constitutional law, federal courts and legal ethics . . . publications include three books and more than seventy-five law review articles . . . regular columnist for *Trial* magazine and frequent contributor to newspapers and other magazines . . . testified before committees of the United States Congress, the California legislature and the Los Angeles City Council . . . elected in April 1997 to the Los Angeles City Charter Commission, which is responsible for rewriting the Los Angeles City Charter . . . served as co-counsel in several cases before the United States Supreme Court and on numerous amicus curiae briefs . . . briefed and argued cases in United States Courts of Appeals.

JOHNNIE L. COCHRAN, Jr. - Trial lawyer and host of Court TV's *Johnnie Cochran Tonight* . . . graduate of the University of California at Los Angeles (1959) and Loyola University School of Law (1962) . . . served as Deputy City Attorney for the City of Los Angeles (1963-65) . . .

founded the firm of Cochran, Atkins & Evans, specializing in civil and criminal litigation (1966) . . . named "Criminal Trial Lawyer of the Year" by the Los Angeles Criminal Courts Bar Association (1977) . . . Assistant District Attorney of Los Angeles County (1978-80) . . . named "Outstanding Law Enforcement Officer of 1979" by California Trial Lawyers Association . . . returned to private practice in 1981 specializing in personal injury litigation, entertainment law, public financing and criminal defense . . . represented well-known clients such as O.J. Simpson, Michael Jackson, Reginald Denny and Todd Bridges . . . inducted into the prestigious International Academy of Trial Lawyers (1982) . . . named "Trial Lawyer of the Year" by the John M. Langston Bar Association (1983) . . . recipient of the "Equal Justice in Law Award" from the Legal Defense Fund of the NAACP (1984) . . . named one of Southern California's "Outstanding Criminal Defense Attorneys" by the *Los Angeles Times Magazine* (1989) . . . named "Trial Lawyer of the Year" by the Los Angeles Trial Lawyers Association (1990) . . . featured in a segment concerning the Todd Bridges case on the CBS News program *48 Hours*, titled "Hot Shot" (1990) . . . correspondent for the CBS News show, *Whose Side Are You On?* (1991) . . . noted as one of the Ten Most Successful Litigators by the *National Law Journal* (1992) . . . inducted into the American College of Trial Lawyers . . . retained as Special Legal Counsel for NBC News with Tom Brokaw for the O.J. Simpson preliminary hearing (1994) . . . named "The Lawyer of the Year" by the *National Law Journal* (1995) . . . in April 1996, elected to membership in the exclusive Inner Circle of Advocates, the top 100 plaintiffs lawyers in the U.S. . . . taught courses at UCLA, Loyola, and Harvard law schools on criminal law and trial techniques.

**JAMES P. FLEISSNER (MODERATOR)** - Associate Professor of Law at Mercer University, Walter F. George School of Law, faculty member since 1994 . . . graduate of Marquette University (1979) and the University of Chicago Law School (1986) . . . Associate Editor, *University of Chicago Law Review* (1985-86) . . . Senior Associate Independent Counsel in *United States v. Henry G. Cisneros, et al.* (1997-present) . . . Assistant United States Attorney in Chicago (1986-94), last serving as criminal section chief, U.S. Attorney's Office . . . recipient of the Gregory C. Jones Award for service to the U.S. Attorney's Office (1992), Department of Justice Director's Award for Superior Performance (1991) and Special Achievement Award (1987 and 1991) . . . teaching and scholarship focuses on criminal law and procedure, evidence, and trial and appellate practice . . . recipient of the Walter F. George Distinguished Faculty Award (1997, 1998, and 1999) . . . served as a legal analyst for the media on the Oklahoma City bombing prosecutions and



other matters, including appearances on MSNBC, CNN, and the PBS program *Newshour with Jim Lehrer*.

LAURIE L. LEVENSON - Associate Dean for Academic Affairs at Loyola Law School in Los Angeles, California, faculty member since 1989 . . . graduate of Stanford University (1977) and University of California at Los Angeles School of Law (1980) . . . law clerk to Judge James Hunter, III, of the United States Court of Appeals for the Third Circuit (1980-81) . . . Assistant United States Attorney in Los Angeles (1981-89), Chief of the Criminal Appellate Section (1986-88), Chief of the Training Section (1988-89) . . . recipient of the Attorney General's Director's Award for Superior Performance (1988) and commendations from the Federal Bureau of Investigation (1986), Internal Revenue Service (1988), United States Postal Service (1988), and Drug Enforcement Administration (1988) . . . volunteer counsel for the Webster Commission (1993) . . . Special Master for the Los Angeles Superior Court (1990-present) and the United States District Court for the Central District of California (1996-present) . . . current member of the Los Angeles County Bar Association's Judicial Appointments and Judiciary committees . . . teaches courses in criminal law, criminal procedure, ethics, and evidence . . . publications include a treatise on California Criminal Procedure and numerous articles . . . provided legal commentary on several high profile cases, including the Rodney King beating trial, the Reginald Denny beating trial, the Menendez brothers murder trials, and the O.J. Simpson murder trial . . . currently serves as an expert legal consultant for CBS News, CNN, and National Public Radio, and as a columnist for the *Los Angeles Times*, *Los Angeles Daily Journal*, and the *National Law Journal*.

JOHN H. MCELHANEY - Partner in the Dallas firm of Locke Liddell & Sapp, formerly Locke Purnell Rain Harrell, since 1977 . . . extensive civil trial and appellate experience in business and tort litigation in areas such as antitrust, product liability, securities, defamation, and legal and accounting professional liability . . . graduate of Southern Methodist University (1956) and Southern Methodist University School of Law (1958) . . . Managing Editor, *Southwestern Law Journal* (1957-58) . . . member of the State Bar of Texas since 1958 . . . Chairman of the Rules and Procedure Committee of the Tort and Insurance Practice Section of the American Bar Association (1980) . . . Chairman of the Dallas Association of Defense Counsel (1981) . . . fellow of the American College of Trial Lawyers (1978) and member of the Ethics Committee (1994) . . . instrumental in drafting the American College of Trial Lawyers' "Report on Fair Trial of High Profile Cases," including

“Suggested Guidelines for Legal Commentators” . . . taught courses in product liability, Texas civil procedure, and aviation law at Southern Methodist University School of Law (1967-76) . . . frequently lectures at continuing legal education seminars and workshops on topics of evidence and civil procedure.

BARRY C. SCHECK - Professor of Law at the Benjamin N. Cardozo School of Law in New York City, faculty member since 1978 . . . Director of Clinical Education, Trial Advocacy Programs and the Jacob Burns Center for the Study of Law and Ethics at Cardozo Law School . . . graduate of Yale University (1971) and Boalt Hall School of Law, University of California at Berkeley (1974) . . . staff attorney for The Legal Aid Society in New York City for three years . . . pioneer in studying and litigating issues concerning the transfer of DNA technology to forensic applications . . . founded in 1992, with Peter Neufeld, the Innocence Project, a clinical program at the Cardozo Law School that has either represented or assisted in the representation of thirty-five men who were exonerated through post-conviction DNA testing and freed from lengthy prison sentences or the death penalty . . . serves as Commissioner on New York’s Forensic Science Review Board . . . serves on the Board of Directors of the National Association of Criminal Defense Lawyers . . . member of the National Institute of Justice’s Commission on the Future of DNA Evidence . . . represented well known defendants and civil rights plaintiffs such as O.J. Simpson, Hedda Nussbaum, Louise Woodward, and Abner Louima.

MARY TILLOTSON - Host of CNN’s two-time Emmy nominated morning talk show *CNN & Company* since 1993 . . . nominated for the CableACE Award for Best Talk Show Interviewer (1996) . . . graduate of the University of Alabama (1968) . . . anchor for WSB Radio in Atlanta, Georgia (1970-72) . . . news anchor for WMAL Radio in Washington, D.C. (1972) . . . reporter and anchor for WTTG-TV in Washington, D.C. (1974-76) . . . congressional reporter for Independent Television News Association (1976-79) . . . news anchor for Mutual Radio Network (1979-80) . . . joined CNN in 1981 . . . contributed regular reports for CNN’s *Election Watch* throughout the 1984 presidential campaigns . . . served as CNN White House correspondent covering Reagan/Gorbachev summits in Washington and Moscow (1985-88) . . . floor reporter for CNN for both the Democratic and Republican national conventions during the 1988 presidential election . . . covered the activities of the United States Senate while serving as CNN Capitol Hill correspondent (1988) . . . served as CNN reporter covering the Bush White House (1991-92).

