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### The Art, Craft, and Future of Legal Journalism: A Tribute to Anthony Lewis

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## Symposium: The Art, Craft, and Future of Legal Journalism: A Tribute to Anthony Lewis

### Foreword

*Richard C. Reuben*\*

It is often said that the rule of law is the cornerstone of a democracy, bringing many virtues to the challenging process of collective self-governance.<sup>1</sup> One of those qualities is notice to citizens of society's formal norms and expectations so they may guide their behavior accordingly.

However, this benefit can only be realized if those norms and expectations are actually communicated to the citizens. After all, if a tree falls in the woods and nobody is there to hear it, what difference does it really make whether it makes a sound?<sup>2</sup>

So, too, with the law. In the United States, our constitutions, statutes, judicial opinions, administrative rules, and other forms of law may be written down for all to see and know and debate, but relatively few actually do. Similarly, our courts, legislatures, and administrative processes may be open and

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1. See Lon L. Fuller, *THE MORALITY OF LAW* 178 (1969).

2. The origins of this familiar philosophical question can be traced to George Berkeley. See 1 GEORGE BERKELEY, *A Treatise Concerning the Principles of Human Knowledge*, in *THE WORKS OF GEORGE BERKELEY D.D.; FORMERLY BISHOP OF CLOYNE INCLUDING HIS POSTHUMOUS WORKS* 211, 269-70 (1710); see also *Notes & Queries*, *SCI. AM.*, Apr. 5, 1884, at 218.

free to the public, but who has the time or bothers to attend, besides those with an immediate interest in the matter.<sup>3</sup>

Most people instead rely on others – especially the media – to keep them abreast of what they need to know about legal developments. This educational function is so important to the effective operation of democracy and the rule of law – facilitating broad public participation in its development – that the framers wisely enshrined and protected it in the First Amendment,<sup>4</sup> thus giving rise to what is often considered “The Fourth Estate.”<sup>5</sup> As Felix Frankfurter once observed, “The public’s confidence in the judiciary hinges on the public’s perception of it, and that perception necessarily hinges on the media’s portrayal of the legal system.”<sup>6</sup>

In the modern era, few performed this function better than Anthony Lewis, the legendary U.S. Supreme Court reporter and columnist for *The New York Times*, who died in March 2013.<sup>7</sup> A pioneer in the coverage of law and the courts, Lewis is widely credited with being one of the founders of contemporary legal journalism.<sup>8</sup> Through a remarkable career that included two Pulitzer Prizes and five books, Lewis taught by example a generation of journalists how to cover the law with accuracy, insight, perspective, and passion.<sup>9</sup>

3. Statistics are unlikely to be kept on court attendance. However, a long-established critique of pluralist democratic theory holds that not all views and interests are always represented, and to the extent they are, they are not represented with the same intensity. See, e.g., MANCUR OLSON, JR., *THE LOGIC OF COLLECTIVE ACTION: PUBLIC GOOD AND THE THEORY OF GROUPS* 35 (1965) (suggesting that rational people will not participate in the political process and instead will “free ride” on the interests of others); E.E. SCHATTSCHNEIDER, *THE SEMISOVEREIGN PEOPLE: A REALIST’S VIEW OF DEMOCRACY IN AMERICA* 34-35 (1960). See generally ROBERT D. PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* 277-78 (2000) (finding generally decreased participation in American civic life).

4. See generally ALEXANDER MEIKLEJOHN, *FREE SPEECH AND ITS RELATION TO SELF-GOVERNMENT* 15 (1948).

5. See, e.g., T. BARTON CARTER ET AL., *THE FIRST AMENDMENT AND THE FOURTH ESTATE: THE LAW OF MASS MEDIA* (11th ed. 2011); LUCAS A. POWE, JR., *THE FOURTH ESTATE AND THE CONSTITUTION: FREEDOM OF THE PRESS IN AMERICA* (1992). The phrase can be traced back to Thomas Carlyle. See Thomas Carlyle, *Lecture V. [Tuesday, 19th May, 1840.] The Hero as a Man of Letters. Johnson, Rousseau, Burns, in ON HEROES, HERO-WORSHIP, AND THE HEROIC IN HISTORY* 132-61 (David R. Sorensen & Brent E. Kinser eds., 2013).

6. John Seigenthaler & David L. Hudson, *Journalism and the Judiciary*, NAT’L JUD. C. ALUMNI WINTER MAG. 15 (Winter 1997). Kudos to David Sellers for finding this precious nugget. See David A. Sellers, *As Today’s Tony Lewises Disappear, Courts Fill Void*, 79 MO. L. REV. 1021 (2014).

7. See Adam Liptak, *Anthony Lewis, Supreme Court Reporter Who Brought Law to Life, Dies at 85*, N.Y. TIMES, Mar. 25, 2013, at A1, available at [http://www.nytimes.com/2013/03/26/us/anthony-lewis-pulitzer-prize-winning-columnist-dies-at-85.html?pagewanted=all&\\_r=2&](http://www.nytimes.com/2013/03/26/us/anthony-lewis-pulitzer-prize-winning-columnist-dies-at-85.html?pagewanted=all&_r=2&).

8. See *id.*

9. *Id.*

While the law can often be dry and technical, and cases idiosyncratic, Lewis showed legal journalists how to communicate the issues to readers in a compelling way, demystifying the complexities of law, bringing out the practical importance of the seemingly arcane, and – perhaps most important – making readers care about the law and its role in the world around them.

This artistry is what readers saw on the pages of *The Times*. But his professional colleagues saw much more in the man behind the bylines. Lewis had a ferocious work ethic that fueled a powerful and penetrating intellect and a knack for being able to put pen to paper with ease. Moreover, in the brusque and highly competitive world of daily journalism, Lewis was the model of class – collegial with the old hands who covered the court and gracious to newcomers seeking his wisdom and blessing.

### *Lewis and the Court*

Despite the relatively paltry salaries, journalists are generally a driven lot, compelled by ego, power, curiosity, and often a desire to make a difference in the world. Anthony Lewis was no different in this respect, other than perhaps by the source of his passion: several deeply held convictions that he appeared to live with every breath. First among them, Lewis believed in the fundamental worth of all people, regardless of color, class, or condition. Although he was not a lawyer by training, he also had a lawyer's faith in the law as a vehicle for assuring equality, human dignity, and basic civil rights for all, as well as an abiding trust that American democracy can work if everyone did their jobs in good faith, including the citizenry. Lewis brought his heart to the task as well, giving his writing a certain moral authority rarely seen in the ostensibly objective world of general interest journalism.

While this may make Lewis sound dreamy-eyed – and to be sure, Anthony Lewis was a liberal's liberal – he was hardly naïve. He understood the dynamics of power, in particular the role the media could play in keeping government on task and accountable – even the courts. For Lewis, the court reporter played a constitutional role as a check on judicial power as well as an advocate for the public, and he embodied these roles with missionary zeal. Whether it was through his daily news coverage or his personal relationships with the justices and other political figures and institutions in official Washington, Lewis kept his foot on the gas in his pursuit of equality and the preservation of human rights and dignity.

Lewis was also blessed with good timing. His arrival at the Court roughly coincided with the rise of the Warren Court and its momentous expansion of civil liberties.<sup>10</sup> President Dwight Eisenhower appointed former California Governor Earl Warren Chief Justice in 1953, and Lewis became *The Times*' first U.S. Supreme Court reporter just four years later, in 1957.<sup>11</sup>

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10. *See id.*

11. *See id.*

The two were made for each other. Warren had already set the course for his court with his historic unanimous decision in *Brown v. Board of Education*, holding that racial segregation in public schools is unconstitutional.<sup>12</sup> The nation was poised for epochal change in race and gender equality, music, mores, and more, all set against the backdrop of a divisive war in Vietnam. Such are the tensions that provide great cases at the nation's highest court, and with a new liberal majority of justices, the Court was ready to take them on.

Lewis was ready, too. He had learned the ways of Washington as a reporter for the *Washington Daily News*, where he earned a Pulitzer Prize for a series of articles about Abraham Chasanow, a civilian U.S. Navy worker who was fired after anonymous informers linked him with anti-American activities.<sup>13</sup> Lewis had also spent the previous year at Harvard Law School as a Nieman Fellow, taking courses in constitutional law, civil procedure and the federal system and even had an article published in the *Harvard Law Review* on the relatively obscure topic of state legislative redistricting – unusual for a non-student at the fabled Cambridge campus.<sup>14</sup>

With years of experience navigating the corridors of powers in Washington, the gravitas of a Pulitzer Prize, and a Court ready to consider the cases brought on by major social change, Lewis had everything he needed to create and define the role of U.S. Supreme Court reporter.

Year after year, until Warren retired in 1969, the Court issued rulings that established a constitutional right to vote<sup>15</sup> and the principle of “one person, one vote,”<sup>16</sup> the rights of criminal defendants to remain silent during interrogation<sup>17</sup> and the right to an attorney if he couldn't afford one,<sup>18</sup> the responsibility of law enforcement to respect defendants' rights,<sup>19</sup> and a constitutional right to privacy,<sup>20</sup> among many others.

Anthony Lewis was the Court's chronicler, heralding each decision with the accuracy of a lawyer, the insight of a social scientist, and the ease of a novelist. He showed what a newspaper reporter could do with the Court's daily grind of orders, arguments, and decisions, with weekday coverage of

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12. 347 U.S. 483, 495 (1954), *supplemented sub nom.* *Brown v. Bd. of Educ. of Topeka, Kan.*, 349 U.S. 294 (1955).

13. See *1955 Winners*, PULITZER PRIZES, <http://www.pulitzer.org/awards/1955> (last visited Nov. 10, 2014).

14. Richard Tofel, *Friend of the Court: How Anthony Lewis Influenced the Justices He Covered*, PROPUBLICA (Mar. 27, 2013, 11:18 AM), <http://www.propublica.org/article/friend-of-the-court-how-anthony-lewis-influenced-the-justices-he-covered>.

15. See, e.g., *Baker v. Carr*, 369 U.S. 186, 207-08 (1962).

16. *Reynolds v. Sims*, 377 U.S. 533, 558 (1964).

17. *Miranda v. Arizona*, 384 U.S. 436, 471 (1966).

18. *Gideon v. Wainwright*, 372 U.S. 335, 339-40 (1963).

19. See, e.g., *Mapp v. Ohio*, 367 U.S. 643, 654-55 (1961).

20. See *Griswold v. Connecticut*, 381 U.S. 479, 484 (1965).

breaking news, and analytic pieces in the *Sunday Times*.<sup>21</sup> With remarkable speed, Lewis earned a second Pulitzer Prize in 1963<sup>22</sup> and sealed his reputation as one of the nation's leading journalists.

### *Beyond the Court*

While Lewis laid the blueprint for modern legal coverage with every byline, he went beyond daily coverage and used a four-month newspaper strike in the winter of 1962 to write what would become the classic work of the genre, *Gideon's Trumpet*,<sup>23</sup> which told the struggle of a poor drifter's fight to get a lawyer to represent him on felony criminal charges in Florida. The facts and narrative were as compelling as any bestseller. But Lewis also used the case to help the public understand how courts work – including a then-unprecedented look at the inner workings of the nation's highest court – as well as how the law itself changes and evolves.<sup>24</sup> Now, more than fifty years later, the book is still required reading for those interested in the courts.

Lewis was such a dominant figure as a Supreme Court reporter that it is surprising to realize he was only on the beat for seven court terms before moving on to become a columnist on civil rights and related issues for more than thirty years, as well as the author of several other books on law and society.<sup>25</sup> In his regular columns and other writings, Lewis remained a vigilant watchdog of the government, especially the Supreme Court, and an ever passionate voice for human rights and dignity, and the law's role in protecting the less fortunate.<sup>26</sup>

The model of class, Lewis also served graciously as an informal ambassador, helping to bridge the gap between the bench and bar, as well as the elder statesman for the generation of legal journalists who would follow in his footsteps, many secretly hoping to be “the next Anthony Lewis.” While none of the incredibly accomplished journalists and court reporters have fully achieved that distinction by themselves, together they have carried his torch forward and made a robust genre of the field he pioneered.

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21. See Liptak, *supra* note 7.

22. *National Reporting*, PULITZER PRIZES, <http://www.pulitzer.org/bycat/National-Reporting> (last visited Nov. 10, 2014). Technically, Lewis's second Pulitzer was also for National Coverage, but with specific reference to his coverage of *Baker v. Carr* and other Supreme Court cases. *Id.*

23. See ANTHONY LEWIS, *GIDEON'S TRUMPET* (1964).

24. See *id.*

25. See ANTHONY LEWIS, *FREEDOM FOR THE THOUGHT THAT WE HATE: A BIOGRAPHY OF THE FIRST AMENDMENT* (2007); ANTHONY LEWIS, *MAKE NO LAW: THE SULLIVAN CASE AND THE FIRST AMENDMENT* (1991); ANTHONY LEWIS, *THE SUPREME COURT AND HOW IT WORKS: THE STORY OF THE GIDEON CASE* (1966); ANTHONY LEWIS & N.Y. TIMES, *PORTRAIT OF A DECADE: THE SECOND AMERICAN REVOLUTION* (1964).

26. See Liptak, *supra* note 7.

*Standing in Tribute*

In this symposium, many of the leading lights of legal journalism come together to pay tribute to Anthony Lewis by providing a sense of breadth and depth to the world of legal journalism that he helped to found. They include Supreme Court and other court reporters, editors and publishers of legal publications, public information officers, professors of law, and professors of journalism.<sup>27</sup> Their reach is from the East Coast to the West, from print journalism to the internet, and from past to present. Each article is a treasure unto itself.

There have been other law review symposia on certain aspects of legal journalism, such as media coverage of high profile cases.<sup>28</sup> But the aim here was much broader, to provide a sense of the field that – for all practical purposes – began with Tony Lewis’s seven-year stint covering the U.S. Supreme Court a half century ago. As such, it is clearly the most comprehensive look at legal journalism by any publication to date.

Even then, it is not exhaustive. For example, none of the articles cover the unique challenges and opportunities that come with coverage of law firms and law schools, important areas of coverage since Steven Brill first broke through with coverage of such previously off-limits topics such as law firm salaries, working conditions, and lawyer profiles.<sup>29</sup> Nor does it include discussion of the business side of the field, and why this niche journalism market continues to thrive despite downward trends throughout the rest of the industry. Similarly, too, it only glances at the impact of the internet and other technology on legal coverage. Each of these could have been symposia in and of itself.

Our focus instead is largely on coverage, the words and ideas that make democracy work, as well as, of course, the man who showed us how to do it well – Anthony Lewis.

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27. See 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/ZURycIZ30IGVrY1pg3nSNI/story.html>.

28. See, e.g., *Bridging the Great Divide: A Symposium on the State of Legal Journalism*, 56 SYRACUSE L. REV. 443 (2006); Symposium, *People v. Simpson: Perspectives on the Implications for the Criminal Justice System*, 69 S. CAL. L. REV. 1267 (1996).

29. Steven Brill was the founder of the pioneering legal publication *American Lawyer*, which was especially popular in the 1980s and 1990s. See Jeff Goodell, *The Supreme Court: Steven Brill’s Court TV Isn’t Just Reporting Courtroom Drama, It’s Becoming the Law’s Interface to the Public. And It’s Great TV.*, WIRED (1993), available at [http://archive.wired.com/wired/archive/3.03/brill\\_pr.html](http://archive.wired.com/wired/archive/3.03/brill_pr.html); *American Lawyers Media Holdings, Inc. History*, FUNDING UNIVERSE, <http://www.fundinguniverse.com/company-histories/american-lawyer-media-holdings-inc-history/> (last visited Nov. 11, 2014). Among other things, it was noted for its groundbreaking, and sometimes controversial, coverage of large law firms. Goodell, *supra*.

*Lewis the Lawspeaker*

Saint Louis University Law School Dean Michael Wolff – a former reporter and Missouri Supreme Court Judge – gives readers a sense of the pedigree that Lewis inherited by introducing us to the medieval “lawspeakers,” who memorized and recited law so that people would know the rule of law.<sup>30</sup> While their medium was the oral tradition of the time, the function of lawspeakers was similar to what legal journalists do today: comprehend and communicate the law so that the public can understand it.

With this historical background, lawyer journalist Lincoln Caplan, the author of several books on the law and a former member of *The New York Times* Editorial Board, then provides a penetrating look at how Anthony Lewis became the iconic founder of a new genre of journalism.<sup>31</sup> He focuses in particular on the year that Lewis spent at Harvard Law School, where he became imbued with legal process theory, thanks to a constitutional law course taught by Paul Freund and Henry Hart’s legendary course, *Federal Courts and the Federal System*.

At the time, the legal process paradigm was by far the dominant mode among academics for understanding how the law worked. Its basic premise is that each institution of government has an important and unique role to play in the exercise of American constitutional democracy and that the allocation of power between them on matters of controversy should be decided on the basis of the unique institutional competencies of each branch.<sup>32</sup>

As Caplan points out, Harvard Law School was the wellspring of legal process theory. It was at Harvard that Lewis became steeped in the spirit of legal process theory at the height of the theory’s intensity and became close to several of its master builders. Lewis also met and befriended former Harvard Law professor Felix Frankfurter, who helped him get access to the Justices at a level not seen before – or since.

Legal process theory deeply influenced Lewis’s coverage of the Court, and it is not too much to imagine that he may have viewed the media in terms of its institutional role in covering the courts and the law as “The Fourth Estate.” His personal mission seemed to be no less than demonstrating how that institutional role could be exercised.

Caplan’s narrative weaves a rich tapestry that is accented with previously unpublished detail, including Lewis’s personal class notes from Hart’s Federal Courts class and Lewis’s arguably seminal role in what ultimately

30. See Michael A. Wolff, *Making Judge-Speak Clear Amidst the Babel of Lawspeakers*, 79 MO. L. REV. 1039 (2014).

31. See Lincoln Caplan, *Anthony Lewis: What He Learned at Harvard Law School*, 79 MO. L. REV. 871 (2014).

32. For a comprehensive history and discussion of legal process theory, see William N. Eskridge Jr. & Philip P. Frickey, *The Making of the Legal Process*, 107 HARV. L. REV. 2031 (1994).



became the Court's most significant election law decision: *Baker v. Carr*, upholding federal judicial review of state legislative districts.

Linda Greenhouse, who followed Lewis's footsteps in covering the Court for *The Times* – and in receiving a Pulitzer Prize for her work – writes to emphasize the remarkable analytic depth that Lewis brought to his coverage, no small achievement considering he was writing for a general interest audience on a tight deadline and before computers eased the task of writing.<sup>33</sup> Lewis “placed the decisions in the context of contemporary politics and the framework of constitutional history while assessing their significance,” Greenhouse writes.

To support her case, Greenhouse mined *The New York Times* archive to cite examples from his coverage of many of the Warren Court's greatest cases, including *Baker v. Carr*, *Reynolds v. Sims*, *Gideon v. Wainwright*, *Cooper v. Aaron*, *Heart of Atlanta Motel v. United States*, and *Jacobellis v. Ohio*. Like reading from a newly opened time capsule, the words she shares from his coverage bring us directly to the historical moment of each case, and to Lewis's brilliance as the Court's Boswell.<sup>34</sup>

Adam Liptak, the current heir to Lewis's seat as *The New York Times*' Supreme Court reporter and the symposium's keynote speaker, reveals a glimpse of what it's like to cover the U.S. Supreme Court, back when Lewis was on the beat as well as today.<sup>35</sup> Liptak – who, interestingly, was a lawyer for *The Times* before becoming its Supreme Court correspondent – also explores Lewis's idiosyncratic view that the First Amendment does not entitle the press to special legal status, such as a reporter's privilege.

Lewis, Liptak explains, believed that the amendment was directed at the words of the press, not the businesses that hold themselves out as “the press,” such as *The New York Times*.<sup>36</sup> Lewis's view is quite unusual among journalists, and indeed he was vilified by his peers for supporting the courts when *New York Times* Reporter Judith Miller was jailed for nearly 100 days in 2005 for refusing to divulge her sources.<sup>37</sup> But Liptak says Lewis's views were consistent with his high regard for the courts and the law, and his sense

33. See Linda Greenhouse, *The Rigorous Romantic: Anthony Lewis on the Supreme Court Beat*, 79 MO. L. REV. 907 (2014).

34. See generally *id.* The reference is to James Boswell's *Life of Samuel Johnson*, which is considered to be one of the most significant biographies in English literature. See generally JAMES BOSWELL, *THE LIFE OF SAMUEL JOHNSON* (1791).

35. See Adam Liptak, *Anthony Lewis and the First Amendment*, 79 MO. L. REV. 863 (2014).

36. Lewis rejected the Roberts Court's current trend toward recognizing the personhood rights of corporations, writing critically of the Court's decision in *Citizens United v. FEC*. 588 U.S. 310 (2010). While he passed away before it was decided, one might reasonably suppose he would have had similar feelings about the Supreme Court's decision in *Burwell v. Hobby Lobby, Inc.*, finding that closely held for-profit corporations are persons under the Religious Freedom Restoration Act. 134 S. Ct. 2751 (2014).

37. Liptak, *supra* note 35.

that the courts are more competent to balance the nuances of particular situations than, for example, a legislature might be in adopting a shield law.

In his tribute to Lewis, first published by the Supreme Court Historical Society, Lyle Denniston acknowledges another important way in which Lewis was different than his journalism colleagues.<sup>38</sup> While one of the hallmarks of American journalism is neutral reportage, Denniston notes that “Tony’s genius was not objectivity.” Denniston is the Dean of the Supreme Court press corps, with more than a half century on the beat and still going strong well into his 80s as the senior writer for SCOTUSblog.<sup>39</sup> As such, the gentle grace with which he offers this critique of Lewis underscores its power.

At a time when a Midwestern sense of balance helped Walter Cronkite famously become “the most trusted man in America” as he covered the country’s radical social change in the ‘50s and ‘60s,<sup>40</sup> Lewis was more of a champion for a Court whose decisions he agreed with ideologically.<sup>41</sup> Few could match Lewis’s profound depth of analysis, which was remarkable given the daily deadlines he was working against. But the truth that journalism itself demands also compels the recognition that Lewis was prone to crossing the fine line that separates analysis from opinion.<sup>42</sup> Indeed, one of the first words of advice the Supreme Court press corps’ old-timers hand down to newcomers is to resist the temptation to “opine with the justices.”<sup>43</sup> This, too, is a part of Anthony Lewis’s legacy.

*Slate* Supreme Court Reporter Dahlia Lithwick confronts the challenge of tone in high coverage head on. Some insiders have compared covering the nation’s highest court to covering the Vatican. While that is the opportunity, it is also the problem. As Lithwick notes, Supreme Court reporters are often criticized as being what she terms “reverent acolytes[,] unable to criticize or even opine on anything for fear of upsetting the justices” and being denied the kind of access to the Court that helped make Lewis great.

But Lithwick notes it was more than access that made Anthony Lewis the gold standard of high court reporting, it was also his willingness to take on the Court when he felt it was appropriate, to bring in detail beyond doctrine to illuminate the significance of the Court’s work,<sup>44</sup> to use his precious

38. See Lyle Denniston, *Anthony Lewis: Pioneer in the Court’s Pressroom*, 79 MO. L. REV. 901 (2014).

39. *Lyle Denniston: Reporter*, SCOTUSBLOG, <http://www.scotusblog.com/author/lyle-denniston/> (last visited Nov. 11, 2014).

40. See *Walter Cronkite Biography*, BIO., <http://www.biography.com/people/walter-cronkite-9262057#synopsis> (last visited Nov. 11, 2014).

41. See Liptak, *supra* note 7.

42. For an example, see Linda Greenhouse’s discussion of Lewis’s coverage of the *Heart of Atlanta* case, in which Lewis rather pointedly reports how the court rejected a rationale offered by Sen. Barry Goldwater, R-Ariz. Greenhouse, *supra* note 33.

43. See Dahlia Lithwick, *Anthony Lewis*, 79 MO. L. REV. 971 (2014).

44. For an example, see Linda Greenhouse’s article discussing Lewis’s coverage of *Cooper v. Aaron*, 358 U.S. 1 (1958), in which Lewis noted high in the story not

space to give voice to the poor and marginalized, and to offer compassion to the less fortunate and scorned. “I cannot imagine what it would be like to cover the Supreme Court without allowing opinion and analysis and values to inflect upon the coverage,” she writes.

*Accommodating the Reporters: Public Information Offices*

The foregoing articles all focus on coverage of the U.S. Supreme Court, but Lewis’s influence in founding the genre of legal journalism extends far beyond that. For one, to the extent that there are more reporters on the beat, there is a concomitant need for courts to be able to accommodate those reporters.

The first of these offices was at the U.S. Supreme Court, of course, and Jonathan Peters, a rising scholar in both journalism and law at the University of Kansas, provides the first comprehensive account of the history of that office.<sup>45</sup> As Peters discovered through archival research and interviews, the office was carved out of the Court’s Office of the Clerk during the Depression era because of the heightened interest in the Court during its epic battle with President Franklin D. Roosevelt. At its helm were some surprisingly colorful characters. One, Barrett McGurn, who held the office during the Burger Court, was widely and vividly reviled by the in-house press corps as obstructionist – when he was not spying on the reporters for the Chief Justice. “[H]e was to Burger what wiretaps were to Nixon,” Peters reports. On the other hand, the other “Tony” of high court lore – Toni House, who was the Public Information Officer during the Rehnquist Court – enjoyed more favor among the high court press corps. A former managing editor for the *Washington Star*, House is credited with modernizing not only the office, but with using her position to help professionalize the field of court information officers by helping to found the national Conference of Court Information Officers.<sup>46</sup>

Much of this professionalization came from the diffusion of public information officers beyond the Supreme Court into the lower federal and state courts. The federal courts’ first and only Chief Public Information Officer, David A. Sellers, offers a definitive account of its creation, as well as the transition of public information offices from hand-delivered slip opinions to

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only that the court was unanimous, but that in reading the decision from the bench, Chief Justice Earl Warren paused and looked at each justice as he mentioned their joining the opinion.

45. See generally Jonathan Peters, *Institutionalizing Press Relations at the Supreme Court: The Origins of the Public Information Office*, 79 MO. L. REV. 985 (2014).

46. Linda Greenhouse, *Toni House, 55, an Ex-Journalist and Press Officer for High Court*, N.Y. TIMES (Sept. 30, 1998), <http://www.nytimes.com/1998/09/30/us/toni-house-55-an-ex-journalist-and-press-officer-for-high-court.html>.

today's remarkable PACER (Public Access to Court Electronic Records) system, as well as its emerging presence in virtual and social media.<sup>47</sup>

### *Hope and Concern*

While a symposium honoring Anthony Lewis's life and legacy provides much to celebrate, the undertow of concern is just as palpable.

Eugene Policinski, Chief Operating Officer of Newseum Institute and Senior Vice President of the First Amendment Center, recites the important history of court coverage in the U.S. – before providing detailed statistics of its decline today.<sup>48</sup> The news industry as a whole has shrunk, but Policinski notes the impact has been disproportionately felt in the nation's court and legal beats, as beat coverage generally has given way to the flexibility of general assignment reporting. While no one is believed to maintain such statistics, the number of reporters for general interest newspapers who are dedicated to courts are reckoned to be countable on two hands – with digits to spare.

Policinski says more training of “parachute journalists” is necessary, at the least, to combat this trend if the industry is to fulfill the constitutional function that Anthony Lewis so capably demonstrated. Acknowledging the same phenomenon in his article, David Sellers says the courts are going to have to be more proactive in getting their message to the public, in part because reporters are not going to be there to assist the courts in this way.

Howard Mintz, the award-winning legal reporter for the *San Jose Mercury News*, is one of the few journalists with a full-time law beat, and he has another concern about his journalistic brethren.<sup>49</sup> Journalists are going to have to change the way they do their work if they are going to survive, he writes. Mintz, who is not a lawyer, has covered the courts since the mid-1980s, and credits technology and court programs like PACER for transforming what was once a difficult, laborious, and time-consuming task into a “push-button” enterprise that can be used in all sorts of creative ways to generate new and important stories. But Mintz says the technology is far ahead of newsroom practitioners and warns his colleagues to “change or die.”

Heath Hooper and University of Georgia Journalism Dean Charles Davis say journalistic practices aren't the only thing that need to change as legal journalism evolves into the next generation: The media also needs better access to public records at the state level and that can only come if the states adopt statutes permitting fee shifting in freedom of information cases.<sup>50</sup> The problem arises from the U.S. Supreme Court's rejection of the central ra-

47. Sellers, *supra* note 6.

48. Eugene Policinski, *Setting the Docket: News Media Coverage of Our Courts – Past, Present and an Uncertain Future*, 79 MO. L. REV. 1007 (2014).

49. See generally Howard Mintz, *Legal Journalism Today: Change or Die*, 79 MO. L. REV. 977 (2014).

50. See generally Heath Hooper & Charles N. Davis, *A Tiger with No Teeth: The Case for Fee Shifting in State Public Records Law*, 79 MO. L. REV. 949 (2014).

tionale supporting fee shifting in such cases, the so-called “catalyst theory,” which generally permits a freedom of information plaintiff to recover attorney fees if the government backs down and provides the information without a court decision.<sup>51</sup> Congress ultimately reversed that decision, but the federal legislation doesn’t apply at the state level, where courts continue to follow the Supreme Court’s now-discredited rationale.

As a result, public access to information can easily be stymied by government officials who have little to lose by refusing to turn over requested documents for even the most pernicious of reasons. After all, without the catalyst doctrine, such stonewalling will work, and even when “a case appear[s] not to be going their way, they can simply turn over the documents some time before real litigation starts, confident that their costs will be relatively minimal,” Hooper and Davis write. Put another way, without the catalyst rationale, the freedom of information tiger simply has no teeth.

Finally, there is an international aspect to the Anthony Lewis story. Lewis himself was a man of the world and, after leaving the U.S. Supreme Court beat, he moved to London for several years to develop his column. He then split his time between London and Boston as his personal column became his perch as one of the leading liberal intellectuals of his generation.<sup>52</sup>

Lawyer and journalism professor Ben Holden provides the symposium’s international perspective, comparing press protections in the United States with those in the recently minted Republic of Kosovo.<sup>53</sup> Much of Kosovo’s emerging press law reflects issues that we have grappled with in the United States. Holden, who teaches media law at the University of Illinois College of Media, finds hope that this nascent nation is in a position to benefit from our successes and to learn from our mistakes. The formal law is good and could position the media for a robust role in securing the nation’s new democracy.

On the other hand, however, Holden also sees cause for concern, positing that the strong media protections built into Kosovo’s new constitution and legal system will work better in theory than in practice. For example, unlike in the United States, Kosovo has a shield law protecting reporters from being compelled to reveal confidential sources, yet it is unclear whether it will apply if the informant is a government employee who is revealing the name of a confidential witness. If it doesn’t, this key exception could well swallow an otherwise noble rule.

The ability to play a role in how such issues play out is as important for the media in the United States as it is for the media in the Republic of Kosovo, and any other nation that hopes to have an effective democracy. This was

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51. See *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep’t of Health & Human Res.*, 532 U.S. 598 (2001).

52. Interestingly, the title of his column also alternated. It was called “At Home Abroad” when he wrote from London or other international locations, and called “Abroad at Home” when he was in Boston.

53. Ben Holden, *Press Freedom and Coverage in the U.S. and Kosovo: A Series of Comparisons and Recommendations*, 79 MO. L. REV. 915 (2014).

part of Anthony Lewis's vision for the courts, a vision he shared through the power of his pen and person over a pioneering career that spanned more than five decades. He showed us how, and now it's up to us and the generations that follow to keep the torch flaming and bright. As he wrote in his final column, astutely quoted by Lincoln Caplan, "In the end I believe that faith in reason will prevail. But it will not happen automatically. Freedom under law is hard work."

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Putting together a symposium is also hard work. This one would not have been possible without the enormous contribution of many hands. It was sponsored by the University of Missouri School of Law and cosponsored by the Missouri School of Journalism and Reynolds Journalism Institute ("RJI") at the University of Missouri. The leaders of those entities – Law Dean Gary Myers, Journalism Dean Dean Mills, and RJI Director Randy Picht – could not have been more supportive, for which I could not be more grateful. The symposium was hosted by the *Missouri Law Review*, in whose pages these articles appear. There, Editor in Chief Elizabeth Hatting, and Associate Editor in Chief Peter Bay managed the grunt work of coordinating the live symposium. Hatting's successor, Editor in Chief Jillian Dent, then managed the editing process with skill and grace, while Managing Editor Kim Hubbard, Lead Articles Editor Alice Haseltine, and their team of editors also worked tirelessly to give the articles the editing care they deserved. Law School External Relations Director Casey Baker and Administrator Robin Nichols showed much care and competence in making sure that no details fell through the cracks. Legal journalist and former Missouri Journalism Professor Michael J. Grinfeld retired before he had an opportunity to work on this project, but his spirit of tenacity, creativity, and good cheer were very much a part of every phase of this symposium.

Finally, the participants of this symposium are due special thanks. All of them are stars in this world of legal journalism, and any of them could have commanded and demanded the considerable speaking fees their stature would rightly justify, or postured for the podium presence of a headliner. Not one of them did. Every one of them did it for Tony. It is hard to imagine a more sincere tribute, one for which I suspect Tony would have been especially grateful.