

**THE RICHARD S. SALANT LECTURE  
ON FREEDOM OF THE PRESS**

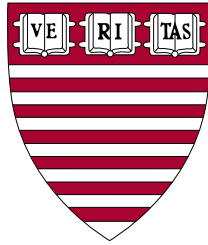
WITH

**ANTHONY LEWIS**

Joan Shorenstein Center  

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**PRESS • POLITICS**



**• PUBLIC POLICY •**

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Harvard University  
John F. Kennedy School of Government

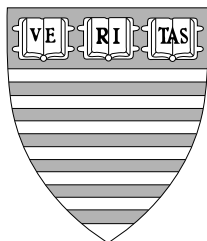
**2008**

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# HISTORY

*In 2007, the estate of Dr. Frank Stanton, former president of CBS, provided funding for a lecture in honor of his longtime friend and colleague, Mr. Richard S. Salant, a lawyer, broadcast media executive, ardent defender of the First Amendment and passionate leader of broadcast ethics and news standards.*



**Frank Stanton** was a central figure in the development of television broadcasting. He became president of CBS in January 1946, a position he held for 27 years. A staunch advocate of First Amendment rights, Stanton worked to ensure that broadcast journalism received protection equal to that received by the print press. In testimony before a U.S. Congressional committee when he was ordered to hand over material from an investigative report called “The Selling of the Pentagon,” Stanton said that the order amounted to an infringement of free speech under the First Amendment. He was also instrumental in assembling the first televised presidential debate in 1960.

In 1935, Stanton received a doctorate from Ohio State University and was hired by CBS. He became head of CBS’s research department in 1938, vice president and general manager in 1945, and in 1946, at the age of 38, was made president of the company.

Dr. Stanton was an early proponent of the creation of a Press and Politics Center at the Kennedy School. He served on the advisory committee for the proposed center in the early 1980s and was on the Shorenstein Center’s advisory board from 1987 until his death in 2006.



**Richard S. Salant** served as president of CBS News from 1961 to 1964 and from 1966 to 1979. Under his leadership, CBS was the first network to expand its nightly news coverage to a half-hour on weekdays, started a full-time election unit, created additional regional news bureaus outside New York and Washington, and launched “60 Minutes,” the “CBS Morning News,” and “Sunday Morning” programs. He was credited with raising professional standards and expanding news programming at CBS. Salant was known as both a defender of the news media’s First Amendment rights and a critic of what he considered the media’s excesses and failings. Salant graduated from Harvard College in 1935 and from Harvard Law School in 1938. He worked in government and as a lawyer. Salant represented CBS in hearings before the FCC and Congressional committees and in a suit with RCA-NBC over which network would develop color television. Although CBS lost, Salant impressed the network’s president, Frank Stanton, who later appointed him vice president of CBS News in 1952.





**Anthony Lewis** is a Pulitzer Prize–winning journalist. His first Pulitzer for national reporting was awarded in 1955, when he was a reporter for the *Washington Daily News*. Lewis wrote a series of articles that were adjudged directly responsible for clearing Abraham Chasanow, an employee of the U.S. Navy Department, and bringing about his restoration to duty with an acknowledgment by the Navy Department that it had committed a grave injustice in dismissing him as a security risk. Lewis won a second Pulitzer Prize for national reporting in 1963 for his distinguished coverage of the Supreme Court. Anthony Lewis

worked at the *New York Times* for many years, first as a deskman (1948–52), as a reporter in the Washington bureau (1955–64), as London bureau chief (1965–72) and as a columnist (1969–2001). He is the author of several notable books, including *Gideon’s Trumpet*, *Make No Law: The Sullivan Case and the First Amendment*, and *Freedom for the Thought We Hate: A Biography of the First Amendment*. Lewis was editor of the *Harvard Crimson* and graduated from Harvard College in 1948. He taught at Columbia University’s Graduate School of Journalism and at Harvard Law School for many years. In 2002 he was the Visiting Lombard Lecturer at the Shorenstein Center.





# RICHARD S. SALANT LECTURE

## OCTOBER 1, 2008

**Dean Ellwood:** Hello, everyone, welcome to the Harvard Kennedy School. My name is David Ellwood, I'm the Dean here. This is a really wonderful evening as it is the first Richard S. Salant Lecture on Freedom of the Press. And indeed we have a spectacular, outstanding person to be the inaugural speaker here tonight.

The lecture originated because of a bequest from another person, who it would be wonderful to have here, Frank Stanton. Indeed, I could imagine few people whose ideas about what's going on in America right this moment I would treasure more on everything from the press, to the Congress, to our political system.

Frank himself was, as all of you know, a remarkable man and our friend. He was a good friend of Harvard University, of the Kennedy School and of the Shorenstein Center. And it was he who provided funding in a bequest for an annual lecture in honor of his longtime friend and colleague, Richard Salant, who was a lawyer, a broadcaster, executive, a media executive of course, and a very ardent defender of free speech.

I also want to particularly mention Elisabeth and Graham Allison because Frank was very, very close to them. As many of you have been to the Kennedy School's John F. Kennedy Jr. Forum and seen what it's like in its glory, the truth is that Frank Stanton, along with Graham, is in very, very large part responsible for that. Frank really did have a vision of a place, a Roman forum, where grand ideas would be discussed and engaged. You can well imagine how people reacted when Graham went to the powers that be at Harvard and said we need a Roman forum at the Kennedy School.

(Laughter)

And it didn't go over very well at first but because of the intense capacity of Frank and Graham both to be visionary but also to be tough, we have the Forum.

So my job is to introduce Alex Jones, who is the Director of the Joan Shorenstein Center on the Press, Politics and Public Policy, and the Laurence M. Lombard Lecturer in the Press and Public Policy. And he is of course a Pulitzer Prize-winning reporter from the *New York Times*. He coauthored, along with a very, very important coauthor, Susan Tifft, who is also right here and we are especially happy to have you here, Susan, *The Patriarch: The Rise and Fall of the Bingham Dynasty*, and *The Trust*.

But as far as I'm concerned, what makes him great is he is the leader of the Shorenstein Center and it is indeed a very, very special and terrific place. So, without further ado, let me turn to Alex. But, again, let me ask to begin with a big hand in memory of Frank Stanton.

(Applause)

**Dean Ellwood:** Alex Jones.

**Mr. Jones:** Thank you, David.

It is my great pleasure to add my welcome to you all tonight for this inaugural Richard S. Salant Lecture on the Freedom of the Press. Tonight we will hear from Tony Lewis who is our overwhelming choice to be the inaugural Salant Lecturer. Richard Salant was considered in his day, and even now, the greatest ever head of a network news division because of his tenure in that position at CBS. He led the news operation at CBS during its most glorious time, creating news and public affairs programming that really inspired other networks and other news organizations.

It was a time when television network news really was something that inspired the world and was vastly important. He was the person who embodied that in many, many respects, not in front of the camera, but behind the scenes and the one who was the head of the division that really was the bulwark, if you will.

But I think it is important that we spend a moment on another great CBS icon, a man whose generosity, as David said, made possible the Salant Lecture. I speak of course of Frank Stanton who died on Christmas Eve in 2006. He was a great friend of Harvard, the Shorenstein Center and the Kennedy School, as David said, and it is from a bequest in his will that the Salant Lecture was born.

Elisabeth and Graham Allison, Frank's devoted counselors and friends, were instrumental in making that possible. And while we have applauded Frank Stanton in memory, I would ask that you join me also in expressing our thanks to Elisabeth, Graham is not here, but to Elisabeth tonight. Thank you.

(Applause)

Frank Stanton was not a news man in the literal sense. To the best of my knowledge, he never covered a story. But as president of CBS, he was a champion of news and of press freedom. For one thing, he was Dick Salant's ally and champion; he made it possible for Dick Salant to win the reputation of being the world's greatest news division chief and made it possible for CBS to be known as the Tiffany network of news. He was instrumental in making possible the first presidential debate to be televised in American history.

It was in 1960 and Frank Stanton basically twisted the arm of the FCC to change the rules in order to make the debate possible because, in those days, the Communications Act of 1934 required that you give equal treatment to any political advocacy. And that meant that you had to get special dispensation to have two people, the Republican nominee and the Democrat nominee, debate each other.

But more directly, Frank Stanton led CBS into a confrontation with the federal government over a critical First Amendment issue, something that I think a lot of people don't really realize about Frank. In 1971, "CBS

Reports,” which was the celebrated documentary unit that Frank Stanton created at CBS, broadcast “The Selling of the Pentagon,” which was a very tough exposé on defense spending. The Pentagon and Congress were not amused, the House Commerce Committee issued a subpoena, ordering CBS to provide outtakes of the materials and Frank, as president of CBS, on the basis of CBS’s First Amendment rights, declined to obey the subpoena. He defied the subpoena, and for his efforts, he received one of three personal Peabody Awards that he received during this career at CBS.

The point is that this lecture could have been called the Frank Stanton Lecture on Freedom of the Press. That it is named instead for his friend, Richard Salant, was the decision of Dr. Stanton, who among other things, was remarkably modest. Our inaugural Richard Salant Lecturer is a man who has come to embody the battle to keep the First Amendment vibrant and vigorous.

Anthony Lewis, my colleague from the *New York Times*, is a graduate of Harvard College, a former editor of the *Crimson* and then later a Nieman Fellow. It was while he was a Nieman that he plunged into the law, taking courses at Harvard Law School and later teaching there. I might add that he was also a Visiting Lombard Lecturer at the Shorenstein Center. He has won two Pulitzer Prizes, one of them for covering the Supreme Court, and he has written several of the most important books ever published on constitutional law and how that applies to our lives. *Gideon’s Trumpet* tells the story of the case that led to the requirement that lawyers be provided to defendants unable to otherwise afford one, which was a revolutionary concept.

The second book, *Make No Law*, is an account of the *Times v. Sullivan* case, which has made possible the ability of the press to get it wrong, unintentionally wrong, but still wrong, when it comes to covering politics, and thereby opened the door to the robust and fearless national conversation that is at the heart of politics today. His most recent book is *Freedom for the Thought We Hate: A Biography of the First Amendment*.

Ladies and gentlemen, the First Amendment story is not what you think it is. It is only relatively recently that Americans could, for instance, be unafraid to express opposition to a war in progress. The First Amendment, it turns out, is as much about politics as about constitutional law, and Tony’s book tells the sometimes bizarre story of how freedom of speech and of the press came finally to mean what those words say.

We live in a world in which a terrorist act could wreak havoc on First Amendment freedoms and for eight years we have had a president who has interpreted executive power, in a time of war, to be whatever he says it is. In this dangerous world, the First Amendment and freedom of the press

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are bulwarks, but bulwarks are a bit like levies and we all know that levies need constant vigilance or they can wash away.

It is my great honor to present our inaugural Richard S. Salant Lecturer on the freedom of the press, Anthony Lewis.

(Applause)

**Mr. Lewis:** Thank you, Alex.

Ladies and gentlemen, it's rather emotional for me to be here among so many people I know and respect and to be giving the first Richard Salant Lecture on Freedom of the Press. I know Richard Salant's qualities that both Dean Ellwood and Alex Jones have mentioned, and I know the story of Frank Stanton and his standing up to Congress. He was held in con-

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**Which of those two views more accurately describes the American press? Madison's noble institution driving tyranny from the temple and bringing in reason and humanity? Or Tocqueville's nosy, prurient intruder playing on popular emotions?**

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tempt, he fought it, not legally, by the way, but politically, and he persuaded the House of Representatives to turn down the committee's contempt citation, a very brave and remarkable accomplishment. Significantly, both Salant and Stanton saw television news in a framework of ethics and public policy. That makes them fitting heroes for the Shorenstein Center.

This is a talk about the press. I include in the word press all forms of conveying news and comment to the public—print, broadcast, cable, computers—in preference to the word media, which to me has a ring of pomposity.

I begin with two classic views of the American press. The first comes from James Madison at the end of the 18th century. In a republic, he said, where “the people, not the government, possess the absolute sovereignty,” the press must be free to inform the people about “the merits and measures of public men.” “To the press alone,” he said, “. . . the world is indebted for all the triumphs which have been gained by reason and humanity over error and oppression.”

The second view, less romantic, comes from Alexis de Tocqueville. In *Democracy in America* in 1835 he wrote: “In France the hallmark of the spirit of Journalism is a violent but lofty and often eloquent way of arguing about great interests of state . . . ; the hallmark of the American journalist is a direct and coarse attack, without any subtleties, on the passions of his readers; he disregards principles to seize on people, following them into their private lives and laying bare their weaknesses and their vices.” 1835.

(Laughter)

Which of those two views more accurately describes the American press? Madison's noble institution driving tyranny from the temple and bringing in reason and humanity? Or Tocqueville's nosy, prurient intruder

playing on popular emotions? Undoubtedly some of each. But reflecting on that question in preparing this talk, I came to the conclusion that I have lived through the high point in the Madisonian vision of the press's function: a golden age, the age, you might say, of Stanton and Salant. And of Fred Friendly, the CBS producer and executive who guided Ed Murrow and was memorably portrayed by George Clooney a few years ago in the movie *Good Night and Good Luck*. I add that Fred did not look a bit like George Clooney.

(Laughter)

It was the spirit that Clooney portrayed. It's a bit odd looking into your own past and concluding that you've lived, without knowing it, through a golden age. It is rather like the Bourgeois Gentilhomme, in Moliere's play, who found to his delight that he spoke prose. But my point is a serious one.

When I started at the *New York Times*—in the middle of the last century, I'm afraid—the press did not often perform the function for which Madison praised it: correcting the errors and abuses of government. One did not expect to see stories in the *New York Times* that challenged official truth. I put to one side that part of the press, a large part, that sought mostly to entertain its readers. But in the serious papers, like the *Times*, reporting of government tended to be like stenography. Official statements appeared without any illuminating framework.

It was at a particular moment in modern history that the press began seeing its highest function as challenging official truth. That was of course the Vietnam War. David Halberstam, whose memory we might salute, and his colleagues stopped simply repeating rosy official accounts of the war. They looked for reality, and reported it. What they saw did not support the official line that we were winning. They saw that, for historical reasons, the other side in the war wore the mantle of Vietnamese nationalism, while we and our South Vietnamese allies were seen as foreign, colonial.

The reporters in Vietnam were not alone in their growing skepticism about official truth. The American public gradually came to see Vietnam not in the romanticized way it had seen other wars. It saw the gap between claimed military gains and the actual situation on the ground: President Johnson's credibility gap, it was called. Many in this audience may be too young to remember the patriotic glow that used to color the public's view of wars, almost all the public's, I should say, and not just in this country. In Britain, for example, the horrors of World War I—the pointless stalemate of trench warfare, the criminal folly of the military leadership—were simply not recognized by the public.

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It kept waving flags while a generation of young men was decimated. Not until the publication of Robert Graves's *Goodbye to All That* in 1929 did the appalling truth begin to get through and disillusionment set in.

In 1971 the Vietnam War led the American press to make a fateful choice about its own role. Neil Sheehan of the *New York Times* acquired a copy of a huge study, done inside the Pentagon, of how the United States got into the war: 43 volumes, stamped Top Secret. It was what came to be called the Pentagon Papers. Reporters and editors on the *Times* wanted to publish stories and text; executives of the paper were reluctant. The *Times*, through the decades of the Cold War, had always worked closely with high officials, right up to the president. Would it be in character to break that entente?

The decision was up to the publisher, Arthur Ochs Sulzberger, Punch Sulzberger, an intensely patriotic former Marine. There were heavy pressures on him to say no to publication. The law firm that had represented the *Times* for decades said it would be a crime to publish. The lawyers refused even to look at the documents themselves, saying that would make them party to the crime. But in the end Punch Sulzberger said yes. The *Times* published stories and pages of excerpts for three days—until the Nixon administration went to court and got a temporary restraining order against further publication.

When the *Times* was silenced, the *Washington Post* got a copy of the papers, and after another internal struggle decided to publish. It was stopped; the *Boston Globe* and others published. For 15 amazing days in June 1971, the struggle raged—in the courts and in the press. Then, by a vote of six to three, the Supreme Court removed the injunctions that had stopped publication.

It was a victory, not just in law but in press attitudes, for the Madisonian vision of the press's great function. What is interesting to me is that,

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inside the *Times*, the desire to publish came not just from those opposed to the war. Neil Sheehan and others who had been in Vietnam were indeed against the war. But the top editor, A.M. Rosenthal, believed in the war but believed even more in the press's duty to challenge official truth.

President Nixon said years later that he did not order the lawsuit against publication because of the content of the Pentagon Papers. The history they told was all before he took office, he said, and they were "no skin off my back." He said he sued, rather, to protect the power of the presidency. But one year after the Pentagon Papers decision there was a break-in at the Watergate in Washington that provoked a deeper crisis for the presidency. Nixon's

cover-up of that event led, as you know, to his forced resignation after the Supreme Court ruled that he had to disclose to a criminal inquiry tapes of conversations in the Oval Office.

The lessons of those turbulent years were that the power of the president must be limited, that he has to govern within the law and that the press's greatest function is to check his use and abuse of power. So we thought at the time. But have those lessons stayed with us? I'm afraid the short answer is no.

For the last eight years we have lived under a president whose lawyers—or the ones with crucial influence—argued that there are no limits on the president as Commander-in-Chief. He can order the violation of a criminal statute on wiretapping, they said; he can direct the torture of detainees in violation of treaties, of domestic law and of profound American tradition; he can take this country to war on the basis of false assertions of fact.

Where was the American press when those things happened? For a long time, sitting on its hands. It was so incurious about the reasons for the war in Iraq that eventually both the *New York Times* and the *Washington Post* published apologies for their failure to do the press's job of digging and challenging. Partly because of that failure, the Bush administration had astonishing success in its efforts to blame Saddam Hussein for the terrorist attacks of September 11, 2001. A poll published in March 2003 said that 45 percent of Americans who were questioned believed that Saddam Hussein was "personally involved" in the 9/11 attacks: a belief without a shred of support in reality.

For a long time, too, the press ignored or underplayed the administration's assault on the Constitution. When the government detained an American citizen as a terrorist suspect—detained him indefinitely, without trial, without access to counsel, in solitary confinement—I read about it in a *Times* story that was about four paragraphs long. It was a long time before the press registered the astounding scope of that assertion of legal power—that brazen scope.

Why were we for years so deferential, so incurious about error and oppression—to use Madison's phrase—in the Bush administration's conduct of what it called the War on Terror? One reason surely was that, like the country generally, we were stunned by the terrorist onslaught. We shared the instinct to be unified in the national response. But I think there was something more. The crimes of Watergate seemed to us the freakish product of a president who, for all his intelligence, was close to paranoid in his moody defensiveness. We found it hard to believe that another

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president would set out—not on his own but with his lawyers and his vice president—to violate the criminal law and deliberately overturn deep American values.

I have lately learned of a depressing incident that illustrates what I mean. I read it in the wonderful new book, *The Dark Side*, by Jane Mayer, who credits for this story a report by Eric Umansky in the *Columbia Journalism Review*. Carlotta Gall is a stringer for the *New York Times* in the Middle East, used frequently and greatly respected. In 2003, she filed a story reporting that Americans had beaten an Afghan detainee to death in an Afghanistan prison. For a month the story sat unused. Finally, after strong urging by the foreign editor, it was published—buried on page 14. Carlotta Gall concluded that the top editors simply could not believe Americans would do such a thing.

We know now that Americans did indeed do such things: not just that and other homicides but cruel torture because eventually the press suspended its disbelief. The *Washington Post* and the *New York Times* published large numbers of stories about torture and other hidden Bush programs, including the president's order to conduct domestic wiretapping without the approval of a special court in the teeth of a statute making such taps a crime. CBS television and Seymour Hersh of the *New Yorker* broke the story, and the graphic photographs, of torture at the Abu Ghraib prison in Iraq.

The hardest thing to convey, I think, was that the numerous incidents of torture were not the result of individual soldiers or CIA agents violating the rules—of bad apples, as Bush officials called the torturers at Abu Ghraib. They were policy. They stemmed from lawless opinions written by an official of the Justice Department and approved in the White House.

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My guess is that most Americans still do not know about this deliberate violence against human beings, or do not care, or actually approve of torture. No ranking official responsible for torture has been called to account. But at least, thanks to the press, the record is there. President Bush, Vice President Cheney and others will forever be stained with that evil.

These last years have made me understand more acutely than ever how much we depend on the press to resist the abuses of power-hungry governments. The guarantees of the Constitution avail us not if we do not know how power is being accumulated and misused. Especially is that true in a time of fear, the time of a war on terror with no foreseeable end. Here again Madison can be our guide. In a letter to Jefferson in 1798, he said: "Perhaps it is a universal truth that the loss of liberty at home is to be charged to provisions against danger, real or pretended, from abroad."

Unfortunately, our intensifying need for the press to speak truth to power coincides with multiplying threats to the press and its ability to perform that function. We are all aware of the economic realities. Network television news has cut way back, among other things eliminating most of its foreign bureaus, as its audience has shrunk. Newspapers are losing circulation and losing some of their important reporters to buyouts and layoffs. That situation was perfectly captured by Garry Trudeau in his cartoon strip “Doonesbury.” One of the characters in the strip, for years, has been a *Washington Post* reporter, Rick Redfern. He was called in last month by his editor, who said: “Rick, you’ve been an extraordinary asset to the paper. But I am afraid that we can no longer afford to keep someone of your caliber on board. We would like to offer you our best buyout package. It’s quite an honor.”

(Laughter)

Some people believe that computer communications—blogs—are the answer to the decline of print and broadcast journalism. Let me say first, as an aside, that blogs are an opportunity for old-fashioned reporters to fire off their views: an opportunity and also a burden. Again “Doonesbury” is my authority. Last July, Rick Redfern came back from a reporting trip. He said to his wife, Joanie Caucus: “Eight countries in eight days? I’m just not built for that craziness anymore.” Then came these exchanges: “Well, you seem to be holding your own.” “Are you serious? I’m 23 pieces behind.” “Twenty-three?” “I can’t get the hang of blogging.”

(Laughter)

Blogs are in fact a great advance for the idea of free expression. Madison, the author of the First Amendment, believed passionately that there should be no censorship of any kind: no stopping of any speech or publication, however wrong-headed it might be. If words were false or harmful, he thought, the remedy was to counter them with good speech. In his day, newspapers were not great establishments requiring huge capital; anyone could bring his foolscap to a printer and have a broadside published. Blogs are the ultimate realization of that Madisonian vision—anyone can say anything at virtually no cost, and millions do.

But the notion that blogs can be a substitute for old-fashioned journalism is a delusion. Bloggers do not have—cannot imaginably have—the resources to absorb, analyze and publish excerpts from 43 volumes of the Pentagon Papers. Or the professional experience and demonstrated commitment to truth that enabled a reporter to acquire sources on how the United States Government came to practice torture. Not many bloggers report

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facts; their business is opinion. They are full of opinions. Like Falstaff's bill at the Mermaid Tavern, there is a paltry amount for meat compared to the layout for sack.

We are drowning in opinion today. Not just on the Web but on the radio and cable television. And much of it is opinion based on little more than ideology or an idea of what will sell. That is the information diet of millions of Americans, perhaps most.

I used to be a newspaper columnist, so I am hardly in a position to advocate the end of opinion journalism. But I never believed in opinion without facts, and I never doubted that the most important work of informing the public was done by dedicated reporters. Remember what C.P. Scott, the great editor of the *Manchester Guardian*, said: "Comment is free, but facts are dear."

There is a special problem with what could be called hate radio: broadcasts, mostly from the extreme right, that denigrate their targets in hateful terms. An example of their technique has been their treatment, during the election campaign, of a book by Jerome R. Corsi, Ph.D. called *The Obama Nation*. Corsi is a classic crackpot.

(Laughter)

Last year he wrote a book saying that the Bush administration and various liberals were plotting to make the United States part of a North American superstate with a currency called the "amero." He called Bill Clinton and Katie Couric communists. In the Obama book he described the candidate as trained and dominated by Marxists and Islamists. The hate radio broadcasters interviewed Corsi or praised his book, giving him great publicity.

In other Western societies, such people would be regarded as the lunatic fringe; here they have to be taken seriously, very seriously, because they can have real influence on our politics. Take the question of Barack Obama's religion. In factual terms there can be no doubt about that; he has been a regular and prominent churchgoer for many years. But a recent survey showed that 13 percent of Americans believe he is a Muslim who took his oath as a Senator on the Koran. Another 16 percent are not sure whether he is Christian or Muslim. Google has a category entitled Obama the antichrist? When I checked it the other day, it had 896,000 entries. I don't mean hits, I mean items discussing the supposed issue of whether Barack Obama is the antichrist.

Ladies and gentlemen, I'm approaching the end of my talk—and I have to face the fact that I have mentioned some of the hard problems facing the press but I've not offered solutions. That is because I have no magic answers. I do not know whether newspapers can survive in anything like their present form, or perhaps I mean the form they had before some of them dumbed down in the search for readers. The hope is that the print press will be able to get real news across in computerized form. Web sites

are useful, but I do not believe that readers can realistically be expected to go through, on a computer screen, complicated stories that require length in the telling. I fear that this country is going to be short of the information needed to make a democracy work and will have to survive on snippets of fact buried in gobs of opinion.

The press is struggling to do its job, moreover, at a time when its credibility is constantly under attack. Much of that, not all, but much of it is not the press's fault. There are ideologues and political hirelings who assume that any report they don't like is the product of a journalistic conspiracy. But the press should not encourage the know-nothing critics by, for example, acting high and mighty, entitled to special privilege. Richard Salant, whose name graces this lecture, urged broadcasters to say so when they got something wrong. He adopted standards of ethics and professionalism, overcoming much resistance to do so.

I do not think we should be apologetic about our profession, ladies and gentlemen. To the contrary, journalism is valuable work, wonderful work, dedicated in a profound way to the public interest. I spent much of my working life on my own, as a columnist with a singular writ. Perhaps that enabled me to see the world of journalism in a more detached way, and I loved what I saw: men and women with high standards and courage. Not everyone, of course, but more than any other group of people I know.

We must never forget the responsibility and the honor given us by the Framers of the First Amendment. In that spirit, I want to conclude by reading what I think is the greatest modern evocation of James Madison's vision: a passage from Justice Hugo Black's opinion in the Pentagon Papers case. Justice Black said: "The press was protected so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government. And paramount among the responsibilities of a free press is the duty to prevent any part of the government from deceiving the people and sending them off to distant lands to die of foreign fevers and foreign shot and shell. In my view, far from deserving condemnation for their courageous reporting, the *New York Times*, the *Washington Post* and other newspapers should be commended for serving the purpose that the Founding Fathers saw so clearly. In revealing the workings of government that led to the Vietnam War, the newspapers nobly did precisely that which the Founders hoped and trusted they would do."

Thank you.

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(Applause)

**Mr. Lewis:** That was wonderful, ladies and gentlemen, thank you.

**Mr. Jones:** Tony has agreed to respond to some questions for a few minutes.

**Mr. Schumacher-Matos:** My name is Edward Schumacher-Matos, and I am a Shorenstein Fellow here, and also write the ombudsman column for the *Miami Herald* and was previously at the *New York Times*.

And I have a question about taking the other side, which is something you don't do when you are an ombudsman and I'm going to do anyway. Are there limits that could be put on the press, that have to do with the private lives of people? The Europeans, as you know, do that and they seem to have healthy democracies, and I wonder if, with everything that happens, the serious press becomes confused with all the media and we are only in the business of exposing nonsense stuff.

And that denigrates all of us and keeps us from doing the serious stuff, even to the point that I think part of what happened with the Bush administration is the press was cowed by all the criticisms of the press. Is there something we can do?

**Mr. Lewis:** It's a very good question, it's one on which I've suffered a lot, you know, worried about. I think there should be respect for privacy and I'll answer in terms of a case. The case is called *Time, Inc. v. Hill*. The Hill family lived in a suburb of Philadelphia. One day their house, a private house, was invaded by three escaped convicts. They were held prisoner in the house for a few days; the convicts were very polite, treated them perfectly fairly, but they just didn't let them leave.

Finally the convicts left, two of them were killed by the police and one captured. It was a huge story in the Philadelphia papers and very traumatic for the Hill family, especially Mrs. Hill. She suffered terribly because of the publicity, and her doctor said she was very fragile and he couldn't predict what might happen to her. They moved away from Philadelphia to a remote area of Connecticut to get away from it all.

A few years later there was a play opened on Broadway called, now I forget the name.

**Mr. Jones:** *The Desperate Hours*.

**Mr. Lewis:** *The Desperate Hours*, thank you.

*The Desperate Hours*, about a family whose home was invaded by escaped convicts. And it wasn't about the Hill episode, but *Life Magazine* decided to stage a picture story to go with the opening of the play in the Hills' former house and treat it as if it were the Hills. And the facts were not the same. For example, the convicts were abusive and threatened to rape the daughter, and so on and so on.

The Hills suffered renewed trauma because of the publication and Mr. Hill sued *Life Magazine*, sued *Time, Inc.*, the publisher. I've gone on too long already, but it takes a little while to tell the story. He sued for damages,

won modest damages, \$25,000, in the New York courts. Time, Inc. took the case up to the Supreme Court of the United States, which heard argument in the case and then ordered a re-argument the following year. Both arguments were conducted for the Hill family by Richard M. Nixon, who was their lawyer, between his vice presidency and his presidency.

We know that the court voted first in favor of Mr. Hill and his lawsuit and then changed its mind and by a vote of five to four, overturned that modest verdict. The story of Mr. Nixon and the case was told by Leonard Garment in a very interesting article in the *New Yorker* some years ago. And at one point in the piece he said doctors had warned that Mrs. Hill was in a very fragile state. Two years after the case was decided, she took her life.

Now, what do you think? Was it really necessary for *Life Magazine* to traduce this family and to once again put it through the trauma? Was it something that was so urgently in the national interest? I don't think so. And there are a lot of other examples.

So, I'm a privacy person and if you ask somebody who thinks, it would have been okay for Mr. Hill to recover his tiny little amount of damages.

**Mr. Lewis:** Nick, do you have a question?

**Mr. Daniloff:** Well, I don't know what to say. You've given such a wonderful presentation tonight. I thought somebody from the audience should say thank you.

(Applause)

But, beyond that, I'd be interested if you would like to reflect on the influence of the Internet on journalism, on objective journalism, on journalism of assertion? Because my sense is that the Internet, for all its freedom, is also a corrupting force. And I think it's likely to corrupt the English language with the contractions which it is inventing. And I think it's going to produce a pressure which essentially is going to lower standards, if we haven't lost them already.

**Mr. Lewis:** Well, Nick, I'm not enough of an expert on the Internet to pretend to give a useful or what should I say, a well-grounded answer to your question. Let's just say I like the way you put it in your question.

(Laughter)

**Ms. Sheffield:** You spoke a lot about the history of American press and freedoms of the press within American history, and I wonder if you could speak to internationally, what have been your experiences with freedom of the press around the world?

**Mr. Lewis:** Well, my own personal experience has only been in Britain where, when I was there, freedom of the press was not a very, shall we say, celebrated value. It was rather strange because the tabloid press is famously extravagant in England, they say anything and everything. They make it up by the yard, I mean literally make it up. I can't resist giving you an example. But I have to be reminded by my wife of the name of that singer.

Elton John, thank you.

The *Sun*, the world's largest selling daily newspaper, Mr. Murdoch's London tabloid, ran a story, this is some years ago, saying that a "rent boy"—British tabloid newspaper slang for a young, male prostitute—named Graham X, had told them all about the fiendish things that Elton John did, including snorting cocaine through rolled up hundred dollar bills and other such things, and they published the story and he sued for libel. Over the next several months, they published nine more stories of that kind about Elton John, all prominently displayed on page one of the tabloid. The last story said he had vicious Rottweiler dogs on whom he had had a terrible operation performed to remove their vocal chords because their barking bothered him. Think of the imagination of these people.

(Laughter)

Imagination, it's wonderful. And so he sued over that too and that was the first case to be tried, the dog case. Why? Maybe because the English like dogs so much, I don't know. So on the Monday when the case was to be heard in the High Court, the *Sun* appeared with its front page given over to this headline: Sorry, Elton.

(Laughter)

And what they said was they were sorry that a teenage rent boy had taken them in. They gave his real name and of course they had written it all, the rent boy hadn't said anything, needless to say, but they paid one million pounds to Elton John and probably were happy, thought it was good for the paper and a net gain for the paper.

Well, I don't know how I got off on that.

(Laughter)

But in those days it was very difficult to publish serious stuff about the government's secrets. The Official Secrets Act, contempt rules and incredibly serious libel rules, which made the plaintiffs almost always win so that the newspapers settled. I'm going to trespass on your time because I love this story so much.

Here is a libel case, a true story. A man named Jeffrey Archer, Lord Archer, who writes detective stories, was said by the, I forget which newspaper, maybe the *News of the World* or the *People*, one of those Sunday tabloids, to have had some relations with a prostitute, who was named, and paid her a lot of money. He sued for libel and in court he testified that he did indeed know the prostitute, and he just thought she was a nice person and he had given her the money so she could have a trip to France.

(Laughter)

And he was sitting in court with his wife, Mary, Lady Archer, and the judge instructed the jury, and I'm not making this up, that they should consider whether someone like Lord Archer would want to go in for rubberized sex when he had access to the fragrant Mary Archer.

(Laughter)

The jury found for Lord Archer and that was the happy ending of the story, except that a few years later it turned out that it was all perjury. He was prosecuted, went to prison and had to pay back all the money, plus interest. That was a little unusual, usually it didn't work out that way for the press.

But I don't know if I've answered your question.

(Laughter)

**Ms. Nyaira:** Listening to you speak about freedom of the press, I was wondering what your opinion would be on what the American government and newsrooms in the United States can do to promote democracy in a country like mine [Zimbabwe] where everything is just going downhill.

**Mr. Lewis:** Well, I wish I had a helpful answer to that question, but I don't. We are committed to the idea of freedom of the press, but the Bush administration has such outspoken contempt for the press that it's not a very persuasive advocate for freedom of the press, in my view. I mean contempt for the American press.

Successive American administrations have been committed to the idea of a free press everywhere. But I have to tell you the truth, it has to come from within. It takes brave editors. Your former newspaper, the *Daily News*, was brave, it got put out of business by Robert Mugabe. And I knew other editors in Zimbabwe who were brave and editors in South Africa who were brave and some in England who were brave. And that's how it has to happen. It's very dangerous, and in countries like Zimbabwe it's extremely dangerous, but I really honestly think it has to come from within, not from us.

**Mr. O'Connor:** Thank you. Rory O'Connor, also a Shorenstein Fellow.

A couple of years ago Dan Rather was over in London being interviewed by the BBC and he compared the attacks on the media over the reporting or the non reporting, let's say, of the war in Iraq to necklacing in South Africa, which, I see you shaking your head. For those of you who don't know, it was putting a burning tire around people. And so he said that reporters in America were being necklaced with charges of unpatriotic behavior for telling the truth about the war.

So my question, in the present context, we've just seen John McCain, for example, launching an all out attack against the press, against the *New York Times*. Clearly these attacks are having an effect on reporting. Is there anything that you see that we can do or in fact that we should do to oppose the attacks?

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**Successive American administrations have been committed to the idea of a free press everywhere. But I have to tell you the truth, it has to come from within. It takes brave editors.**

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**Mr. Lewis:** Well, I have to say that I found the analogy a bit, what should we say? overdone, but the attacks certainly have been severe. The other day McCain's campaign manager issued a statement, which was duly carried in full in the *New York Times*, saying the *New York Times* could no longer be regarded as a newspaper, it was just a propaganda sheet, because it had the temerity to write a story about some of the lies McCain has been putting into advertising. And it had a similar story about misleading statements by Obama.

Once again, I wish I could think of a nice formula to answer such attacks. I really was referring to them when I said, toward the end of my speech, that it's a time when the press is under a lot of pressure from attacks. The only thing I think is important, and I think this is being done to an extent, is that the press hang together. That it understands that the freedom of the *Washington Post* or the freedom of the *Daily Bugle* in Peoria or somewhere is its freedom.

There was actually a historical precedent for this and it's worth saying so. The first great press case in the Supreme Court of the United States, Near against Minnesota, was about a vile, antisemitic weekly newspaper put out in Minneapolis, the *Saturday Press*, and it was put out of business under a strange new Minnesota law which allowed for the suppression of bad or evil newspapers.

And it would have died right there, with the newspaper out of business, except that Colonel McCormick, the publisher of the *Chicago Tribune*, heard about it and thought that as bad as the *Saturday Press* might be, it was important to stand up for freedom of the press, even for this obscure newspaper. And he sent his high-powered lawyer up who took the case to the Supreme Court and won it five to four, and we've all been a lot freer since then, so that's the moral.

**Mr. Kravetz:** Hi. I'm Charlie Kravetz, from NECN.

I just have a question about the decision that Norman Pearlstein made from *Time* magazine when he was ordered by the Supreme Court to give

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**. . . my feeling about the press claim of reportorial privilege is not the same as that held as an article of faith by most journalists, . . .**

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over Matthew Cooper's papers to the grand jury investigating the Valerie Plame case. I wonder if you could speak to us a little bit about your thoughts on that decision and his comment that the press was not above the law?

**Mr. Lewis:** I'm sure I'll disappoint you in my answer, because my feeling about the press claim of reportorial privilege is not the same as that held as an article of faith by most journalists, and certainly by their lawyers. I think that claim can be validly pressed only when the press is performing the precise function that I

described in my speech, the Madisonian function of challenging official power.

And that wasn't the case in the Plame case, it was the other way around. We weren't vindicating a whistleblower, we weren't protecting the name of a whistleblower, we were protecting the name of people who were trying to destroy a whistleblower. That's what that case was about, so I'm not very sympathetic to the facts of the case, I don't find them sympathetic.

But in any event, when the case started I thought that the reporters had zero chance of winning. The Supreme Court decided the issue in 1972, the chance that it will revisit that decision and decide that there is a press privilege not to disclose is zero. There aren't three votes in the Supreme Court, I doubt that there are any votes on the Supreme Court for revisiting that decision, but certainly not a majority. So it wasn't a winning case and I think it was a foolish case to stand on, unsympathetic on the facts and hopeless on the law.

So I think Pearlstein was facing reality. He was being asked, in essence, to put all the assets of Time, Inc. on the line because it wouldn't have just been the reporter going to prison, it would have been extreme fines. The judge was very angry, a million dollars a day, something like that, and I think Pearlstein had reason for what he did. I don't know that I would have done exactly the same thing, I don't know enough, I wasn't close to it, but it's not a knee jerk question for me.

**Mr. Okrent:** I'm Dan Okrent, I'm a recovering public editor, a vet of the *Times*, like Mr. Schumacher-Matos at the *Herald*.

And I felt my tuning fork resounding with what he had to say. If you are in the position of being an ombudsman, you hear from readers and you hear from people who have been written about.

And I want to posit something and get your reaction to it. When the press hangs together, it also hangs together to protect itself when it has committed great injustices, when we make mistakes, when we accuse people of doing things that they haven't done, when we invade their privacy. And the usual response is, well, we have the First Amendment to protect us, rather than the response being we were wrong, we apologize.

And I felt, from my experience at the *Times*, and I wonder if Edward has had the same experience, that instead of getting into the defensive crouch that we have this protection of the First Amendment, we instead owned up to what we do when we do something wrong, then perhaps we wouldn't be under the constant assault that we are now under.

I think we still need to of course protect the First Amendment. I think that we should have the right to say that which is true. And I think that we should absolutely own up to it and apologize when we are wrong.

**Mr. Lewis:** I entirely agree with you, and I said in my speech that Dick Salant had made that a principle at CBS, I think correctly. Of course the

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**I would like the press to be more forthcoming in its acknowledgement of error and I certainly agree with you in disliking the sort of automatic wrapping of oneself in the First Amendment and saying we are the press, you can't do anything to us.**

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*Times* has come a long way. It runs a page of apologies or corrections now, it has a public editor, it's had several. But still, I would like the press to be more forthcoming in its acknowledgement of error and I certainly agree with you in disliking the sort of automatic wrapping of oneself in the First Amendment and saying we are the press, you can't do anything to us. I don't think that's wise.

I'll give you an example. Here I go again on a court case but it's really an example. You probably all know the case. Wen Ho Lee was a scientist at the Los Alamos National Laboratory, and one day the press and a couple of broadcast networks began saying that he was in fact a spy for China, leaking atomic secrets to China; we attributed that to government sources unnamed. He was fired from his job, charged with fifty counts of criminal acts, including espionage, held in solitary confinement for nine months. Then 49 of the 50

charges were dismissed by the government, and the fiftieth he pleaded guilty to improper handling of information that had been retroactively classified, and he was let go.

He then sued the government for invasion of his privacy in the leaks. Of course his life had been destroyed, he could never work in any such job again, and his reputation had been destroyed. And he inevitably asked the newspapers and broadcasters who was the leaker or who were the leakers? And just as inevitably, the press failed and refused to respond.

And finally, as the judge was about to hold the press entities in contempt for not answering the questions, there was a settlement. The newspapers agreed to pay a sum, I think it was \$800,000, to Wen Ho Lee, the government paid a similar amount to cover his legal fees, and the case went away.

Well, the *New York Times*, in the story on the settlement, said that it was settling so as not to call into question the press's right to keep its secrets. And I thought to myself, wouldn't it have been nice if the *New York Times* had said we are settling because we think we did an injustice to Wen Ho Lee in reporting a biased, inaccurate, lying government source, who said he was a traitor. I would have liked that better, if that's what you mean.

I'm with you on that.

(Laughter)

**Mr. Okrent:** The other example, though I'm not in the habit of defending Republican secretaries of labor, of course is the secretary of labor, Ray Donovan was it?

**Mr. Lewis:** Yes, Donovan, good example.

**Mr. Okrent:** Who had horrible things said about him, and he goes to court and he wins on the facts, I believe, as well as the law, that he had been libeled. And then he says to the judge where do I go to get my reputation back?

And you don't get your reputation back in the one paragraph of a correction that appears on A2 or now on A4. And I think that until we are willing to acknowledge, as you suggest, what we've done on page one, we are always going to be under attack and I think properly.

**Mr. Jones:** Ladies and gentlemen, thank you for a very fascinating evening.

Thank you, Tony.





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