

One mainstream journalist is an exception to the cynical rule. That's great – but we need more



Brooke Gladstone

by Lev Tsitrin

In 1968, as the Soviet tanks rolled into Prague to crush Czechoslovak “Socialism with a human face,” seven people came to the Moscow’s Red Square and unfurled hand-written signs that protested the invasion. If I remember correctly the words of the narrator in a documentary about the events, “sooner than Kremlin’s bells ended their noontime chimes,” the KGB officers were all over them, pushing protestors into police vans. Yet neither the brevity, nor the small scale of the Soviet protest prevented a Czech paper (an immigrant one, I

presume) to declare on its front page that “there are seven reasons now to not hate all Russians.”

The other day, I had a somewhat similar realization that humanity may be a bit better than I previously thought. The local NPR outlet WNYC advertised an on-site, hour-long interview with Michael Waldman, President and CEO of Brennan Center for Justice titled “*How the Supreme Court Divided America*.” Since it sounded like my cup of tea, I hopped on the train and headed to Manhattan. The interview was conducted by Brooke Gladstone of NPR’s *OnTheMedia* and was focused on Mr. Waldman’s book, “*The Supermajority*” – and turned out to be a very enjoyable discussion of how the Supreme Court become – contrary to the intentions of the Founding Fathers – the most powerful branch in the federal government, starting with the famous (or I would argue, infamous *Marbury v Madison* – infamous because it was so openly and brazenly unprocedural – a textbook example of judicial fraud, given that Madison did not even respond to Marbury’s charges but still won the case, Chief Justice John Marshall writing the argument on Madison’s behalf himself, openly acting not only as a judge, but as Madison’s lawyer – in violation of any interpretation of “due process”). (If you watch the talk on [YouTube](#), you may want to skip the customary greetings from the organizers who, as is usual on such occasions, patted themselves on the shoulder for the great work they are doing – and start at about 17:18 when the actual discussion begins).

When questions were called, I jumped at the chance and, at about 57:54, asked my usual question to which I never get a straight answer from the journalists: why is the fact that instead of adjudicating parties’ argument, federal judges feel free to replace it with judges’ own, bogus one – which allows them to decide cases the way they want rather than “according to law” – and when sued for fraud, defend themselves with a *Pierson v Ray*’s scandalous self-given right to act from the bench “maliciously and corruptly” is not being reported

despite being an obvious outrage? (Now that I am watching myself speak, it feels a little uncomfortable to see myself “warts and all” – the “all” including phonetics, my Russian accent being so pronounced).

The usual reaction in previous in-person encounters with journalists is shrugged shoulders, rolled eyes, “no comment” or – once – a compliment that did not answer the question: “you’ve discovered a major gap in American journalism,” but Brooke was upfront: “I don’t know.”

To me, the response was significant not only for its atypical honesty, but also for who it came from. Brooke’s [OnTheMedia](#) is an “investigation into how the media shapes our worldview” – and often deals with the inner workings of journalism. If she does not know, who would? Clearly, this is indeed a virgin subject that cries to be broached and explored in the mainstream press.

To be sure, there is plenty of reporting and commentary about judges – but none of it focuses on how they do what they do. No one looks under the hood of judicial decision-making – which, one would think, is the only thing that is truly important to investigate about judging. Yet, no one checks whether judges follow “due process.”

Well, we do hear some vague hints and echoes in mainstream media reporting. Consider, for instance, ProPublica’s recent revelations of Justices Thomas’ and Alito’s free trips provided by their billionaire friends. The implied message of such exposés is – this smacks of corruption! Justices may show partiality if or when the time comes for their friends’ companies to be in the court! This isn’t right!

It seems to follow from this that to ProPublica, the lack of judicial impartiality matters. Judicial corruption matters. But doesn’t the right to act “maliciously and corruptly” from the bench smack of corruption, too – and does so rather

strongly? Why shouldn't this be reported if reporting judicial corruption is important? And when it comes to impartiality, is it possible for anyone – a federal judge including – to be impartial to their own lawyerly argument? Clearly, what I discovered during my litigation, touches – big time! on what ProPublica journalists seem to be concerned about. And yet, when I contacted the journalists who investigated Justices Thomas and Alito – Justin Elliott, Alex Mierjeski, and Joshua Kaplan – not one of them replied. I guess a story of judicial corruption is worth pursuing only then it involves investigative romantics – secretly looking through keyholes and waiting in ambush with a camera – but when judges openly say “yes, we are corrupt!” – that's not a story of judicial corruption! Nothing to see there, folks, nothing to report!

In other words, the easily provable (and readily acknowledged) judicial corruption done openly from the bench is not the subject of journalism – but only the potential corruption that may (or may not) result from judges' after-hours leisure. That's a really strange logic – if it can be called logic at all. I wonder how would Justin Elliott, Alex Mierjeski, and Joshua Kaplan define journalism – as reporting the outrages, or as providing pseudo-sensations that prove nothing?

So, much work lies ahead in convincing the mainstream press that federal judiciary should not be allowed to get away with legalizing its corruption – and it gives me some comfort that at least one mainstream American journalist was honest and upfront about it. As the Czechs in 1968, I now have one reason to not hate all mainstream journalists. This, of course, is good, because hate is not a healthy emotion – but we need more honest journalists to fix the wide-spread corruption. Defeating journalistic cynicism and hypocrisy is no easy task – but who knows? After all, the incredible may happen – even the Communist regime in Czechoslovakia ultimately crumbled and fell!

Lev Tsitrin is the author of [*“Why Do Judges Act as Lawyers?: A*](#)

Guide to What's Wrong with American Law"