

## Life After Lyle: Scotusblog Greet New Term Without Longtime Ace

By Ed Beeson

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Lyle Denniston, seen here in front of the Supreme Court building in 2012, served as Scotusblog's primary reporter from 2004 until this past June. (Getty)

It was June 28, 2012. D-Day for Obamacare. The U.S. Supreme Court had convened for the last major day of its term, ready to pronounce the outcome of one of the most closely watched cases in recent times. The fate of the crowning achievement of President Barack Obama's first term hung in the air, and it was anybody's guess what would happen.

For weeks, anticipation had been running high. Every major news organization was on the ready to report the outcome. But for many people, it wasn't just the cable news networks they were glued to. It was Scotusblog, the go-to source for news from the nation's highest court.

Nearly 900,000 people were logged on that morning, and chants of #TeamLyle could be found across Twitter. They were cheering for Lyle Denniston, the Scotusblog reporter who'd spent more than five decades covering the Supreme Court. The 81-year-old was stationed in the court's press office, waiting for the moment Chief Justice John G. Roberts announced he had the opinion in the matter of *National Federation of Independent Business v. Sebelius*.

That moment came just before 10:07 a.m. As Justice Roberts began reciting the opening lines of his ruling, the court's press officers opened a white box containing paper copies of the nearly 200-page decision. Denniston grabbed two and bolted to the nearby cafeteria, where his colleagues waited with laptops open.

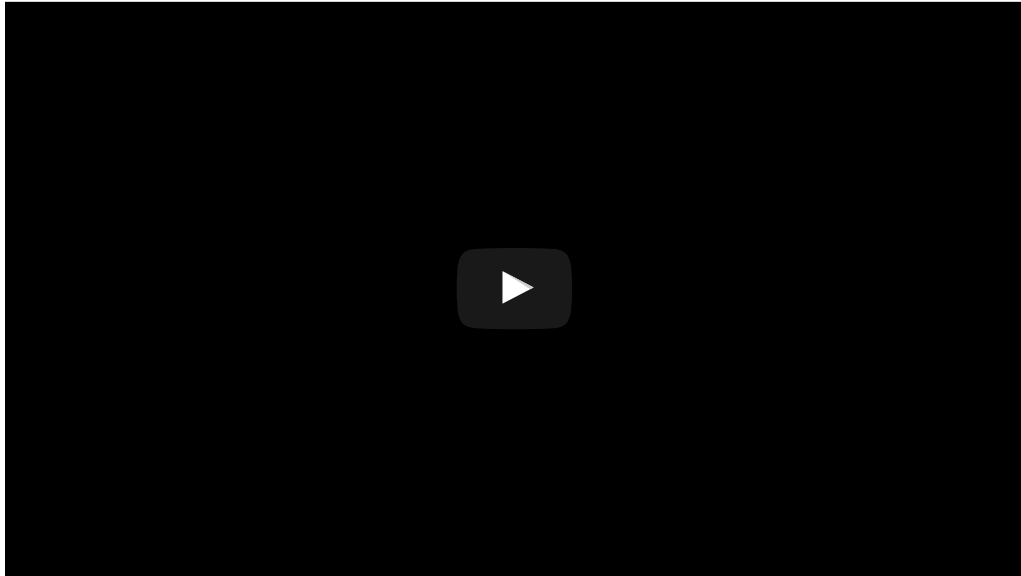
Scotusblog let readers know it had the opinion in hand. "Parsing it asap," typed Amy Howe, Scotusblog's editor. The timestamp read 10:08 a.m.

By this point, CNN and Fox News had already taken to the airwaves. After scanning the top of the decision, they declared a key piece of the Affordable Care Act — the individual mandate to purchase health insurance — dead. Justice Roberts had ruled that such a mandate couldn't be permitted under the commerce clause of the U.S. Constitution, signaling to the cable news giants that the law was lost.

But Denniston and Tom Goldstein, who is Scotusblog's publisher as well as a Supreme Court litigator, read on. A few seconds later, they realized that Obamacare was not dead but in fact alive and well.

"The individual mandate survives as a tax," Howe typed. The timestamp still read 10:08 a.m.

It didn't take long for Scotusblog's coup to be noticed. While the website was not the first to get the decision right — Bloomberg News had it beat by a minute — its reporting **set the record straight**. As Fox News broadcast the demise of Obamacare, co-anchor Megyn Kelly interrupted to say, "We're getting conflicting information," before telling viewers of Scotusblog's correct call on the law.



For Supreme Court watchers, it was as close to a "Dewey Defeats Truman" moment as they could get. But for Scotusblog, it was all in a day's work. And there was no time to take in the glory. By 11:15 a.m., Denniston had published his first take analyzing the historic decision.

As anyone who follows the Supreme Court knows, often the quickest way to find out where the justices have landed on a particular matter is through Scotusblog. Thanks to the court's slow embrace of technology, Scotusblog has carved out a big niche for itself simply by delivering the news of the court often one step ahead of everyone else.

That's largely been accomplished by having Denniston stationed in the court's press office and ready to deliver the outcome of cases within seconds of grabbing a paper copy of the opinion from the court's public affairs staff.

The speed and accuracy of his reporting has won Scotusblog serious journalistic acclaim — and Denniston a serious Internet fan base.

Yet times have changed. As the new term on the high court dawns, Scotusblog will have to see how it scores without its longtime ace.



Tom Goldstein

On June 25, Denniston, who's been covering the high court since 1958, announced he was leaving Scotusblog. It was the end of his 12-year run at the news site, which has grown from being a marketing tool for Goldstein's law practice into a Peabody Award-winning powerhouse — one that's respected not only for breaking news but also for providing the wall-to-wall coverage of opinions, orders and oral arguments that Supreme Court junkies want and need.

Now, the question for Scotusblog is whether the lean outfit is ready to fill the role that Denniston leaves behind. With him departs not just an indefatigable work ethic and a knack for crisp deadline reporting but also institutional knowledge that may know no parallel. When the 85-year-old Denniston began reporting on the Supreme Court for *The Wall Street Journal*, Dwight D. Eisenhower was still in the White House and Earl Warren was the chief justice of the court.

Goldstein says that the site is ready for the change, having spent two years preparing for this moment.

"It certainly won't be any different from the reader side of things," he said.

Taking over as the site's primary reporter is Howe, who is married to Goldstein and who's been involved in Scotusblog since it launched in 2002. Though she didn't grow up in journalism, Howe's no stranger to the high court, having worked on more than two dozen merits cases — arguing two of them — during her past life as a practicing lawyer. Taking over for Howe as the site's new editor is Edith Roberts, a lawyer who clerked for Judge Ruth Bader Ginsburg when she was on the D.C. Circuit.



Amy Howe

Denniston joined Scotusblog in 2004 and has been instrumental in building both its chops for deep, analytical reporting and its trove of briefs, petitions and orders that simply don't exist anywhere else online. But it was Denniston's work in feeding opinions to its live forum that has burnished the site's reputation as the go-to place for immediate news about the court.

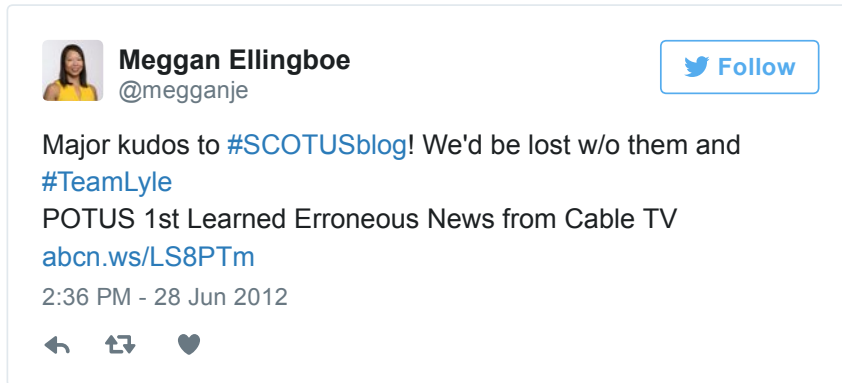
And it's through that forum that Scotusblog has managed to create a dramatic, even festive, occasion out of one of the most staid and ritualized functions of the federal government. Fitting for the Internet Age, it even spawned a meme for Supreme Court geeks: "waiting for Lyle."

#### **'In All of our Hearts'**

President Barack Obama has his **mic drop**. Vice President Joe Biden has his bizarre, Trans Am-racing **alter ego**

splashed across the pages of The Onion. Politicians of all stripes, including those worn in prison, have their impersonators on Saturday Night Live and caricatures in the shrinking op-ed pages of newspapers.

But for all of its grandiosity, pomp and circumstance, there is strikingly little in the way of affectionate, endearing or meta pop-culture flourishes around the Supreme Court.



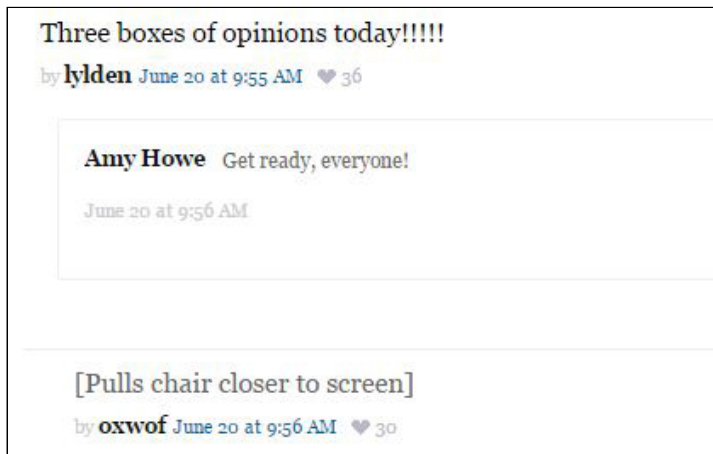
"You have the Notorious RBG, and you have 'waiting for Lyle,'" Goldstein says. "That's about as good as we get. It's a pretty dull institution."

"Waiting for Lyle" draws to mind "Waiting for Godot." But unlike the enigmatic figure at the center of the Samuel Beckett play, Denniston actually shows up — and quite promptly. Scotusblog users have found their own ways to wax poetic about the man they were waiting for.

"Where is Lyle, physically?" one reader named SkEpTiC wrote during a lull of opinions being released on June 23.

"He is in the press office, where they distribute opinions, and the press room," Howe dashed off in response.

"Where is Lyle, metaphysically?," another reader named Justice Good Burger typed a minute later.



Lyle Denniston tells readers to get ready for a lot of U.S. Supreme Court opinions on June 20.

"In all of our hearts. As well as those of a shocking number of twenty-somethings," replied Tejinder Singh, one of Goldstein's partners at Goldstein & Russell PC.

Lyle-phoria, if one might coin the term, seems to have emerged around the time the Supreme Court was gearing up for the 2012 Obamacare opinion. Journalists and others who were awaiting the decision began tweeting out the hashtag #teamlyle in anticipation of the big moment. A year later, #waitingforLyle appeared to come in vogue. By the start of the Supreme Court's October 2013 term, Scotusblog had adopted the phrase as its own, splashing it as a banner across the top of its live feed.

It's an odd turn of events for a decidedly old-school newspaperman who remains devout to that journalistic ideal of never letting himself get in the way of his coverage. Denniston recalls with some amusement finding out that he had a fan club somewhere in California. Twice, people suggested that he run for president while they were waiting for Lyle, Denniston said. Thrice, people asked for his hand in marriage.

"I think they were probably not serious," the happily married Denniston said.

But the virtual affection is real. After Denniston penned an **open letter** to Scotusblog readers announcing his plans to leave the website, he was greeted with warm send-offs the next time the court reconvened.

"No matter how far the distance between us, in our hearts we'll forever be #waitingforLyle," a reader named Quirk wrote the morning of June 27.

The unusual display in part speaks to the natural awe for someone who's been writing the first draft of history since nearly the end of World War II. A Nebraska native, Denniston got his start in newspapers in 1948, covering the Otoe County Courthouse in Nebraska City as a teenager. His move to the Supreme Court came a decade later, when he took up a job with The Wall Street Journal. He later moved on to an afternoon paper called the Washington Star, where he perfected his deadline reporting skills. To make the 11:15 a.m. cut, Denniston would have to grab the opinion and dictate a full story over the phone to a newsroom clerk who would type it in.

When the Star folded, he took up work with the Baltimore Sun and, later, the Boston Globe. All in all, Denniston has covered more than a quarter of the 112 justices who've ever sat on the Supreme Court. Justice Ruth Bader Ginsburg, the oldest member of the bench, is two years Denniston's junior.

### **One-Stop Supreme Court Shop**

For Supreme Court litigators, the experience of following Scotusblog can be intense. Watching the live feed of opinions, "there are two separate moments of excitement," said Mark C. Fleming, vice-chair of the appellate and Supreme Court practice at WilmerHale.

The first is wondering if an opinion in their case will be issued that day. The second, he said, is when the name of their case pops up in the Scotusblog feed.

"If it's in your favor, you might shout for joy at your computer screen," Fleming said. "And if it's against you, your heart sinks."

Of course, Scotusblog does much more than serve as a place for play-by-play commentary and to root for a veteran journalist. The site instead seeks to be as comprehensive as possible in covering the high court.

What that means is doing what no other outlet does: covering every merits case that comes before the court from start to finish and creating a relentlessly organized repository for each matter. (The only exceptions are the cases that Goldstein or his firm are involved in. In these instances, coverage is farmed out to experts who aren't affiliated with the blog or Goldstein's law firm, which Scotusblog says has been done to avoid any appearances of conflicts of interest.)

## **Lyle's Greatest Hits**

Former Scotusblog reporter Lyle Denniston has covered the Supreme Court for nearly half a century and has witnessed more than a quarter of the justices who've ever sat on the bench. In addition to the 2012 decision over the Affordable Care Act, here are some of the most memorable cases and issues he's covered.

### **Bush v. Gore**

The 36-day battle over the Florida recount in the 2000 presidential race tops Denniston's list of cases he's covered. And why shouldn't it? It was an epic showdown over the future of the country, featuring two of the titans of the Supreme Court bar, Ted Olson and David Boies. And it was decided a day after oral arguments.

### **Same-Sex Marriage**

While the march to marriage equality reached its zenith in 2015 with the Supreme Court's decision in *Obergefell v. Hodges*, Denniston says he's found much professional satisfaction having covered the legal side of the same-sex marriage debate since its early days in Hawaii, which confronted the question in 1992.

### **Women's Rights**

Denniston said it was fascinating to cover the women's rights movement as it reached the Supreme Court in 1971. That year, the court decided seminal cases on the topic, including *Reed v. Reed*, which marked the first time a law was deemed unconstitutional under the Fourteenth Amendment because it discriminated against women.

### **Death Penalty**

In 1972, the Supreme Court's decision in the death penalty case *Furman v. Georgia* led to a moratorium on executions across the country, only to be lifted four years later with the outcome of *Gregg v. Georgia*. "It was an amazing experience to cover the whole series of criminal law cases during the Warren Court years," Denniston said.

### **Pentagon Papers**

Denniston says he'll never forget the excitement of covering the Pentagon Papers, the landmark First

Amendment case over the New York Times's publication of classified information about the U.S. war in Vietnam. The Supreme Court ultimately ruled in favor of the newspaper in 1971. Denniston says, "I worked so hard on that case that I nearly collapsed from exhaustion while covering it at the Second Circuit in New York City."

It's a service that simply doesn't exist elsewhere, and, in a world of paywalls for both specialized news media and the federal courts, the fact that Scotusblog is free to use is even more striking. Goldstein says Scotusblog, which in the past has had corporate sponsors, brings in no revenue and in fact costs him \$400,000 a year to operate.

He said he could change the site to try to bring in revenue, but he prefers things the way they are.

"I care more about the public interest side of it than I care about the money," Goldstein said.

It was in the spirit of public interest that Scotusblog received one of its highest journalistic honors in 2013 when it was named a George Foster Peabody Award winner, which celebrates work in the broadcast and electronic media. The year Scotusblog won, it was joined by broadcast luminaries such as the radio podcast "This American Life" and by a West Hartford, Connecticut, television station that had the grim duty of providing local coverage of the Sandy Hook Elementary School shooting.

The fact that Scotusblog has risen to this level of recognition is surprising considering its roots, which are not in traditional media. Goldstein and Howe launched Scotusblog in 2002 not to fill a news gap but to drum up business for their Supreme Court litigation boutique. Early incarnations of the website show just how much of a promotional enterprise it was. Across the top of the website was a banner that read, "Brought to you by the law firm of Goldstein & Howe P.C."

But as the years have gone by, Scotusblog has shed the obvious connection to Goldstein's law firm and asserted itself as more of an independent outlet that just so happens to be owned one of the high court's most prolific advocates. Part of the reason for that is the blog didn't exactly generate more business for the firm.

"People don't hire Supreme Court advocates for their blogging abilities," Goldstein said he came to realize.

Another reason is journalistic, Goldstein said. Denniston came on board in 2004 and, through his work, helped turn Scotusblog into a more independent and professional newsgathering organization.

In the early days, the blog would trumpet Goldstein's work — and particularly his wins — before the Supreme Court.

"The firm has (no joke) 12 briefs due between now and February 28, the day I will argue the Spector case," Goldstein wrote on Feb. 7, 2005, according to a snapshot of the website kept by the Internet Archive.

Now, such cross-pollination would be forbidden, Goldstein says. In January 2014, he set up a new policy that said that no one who reports to him can write about or discuss on Scotusblog the cases that Goldstein or his firm were involved in. The blog will still cover Goldstein's cases, but it will be from outside contributors, such as a law professor.

"We really tried to create a real separation of church and state between the blog and the firm," Goldstein said.

He said, "weirdly, ironically" this separation helped the law practice, now a five-lawyer boutique. But that wasn't his motivation.

"It was first important in the evolution of our relationship with the court and demonstrating to the court the blog's independence," Goldstein said. "But I also just think it's the right thing to do."

### **Declaring Independence**

The question about the blog's independence has been a nagging issue. Over the years, Scotusblog tried to secure press credentials it needed to cover the Supreme Court. But in mid-2014, the Senate Press Gallery refused, and then it also refused to renew the credentials it previously awarded Denniston for a freelance gig he had with a Boston public radio station.

In **its decision** on the matter, the press gallery said Scotusblog was still not independent enough from Goldstein's practice, despite the firewalls he had put in place. The matter spilled over in the press, and the editorial board of The New York Times and others rallied to Scotusblog's defense. Eventually a solution emerged, and Denniston and Scotusblog reached a compromise with the Supreme Court's public information office that allowed them to keep access to the court.

The fight did not come without some lingering cost. While he and Goldstein were satisfied with the result, to Denniston the struggle to keep his credentials cut too close to home. As a journalist, one of the first things he impresses upon you is his unwavering independence. He notes that he was never on staff at Scotusblog, always an independent contractor, and that Goldstein never told him what to cover or how. The only thing off-limits were Goldstein's own cases, something Denniston grumbled about but said he accepted. But to not be able to convince the press gallery of his independence simply because the guy signing his paycheck was a Supreme Court lawyer remains something he

can't quite shake.

"It was kind of a discrediting experience to have my credentials on the Hill yanked," he said.

Denniston decided the end of the last term was the time for him to move on from Scotusblog. But for a journalist who says he's "addicted" to explaining the law, that doesn't mean retirement. Instead of heading to the marina where he keeps his sailboat, he decided to turn a part-time gig writing for the Constitution Daily, a blog run by the nonprofit group the National Constitution Center, into a full-time one.



**Lyle Denniston** *Independent Contractor*  
*Reporter*  
Posted Sat, June 25th, 2016 9:46 am

[✉ Email Lyle](#)  
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## One journey over, the quest continues

**Commentary**

So much of the rhythm of my life, and that of my family, has been dictated for more than a half-century by the Supreme Court's calendar. And so it is with the completion this coming week of the Court's most recent Term. With one more live blog, and some picking up of loose ends, my journey with SCOTUSblog ends.

If all goes according to plan, Denniston said, he'll keep reporting until he's 90 — a whole other presidential election away.

"I just have an immense fascination with the law, lawyers and judges," said Denniston, who doesn't have a law degree. "The substance of the law and the process is very fascinating."

### **Court Adjourned**

The last day of the Supreme Court term arrived on June 28. After a day in which the court unanimously overturned the corruption conviction of former Virginia Gov. Bob McDonnell and his wife, the court had a final set of orders to issue.

Scotusblog set up a live feed to go over the results. At 9:29 a.m., Howe typed, "And here we go, one last time ... "

"#waitingforlyle."

The order list came, and, within five minutes, the entire 27 pages were dissected. The court denied certiorari in a number of closely watched cases, but then it granted certiorari in eight other matters, including a case involving a grade school-age girl and her service dog, a Goldendoodle named Wonder.

"Well, there goes that December vacation," Howe quipped at 9:36 a.m.

"But I can hold out hope that Wonder the Goldendoodle will come to the oral argument."

A couple minutes later, a final tribute to Denniston was paid.

"Sorry to hear this is Lyle's last blog," a reader named Phil Smith wrote.

"He will be missed, that's for sure," Howe chimed in.

But Denniston reminded folks not to give up hope.

"There's always a tomorrow," he typed.

*Ed Beeson is a feature reporter for Law360 who **last wrote** about legal battles over the Dodd-Frank Act's definition of a whistleblower. Follow him on **Twitter**.*