

ProPublica asks a wrong question about Supreme Court Justice Thomas



by Lev Tsitrin

Every time I hear a news report about a judge, I prick up my ears. This morning it was NPR's story "[ProPublica investigates luxury vacations gifted to Supreme Court Justice Thomas](#)" the gist of it being that "investigation out Thursday reveals that [he] has failed to disclose luxury vacations and free travel provided by conservative billionaire Harlan Crow" – which, it turns out, is both illegal (justices are supposed to report such gifts on their annual reports, and Justice Thomas never did so – for 20 years) and, more to the point, terrible.

Why the latter? Because, as Justin Elliott of ProPublica who

investigated the scandalous news explained, reporting such gifts helps the public understand “who might be able to influence justices.”

Which – let me repeat for the umpteenth time in the hope that this may finally reach the people up high – rests on a simple unspoken underlying premise that judges can do whatever they want, that law and evidence presented to judges by the parties are not what decides the outcome of a case – but what does decide it is a favorable disposition of the judge towards one of the parties.

Sadly, this is not off-mark at all. As I keep telling everyone who is willing to hear (and a great many – in journalistic profession and in academe – who are not), judges feel free to adjudicate not the argument that the conflicting parties put on the opposing trays of the scale of justice, but the argument concocted by the judges themselves out of thin air to make a favored party win – and when sued for fraud (for fraud it definitely is), shrug it off by invoking the self-given, in *Pierson v Ray*, right to act from the bench “maliciously and corruptly.” Of course, under such arrangements, being friends with a judge helps greatly.

The question that ProPublica’s Justin Elliott raises in his report is this – is it really right for judges to take such gifts, especially without reporting them? But in my view, the question he should have raised is – is it really right for judging to be arbitrary, “corrupt and malicious” – and should judges be allowed to adjudicate anything other than the argument presented to them by the parties, thus enforcing judicial impartiality by imposing on judges the “rule of law” (the law in question being “due process” which forbids judges to be parties to the case which they do when they start acting as lawyers)?

In my years-long experience, academics and journalists really don’t want to hear this question. But hope springs eternal. On

his [twitter account](#), Mr Elliot invites “[Email tips/comments/complaints:](#).” I’ll take up his offer and will send him a “tip/comment/complaint.” Who knows? May be at ProPublica the journalistic hell of utter cynicism did freeze over, and Mr, Elliott will take up the story of our officially “corrupt and malicious” judging, and will make it public, ProPublica style. I’d really love to hear this story, told loud and clear – right on NPR.

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