

ProPublica's method of investigating judges: focus on the irrelevant, ignore what matters



by Lev Tsitrin

Another day, another pseudo-bombshell from ProPublica, "[*The Judiciary Has Policed Itself for Decades. It Doesn't Work.*](#)"

Let me spare you a very long read: the "Administrative Office" – an agency tasked with checking judges' financial disclosure reports, lets them get away with gifts of lavish travel, and with making money via lectures and book deals. "The unit is so mismanaged that a program assistant who orders office supplies and furniture has been tasked with helping review [judges']

disclosures; staffers without law degrees have routinely given legal advice to judges; and some employees, including temps, have opted to simply fill out judges' disclosures for them before signing off on those very same reports."

This is supposed to make our blood boil – but before your blood pressure goes up, ask yourself the question writ large over all this – a question that is, clearly, not noticed by ProPublica or other MSM outlets: "why does it matter whether judges take gifts or make money on the side?"

I can hear you answer, "isn't it obvious? Won't judges decide case in favor of those who give them gifts, or do business with them? It's bribery!"

That's an excellent answer – but it implies that judges can decide cases whichever way they want – so all the talk of "the rule of law" rather than the "rule of men" is – pardon my attempt at the language of diplomacy, French – nothing but garbage. What your answer means is that there is no rule of law in the courts of law – only the arbitrary rule of judges. And apparently, the likes of ProPublica accepted this arrangement as something that's self-evidently proper and natural. As a result, journalists do not seek to make judges abide by the law – though judges already prepared themselves for that battle, giving themselves in *Pierson v Ray* the right to act from the bench "maliciously and corruptly," thus rendering judicial "ethics rules" (financial disclosure including) irrelevant because what judges do in violation of law, accords with the law – *Pierson v Ray* being a law! This simple and elegant sleight of judicial hand reflecting the natural order of things, journalists refuse to investigate judicial decision-making to check whose argument gets adjudicated – the parties' argument, or the judges' argument – and if the latter, raising ruckus and exposing judges to disgrace and public shaming.

And yet, the question of "whose argument gets adjudicated" is

the key to proper judging. ProPublica cites as the height of absurdity the situation in which “some employees simply fill out judges’ disclosures for them before signing off on those very same reports.” But replace in that sentence the “employees” with “judges,” “disclosures” with “argument,” and “reports” with “decisions” – and you get what is routinely practiced on the bench – “some judges simply concoct parties’ arguments for them before deciding cases based on those very same arguments.” How come the journalists notice the glaring absurdity when the Accounting Office employees do this – but not when judges do that very same thing, even though this is what gives judges their power to decide cases the way they want to, and not the way they have to “according to law” – and this is why it is so useful to be friends with judges – and hence, impels giving judges gifts and perks so as to be on their good side at the time of legal trouble?

So why does MSM refuse to face and address this key issue? I think I know the answer: we are so conditioned to “respect the law” that we respect it even when we should recoil from it. I vividly recall my father’s reminiscences of being sent, as a young graduate of a repairmen school in early 1950s, to a remote Byelorussian village, and hearing a villager telling with indignation of the injustices of German occupation during the recently-ended war: “when they run into a man in the forest, they point a gun at him and make him drop his pants,” he recalled. “*But what if he’s a Tatar?*” he demanded from his listeners to know, with palpable indignation. To him, it was natural that a Jew would be gunned down: rules are rules! – but what made him righteously indignant was that someone innocent of being a Jew, i.e. a Moslem – could unjustly get killed. He rooted for fairness – but in according to rules!

American journalists think in the exact same way as that Byelorussian villager did; their indignation is selective; ProPublica journalists and their MSM ilk cannot understand how judging can be anything but arbitrary, and they are trying to

find fairness within that arbitrary system without dislodging the system itself. To them it is as natural that judges will favor whom they want to favor, making them win, and disfavor whom they want to disfavor, making them lose, as it was for that Byelorussian peasant that if it was a Jew who got killed, nothing was amiss – but if a Moslem was, then an injustice got committed. Hence, the journalistic double-standard: the clearly illegal judicial layering is accepted as self-evidently normal – but not the exactly same behavior by an employee of an Administrative Office; ProPublica reporters froth at the mouth at the latter, seeing in it an outrageous violation of norms, while the exactly identical former done by a judge is but a “classic exercise of judicial function” as Judge Garaufis of the Eastern District Court of New York characterized judges’ brazen replacement of parties’ argument when I sued his colleague, Judge Vitaliano, for fraud.

Mainstream media applies its microscope to the insignificant – while adamantly refusing to see that what’s really wrong with the judiciary. And what’s really wrong is judges’ ability to engage in clearly illegal lawyering on behalf of the party the judge wants to win (as well as the fact that a judge wants a particular party to win). Instead of taking up the task of eliminating the root of evil – the “sua sponte” replacement of parties’ argument with judges’ bogus one that gives judges their ability to decide cases the way they want to – and as a result, to favor judges’ personal, and ideological friends in their decisions, the journalists jump at what’s a byproduct of illegal judging.

Why wonder that judges’ politics, and gift-giving indeed play the key role in deciding cases? At present, the law – as it is expressed in *Pierson v Ray* – is that judges can dispense with the law. But on that, ProPublica and the rest of MSM are mum – because they see nothing wrong with this Kafkaesque arrangement. The mainstream media has been well trained to take for granted that judging is arbitrary, just as the German

occupation trained a Byelorussian peasant that killing a mere Jew was legit. America is Kafkaesque because federal courts are. And federal courts are Kafkaesque because the American press is. No one holds judges' feet to the fire, though the likes of ProPublica pretend to. Are you still surprised that the country goes to hell in a handbasket?

Lev Tsitrin is the author of "[Why Do Judges Act as Lawyers?: A Guide to What's Wrong with American Law](#)"