

Opinion | The Hypocrisy of Supreme Court Ethics Journalism

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5–6 minutes

Expect to see more baseless attacks on conservative justices.

“Rules for thee but not for me” seems to be the phrase these days when it comes to criticizing Supreme Court justices. Politico adds to the double standard in its recent [story](#) that attacks Justice Amy Coney Barrett for not providing a client list from her husband’s law firm on her annual financial disclosure form.

Disclosing such clients is neither required nor appropriate, but that didn’t stop Gabe Roth of the group Fix The Court, which was funded by a left-wing money outfit connected to Arabella Advisors, from bemoaning the supposed loss of public trust in the court resulting from the lack of information about the clients of Jesse Barrett’s firm. And I don’t recall Mr. Roth, or anyone else on the left, hand-wringing over a lack of disclosure from the law firms of the spouses of liberal justices.

The Politico story makes much of Mr. Barrett’s continuing to practice law after moving to Washington when his wife joined the Supreme Court. But by sticking with his Indiana-based firm, SouthBank Legal, Mr. Barrett hasn’t raised any appearance issues. SouthBank Legal doesn’t have a Supreme Court practice and has never represented clients before the court.

Neither Politico nor the press generally raised such concerns over

Marty Ginsburg, who moved to Washington and joined the Fried Frank law firm when his wife, Ruth Bader Ginsburg, was appointed to the U.S. Circuit Court of Appeals for the District of Columbia in 1980. He practiced at the firm until he retired in 2009. There was no hue and cry over Judge and later Justice Ginsburg not providing a list of Fried Frank's many clients to allay public concerns over a potential conflict. A review of Justice Ginsburg's financial disclosures from 2005 to 2009 confirms that she never disclosed Marty Ginsburg's clients and didn't even list Fried Frank in the disclosure form's section on spouse's noninvestment income. Instead she listed her husband's income as coming from Martin Ginsburg P.C.

The press gave scant coverage to the many instances in which Fried Frank filed friend-of-the-court briefs with the Supreme Court. One of Mr. Ginsburg's Fried Frank colleagues also represented KSR International as a party before the high court, with Justice Ginsburg voting in favor of her husband's firm's client. The press likewise wasn't interested in the business relationship between Mr. Ginsburg, Ross Perot and Mr. Perot's company, EDS, even though Perot endowed a chair named after Marty Ginsburg at Georgetown University Law Center. Perot helped wrangle political support at Mr. Ginsburg's request for Ms. Ginsburg's confirmation to the D.C. Circuit, and Perot was a party to at least two cases in which petitions were filed with the Supreme Court. Justice Ginsburg didn't recuse herself from these cases.

None of this is mentioned in the Politico piece. Instead, it attacks Justice Antonin Scalia for having received but not disclosed a gift from a friend (disclosure was not required) and goes after Justice Barrett and her husband for conduct that doesn't even approach the line, much less cross it. Apparently, the behavior of working spouses of conservative justices raises worrisome ethics issues, while their liberal counterparts are celebrated as Washington power couples.

The current justices haven't violated, nor had Ginsburg, the

longstanding federal statute governing recusals: 28 U.S.C. 455, which applies to Supreme Court justices. In 1993, seven justices, including Ginsburg, issued a [memo](#) interpreting and applying this statute as to when justices must recuse themselves regarding family members. This is the standard the court has followed for nearly 30 years and, contrary to the current protests of the institutional press, that approach is sound and raises no genuine ethical problems.

The press is manufacturing this supposed ethical problem because it doesn't like the legal direction of the court. The ascendant originalist approach at the court is more faithful to the Constitution, but it is less welcoming to the liberal policy-making many have come to expect from the court since the Warren era. Expect to see many more baseless attacks on the court's conservative members in the future.

Mr. Paoletta served as a lawyer in the George H.W. Bush and Trump administrations. He worked on the nominations of Justices Clarence Thomas, Neil Gorsuch and Brett Kavanaugh and represents Ginni Thomas, Justice Thomas's wife, in the Jan. 6 Committee's proceedings.

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