

THE NEW YORK TIMES- OPINION

JESSE WEGMAN

Does Justice Alito Hear Himself?

June 22, 2023

By Jesse Wegman

Mr. Wegman is a member of the editorial board.

For someone who wields unimaginable power and exudes utter confidence in his own moral rectitude, Justice Samuel Alito is an exceptionally touchy guy.

Exhibit A: His decision to devote time and energy to a newspaper essay defending himself against charges of ethical and legal violations that had not yet been published, and which he considered invalid in the first place. The essay, in both form and substance, epitomizes the bitterness and superciliousness that he has demonstrated in regular doses throughout his years on the Supreme Court.

Listen to 'Matter of Opinion'

Four Opinion writers on the ethics controversies hanging over the Supreme Court.

The nature of the charges, detailed in a deeply reported article published by ProPublica on Tuesday evening, will sound familiar after the recent revelations about the casual attitude of several justices regarding the most basic ethical standards.

In 2008, Justice Alito accepted a free flight to a luxury fishing resort in Alaska on a private jet owned by Paul Singer, the hugely wealthy hedge-fund owner and major conservative donor. When one of Mr. Singer's companies later appeared before the court in a multibillion-dollar lawsuit against the Argentine government, it won its case, eventually netting \$2.4 billion. Justice Alito voted in the majority. He neither recused himself from the case nor reported the free flight, which could have cost him up to \$100,000 on the open market, and which appears to be a violation of a federal law requiring the disclosure of such gifts.

Most judges, whether by temperament or fidelity, avoid the spotlight. They prefer to follow rules and let their opinions do the talking. That has never been Justice Alito's way. For most of his 17 years on the court, he has appeared to relish playing the role of bare-knuckled partisan soldier, standing athwart history in loyal service to a vengeful, theocratic right-wing movement that elevates religious liberty for some over basic freedoms for all.

Remember when he mouthed "not true," on live national television, in reaction to President Barack Obama's criticism of the court's Citizens United decision during the 2010 State of the Union address? Or when he attacked liberals as threatening religious liberty and free speech? Or when he mocked the critics of his majority opinion last year striking down Roe v. Wade and a woman's constitutional right to abortion? You'd think you were listening to a pugnacious politician rather than a high-minded jurist — and you would not be entirely wrong.

On Tuesday evening, hours before the ProPublica report came out, Justice Alito took to the ramparts again. In a lengthy screed on The Wall Street Journal's opinion page, he absolved himself of any wrongdoing, flatly rejecting any suggestion that he should have recused himself or reported Mr. Singer's gift. Recusal is required only when "an unbiased and reasonable person who is aware of all relevant facts would doubt that the justice could fairly discharge his or her duties," he wrote, quoting the court's recently adopted statement of ethics and principles. "No such person," he concluded, "would think that my relationship with Mr. Singer meets that standard."

One of the hazards of an unelected lifetime gig is that you have little idea of what regular people actually think. Contrary to Justice Alito's cosseted worldview, the real reason "no such person" would doubt his impartiality is that no such person exists. The justice never disclosed the existence of the trip, so no one was aware of "all relevant facts" besides himself, Mr. Singer and the other people on the plane.

But even if the relationship had been known, can anyone say with a straight face that no "unbiased and reasonable person" would question the justice's impartiality when he votes for someone who gave him a valuable gift? Isn't there at least the *appearance* that something other than the strict application of the rule of law is at work? And appearances count, perhaps nowhere more than at the Supreme Court, which is the final arbiter of many of the most fraught issues of American life.

Justice Alito is hardly the first member of the current court to face charges of serious ethical lapses. Nearly all the other justices, conservative and liberal, have accepted free travel and other gifts over the years, although these have rarely involved such a clear connection to cases that have come before the court. Justice Clarence Thomas has been under fire for, among other things, failing to recuse himself from cases involving the Jan. 6 Capitol insurrection, even though his wife, Ginni, was in regular communication with the Trump White House in an attempt to overturn the 2020 election. More recently, ProPublica has reported on Justice Thomas's ties to Harlan Crow, another conservative billionaire who has lavished gifts on him and his wife over the years, and who has been connected to at least one business with a case before the court.

Justice Thomas has mostly kept his mouth shut, though he did issue a brief statement after the ProPublica article about him. Justice Alito, by choosing to speak up at length and in a forum that he knew would be both friendly and prominent, muscled his opinion into public view. In doing so, he illustrated how flimsy even a Supreme Court justice's reasoning can be when he attempts to be a judge in his own cause.

For instance, Justice Alito defended his decision not to report Mr. Singer's freebie because it was "personal hospitality," which he believed, like his colleague Justice Thomas, did not need to be reported. And yet he also claimed he barely knew Mr. Singer. So which is it? "If you were good friends, what were you doing ruling on his case?" one legal-ethics expert said to ProPublica. "And if you weren't good friends, what were you doing accepting this?"

Rather than try to square that circle and admit he'd been caught doing something ethically wrong and arguably illegal, Justice Alito went to laughable lengths to lawyer his way out. As far as he was aware, he wrote, the seat he occupied on his private-jet jaunt to Alaska "would have otherwise been vacant" — by which he presumably means to say the gift was valueless. Remind me to try that one out the next time I walk past an empty first-class seat on a Delta flight. Seriously, though: do these guys listen to themselves?

Justice Alito doesn't like these sorts of questions. In fact, he doesn't seem to like any criticism of the court. In addition to getting his back up about ethical complaints, he is aggrieved about challenges to the court's blatantly partisan decisions and its increasing reliance on the secretive "shadow docket" to issue rulings without oral arguments or written opinions.

“We are being hammered daily, and I think quite unfairly in a lot of instances. And nobody, practically nobody, is defending us,” he said in an interview in April with The Wall Street Journal.

If Justice Alito doesn’t appreciate being called out for taking lavish trips on litigants’ dimes or for overturning precedent to impose his personal ideology, he might consider not doing those things in the first place. Instead, he chooses to shoot the messenger.

It is this odor of impunity, this mockery of legitimate critique, this disregard for the rights and freedoms of millions of Americans — this “stench” of politicization, as Justice Sonia Sotomayor put it during oral arguments in the case that eventually overturned Roe v. Wade — that defines today’s Supreme Court. That should concern Chief Justice John Roberts above all, because his name and legacy will be forever attached to this court.

And that is why, if the justices are confused as to the reason public trust in the court is in free fall, they need look no further than Justice Alito’s smug, defensive reaction to a very fair criticism. As long as the court refuses to accept significantly stricter ethics rules, either adopted by themselves or imposed by Congress, that trust — and with it the court’s legitimacy — will continue to erode until it’s not worth a seat on a private jet.

The Times is committed to publishing a diversity of letters to the editor. We’d like to hear what you think about this or any of our articles. Here are some tips. And here’s our email: letters@nytimes.com.

Follow The New York Times Opinion section on Facebook, Twitter (@NYTopinion) and Instagram.

Jesse Wegman is a member of the editorial board, where he has written about the Supreme Court and national legal affairs since 2013. He is the author of “Let the People Pick the President: The Case for Abolishing the Electoral College.”