



HOW DOES THE WORLD JUDGE THE U.S. SUPREME COURT?

By Dato' Dr. Nellie S.L. Tan-Wong, J.P., Chairman, Women's Institute of Management

To most of us around the world the U.S. Supreme Court must be the highest body deciding on law and justice in the country and perhaps around the world. However, the shroud of secrecy of the conduct of some of the U.S. Supreme Court justices is so alarming and beyond belief. It is disgraceful.

In April 2023, ProPublica published the first story in its investigative series exposing a lack of ethics oversight for US Supreme Court justices, some of whom received expensive gifts and worldwide vacations from well-heeled individuals – which meant private access to justices for those wealthy benefactors and their friends. The series provided rare, behind-the-scenes details of those interactions and prompted historic reforms on the nation's highest court.

Justice Clarence Thomas

The series begins covering the personal relationship between Justice Clarence Thomas and Harlan Crow, a real estate billionaire Thomas met three decades ago, according to ProPublica reporters Joshua Kaplan, Justin Elliott, and Alex Mierjeski. Thomas and his wife boarded a private jet for Indonesia shortly after the court wrapped its term in June 2019 for “nine days of island-hopping in a volcanic archipelago on a superyacht staffed by a coterie of attendants and a private chef,” the reporters write. Chartering the yacht and plane alone could have cost over half a million dollars – but the Thomases weren't footing the bill, the reporters found – Crow was.

Almost every year for over two decades, Thomas has taken expensive trips courtesy of Crow, according to the investigation. “He has gone with Crow to the Bohemian Grove, the exclusive California all-male retreat, and to Crow's sprawling ranch in East Texas,” the reporters write. “And Thomas typically spends about a week every summer at Crow's private resort in the Adirondacks.” Those trips meant Thomas was in contact with

powerful corporate executives, including from Verizon and PricewaterhouseCoopers, and political activists, such as “Leonard Leo, the Federalist Society leader regarded as an architect of the Supreme Court's recent turn to the right,” the reporters write.

“By accepting the trips, Thomas has broken long-standing norms for judges' conduct, ethics experts and four current or retired federal judges said,” the reporters write. Crucially, those trips were not listed among Thomas' annual financial disclosures, even though gifts worth over US\$415 usually must be reported, the reporters found. Despite such disclosure rules, before the ProPublica investigation the Supreme Court did not have a formal ethical code of conduct. The private jet flights and yacht trips in particular should have been disclosed, the investigation finds.

Thomas' “failure to report the flights appears to violate a law passed after Watergate that requires justices, judges, members of Congress and federal officials to disclose most gifts,” according to two ethics experts the reporters spoke with. Crow “has denied trying to influence the justice but has said he extended hospitality to him just as he has to other dear friends,” the reporters write. Among other findings from the investigation: Crow paid for boarding school tuition running more than US\$6,000 a month for a boy Thomas said he was raising “as a son”. According to a former school administrator, “Crow paid Martin's tuition the entire time he was a student here, which was about a year,” the reporters write.

Thomas attended two donor summits hosted by the Koch network, the political organisation founded by billionaires Charles and David Koch, which put Thomas in “the extraordinary position of having helped a political network that has brought multiple cases before the Supreme Court,” the reporters write. Crow and wife Kathy paid for a seven-foot-tall



A painting that hangs at Camp Topridge shows Crow, far right, and Thomas, second from right, smoking cigars at the resort. They are joined by lawyers Peter Rutledge, Leonard Leo and Mark Paoletta, from left

bronze statue of Thomas' eighth-grade teacher, unveiled at an October 2021 ceremony in a New York City suburb at which Thomas spoke.

Justice Antonin Scalia

The ProPublica team examined numerous archival documents while reporting the series, including from congressional and judiciary archives. Also among them: university archives, which are often collections of documents and pictures by and about public figures produced throughout their careers. The team early in reporting the series visited the collection of former Justice Antonin Scalia, donated to the Harvard Law School Library after

Scalia died in 2016. Many parts of the Scalia archive remain sealed – but photographs weren't sealed, Kaplan says.

"From the chicken scratch scrawl on the back of some of these photos, we started learning about some of the people that had taken Scalia to an Alaska trip – reporting those out brought

Antonin Scalia on a luxury Alaska fishing expedition

us to Alito," he says. Kaplan adds: "Figuring out what past or present officials have archives that are at least partially in a university, there's a pretty good chance you'll be the first reporter to have ever looked at them. And they might have some gold in there." Start by looking for archives from universities a public figure has attended or has some other longstanding affiliation with, such as a professorship.

Justice Samuel Alito

Alito's Supreme Court tenure started with controversy, as the American Civil Liberties Union opposed his nomination over Alito's support of policies that "abridge individual freedoms," and Alito's wife exited the confirmation hearing in tears after Democrats brought up his involvement with a Princeton University alumni group that didn't accept women and minorities as members. Alito openly opposes then-President Barack Obama during his State of the Union speech as Obama criticized the court's recent campaign finance ruling, with Alito shaking his head and mouthing, "Not true," as the President spoke – a rarity for Supreme Court justices, who typically do not show emotion during the State of the Union speech.

The Times reports a conservative activist knew the ruling in 2014's *Burwell v. Hobby Lobby* before it came out, allegedly



Clarence Thomas has been treated to luxury vacations by billionaire Republican donor Harlan Crow



Superyacht



Private Jet



Luxury resort

discovering the outcome after donors of his had dinner with Alito – which sparked a congressional hearing before the House Judiciary Committee, though Alito denied the accusations, telling the Times the suggestion he or his wife disclosed the ruling was “completely false.” ProPublica reports Alito took a luxury fishing trip with billionaire Paul Singer, whose hedge fund has repeatedly had business before the court, without Journal op-ed that came out before the ProPublica report, entitled “ProPublica Misleads Its Readers.”

The Times reports Alito flew a flag upside down outside his house in January 2021 – when supporters of the “Stop the Steal” effort were using the symbol to protest the 2020 election – which reportedly “alarmed” Alito’s neighbours and led them to report the flag to the court; ethics experts believe

the move likely violated rules barring justices from displaying any political biases. Alito sold shares of Anheuser-Busch in August 2023, around the time the company came under fire for partnering with transgender influencer Dylan Mulvaney, Law Dork first reported, raising questions over whether the justice participated in a right-wing boycott against Bud Light. Forbes estimates Alito’s net worth at US\$10 million, making him the second-richest justice behind Chief Justice John Roberts.

Alito’s wealth is largely based on his sizable inheritance and investment portfolio. Associate Supreme Court justices take an annual salary of roughly US\$300,000. In early July 2008, Samuel Alito stood on a riverbank in a remote corner of Alaska. The Supreme Court justice was on vacation at a luxury



Samuel Alito

Martha-Ann Alito



Upside down US flag flew at Justice Samuel Alito’s home



fishing lodge that charged more than US\$1,000 a day, and after catching a king salmon nearly the size of his leg, Alito posed for a picture.

To his left, a man stood beaming: Paul Singer, a hedge fund billionaire who has repeatedly asked the Supreme Court to rule in his favour in high-stakes business disputes. Singer was more than a fellow angler. He flew Alito to Alaska on a private jet. If the justice chartered the plane himself, the cost could have exceeded US\$100,000 one way. In the years that followed, Singer's hedge fund came before the court at least 10 times in cases where his role was often covered by the legal press and mainstream media.

In 2014, the court agreed to resolve a key issue in a decade-long battle between Singer's hedge fund and the nation of Argentina. Alito did not recuse himself from the case and voted with the 7-1 majority in Singer's favour. The hedge fund was ultimately paid US\$2.4 billion. Alito did not report the 2008 fishing trip on his annual financial disclosures. By failing to disclose the private jet flight Singer provided, Alito appears to have violated a federal law that requires justices to disclose most gifts, according to ethics law experts.

The Secretive Judicial Conference

The secretive Judicial Conference is tasked with self-governance. The group, led by the Supreme Court's chief justice, has spent decades preserving perks, defending judges and thwarting outside oversight. For decades, judges have relied on a select group to make sure the judiciary adheres to the highest ethical standards: themselves. The Judicial Conference, a secretive, century-old council of federal judges led by the chief justice of the Supreme Court, oversees the ethics and financial disclosures for more than 1,700 federal judges, including the nine justices of the high court.

Those financial disclosures, submitted yearly as a list of assets and gifts, are often the only window into whether judges with lifetime appointments have conflicts of interest as they rule on the country's most consequential legal cases. The judiciary's leaders argue that the conference has been an effective watchdog over America's third branch of government. The conference's authority plays an important role in judicial controversies and has been at the center of some defences of the court following ProPublica's reporting on possible ethical breaches.



With its "sound structure of self-governance," Chief Justice John Roberts wrote in 2021, "the Judicial Conference has been an enduring success." In reality, the Judicial Conference has instead often protected, not policed, the judiciary, according to interviews and previously undisclosed internal documents. For decades, conference officials have repeatedly worked to preserve judges' most coveted perks while thwarting congressional oversight and targeting "disloyal" figures in the judiciary who argued for reforms.

In the mid-1990s, two judges – a member of the Supreme Court and a judge on the conference – arranged to obscure a legal publisher's role in underwriting meetings for an awards ceremony attended by judges at lavish resorts in locales like the Virgin Islands and Hawaii. Years later, amid a Senate-ordered audit of judges' travel records, one of the conference's top officials in Washington told the chief justice that he had ordered his staff "to present the data in a way to mitigate the damage." Congress did not ultimately pass any of the bills being floated around the time to restrict gifts and travel.

As a result of the year-long investigation:

The Senate Judiciary Committee last May held a full hearing on Supreme Court ethics reform and, in November, subpoenaed Leo and Crow to obtain information. (Editor's Note: Leo has since refused to comply with the Congressional subpoena, calling the investigation "politically motivated.") The Supreme Court adopted its first-ever code of conduct in November 2023. Nonpartisan ethics watchdogs, including the Campaign Legal Center and the Project on Government Oversight, have called on the Department of Justice to investigate Thomas for failing to disclose the trips Crow provided.

Another 40-plus watchdog groups have called for Justice Thomas and Justice Alito to recuse themselves from cases relating to big-time political donors. The justices have rejected such recusal. For Kaplan, Elliott, and Mierjeski, a big takeaway from the investigation is that courts at all levels need more scrutiny from journalists. "One of the lessons of this has been that the courts are just totally under-covered as an institution, both at the federal level all the way down to local and state [levels]," Elliott says. "One piece of advice would just be to start adding judges and courts, at whatever the relevant level is, to the mental list of things that should be covered."

Here are more tips for covering courts the ProPublica reporters shared with The Journalist's Resource.

Think of a Public Figure's Entourage as a Huge Source Pool. It takes a village to move a public figure from point A to point B. "It's not like a normal person going on a trip to Europe or something," Elliott says. This is especially true if the public figure travels on private planes and boats, which require specialised crew to operate. For example, Crow's yacht, the *Michaela Rose*, often operates with a staff of a couple dozen, the ProPublica reporters found. "We decided to try to talk to some of those people," Elliott says. "So we started just sort of cold calling."

Being an Outsider Can Be an Advantage, But be Ready to Play a 'Numbers Game' with Cold Calls.

Kaplan says there are "extremely talented court reporters" with well-connected sources who focus on explaining Supreme Court decisions – but the ProPublica reporting team "did not start with any sources at all," he says. That wasn't necessarily a detriment. To a reporter who regularly covers Supreme Court decisions, the staff of a yacht a Supreme Court justice had boarded might not have much to offer. But it was those seemingly tertiary sources, not directly involved with the regular functioning of the court, who were critical to telling the story of who the justices were spending time with while off the bench.

"We had to kind of start from scratch and get creative with the sort of people we were talking to," Kaplan says. "We were talking almost exclusively to people that were very far removed from Washington, very far removed from the halls of national politics. And that brought us, over the course of the year, to some kind of relatively novel places." Those service workers – on the yacht, at the Adirondacks resort, at the Alaskan fishing lodge, and other places – were "the absolute backbone of this," Kaplan says.

"It wasn't a situation where any one person had the keys to the castle and were able to tell us everything that had happened, but a lot of people had some really valuable piece of the puzzle." Kaplan estimates that over the course of reporting the series, the team placed over a thousand phone calls. "It really is a numbers game," adds Elliott. "Many, many, many, many people said no to us, or just didn't return our calls."

Build Trust with Sources by Articulating the Big Vision of your Investigation, and by Making Sure They Understand the Concepts of "On the Record", "Off the Record", and "On Background".

Building trust is key when interviewing sources who don't have experience talking with reporters. The ProPublica team found the sources they spoke with were by and large persuaded by the bigger picture of the investigation. "Regardless of where any particular source might fall in the political spectrum, there's, I think, a very clear public interest case that we should know who is getting access to some of the most powerful government officials – Supreme Court justices – in the country," Elliott says.



Justice Samuel Alito and Paul Singer, a hedge fund billionaire on their fishing trip

He adds "it would have been the same case that we were making if we were writing about Elena Kagan or Sonia Sotomayor," referring to two justices usually regarded as being more ideologically liberal than conservative. Likewise, being patient and explaining journalistic concepts that define how the information they share will be used – on the record, on background, or off the record, for example – is a great way to get sources to open up. "Most people, when they get a call, they've never spoken to a reporter before," Kaplan says. "They don't understand the seriousness with which one takes protecting anonymity. And so, just taking the time to get to know people and to earn that trust, I think it's critical."

Take Advantage of Teamwork by Divvying the Labour.

When embarking on an investigation that will involve hundreds of phone calls and reading reams of records, dividing the work among a small group can save time and allow for collaborative strategising along the way. "The benefit of the dynamic was that while these guys were making calls, I had time to kind of noodle around," Mierjeski says. "Some of the findings in those stories just came from the ability to spend time searching and fishing." With Elliott and Kaplan focusing on contacting sources, Mierjeski was able to track down, for example, coverage in *Catholic Cemetery* magazine of the statue of Thomas' teacher, which Crow and his wife paid for, the reporters found.

There can also be mental health benefits to teamwork, in terms of reporters encouraging each other to press ahead in the face of obstacles. "For me it would be difficult, as a psychological proposition, to not be sort of paralysed by the crushing disappointment of failure if you're just sitting at home alone having seven people in a row ask you how you

got their number and then hang up on you," Elliott says. "It's sort of like going to the gym – it works better if you have a partner." Elliott, Kaplan, and Mierjeski were continually communicating, Kaplan says, which was hugely helpful for real-time brainstorming.

One example: The realization that polo shirts with the logo for Crow's yacht could lead to more information about when and where Thomas was on the yacht. "I remember it was like Friday night at 10 p.m. that one of us realized the Michaela Rose, the yacht logo on the shirts, could be a way to find other potential trips," Mierjeski says. "The Signal chat was just blown up." Elliott adds, "We started looking for every single picture we could find of Justice Thomas wearing a polo shirt to see if there was a logo on it."

Seek Visual Evidence, Especially if a Key Source Won't Talk.

The photos the reporters obtained of Justice Thomas on trips with Crow and Justice Alito holding a fish in Alaska were "very helpful in establishing things, but also, I think, really resonated with people and helped these stories get a wider reach," Kaplan says. The photographs were "more powerful than probably any prose we could come up with," Elliott adds. The reporters found some of them on social media sites, like Instagram and Facebook. The pictures were not just illustrative but were important evidence of places the justices had been.

Alito responded to questions from the ProPublica reporters indirectly – in a Wall Street Journal op-ed. Thomas, however, was silent until the first story in the series published. "It wasn't like Justice Thomas was going through our very detailed questions that we sent and saying, 'You have this right, you have this wrong,'" Elliott says. "It was just like, 'No comment.' Which can be a sensitive position to be in as a reporter because if you're getting no engagement, you just have to be right."

Search Court Documents, Which Are Likely to be Public Record, for Evidence.

When covering a story that deals with private interactions or a government entity not subject to public records laws, look for court cases. Unless a judge seals a case or portions of it, such records often are subject to public inspection. That's how the ProPublica team was able to show in their reporting that Crow had paid tuition on behalf of the boy Justice Thomas was raising.

The private school had been involved in a bankruptcy and later dissolved, but for a time was required to file financial statements to a federal court. The reporters found those statements through the Public Access to Court Electronic Records system, or PACER, an online federal courts document repository. "Whoever was filing those statements seems to get sloppier and sloppier about redacting them as the case was going on," Elliot says. "We came across a financial statement from the school that actually showed a wire of money from one of Crow's companies to the school." In July 2009, the company "wired US\$6,200 to the school that month, the exact cost of the month's tuition," the reporters write.

"The vast majority of judges willingly comply with the rules," Robert Loesche, who was the top lawyer at the Administrative Office for years, told ProPublica. "But there's a minority of judges out there who push the envelope of judicial independence and don't want their behavior monitored." "I'm Telling You: Nothing." In 2011, lawmakers and advocacy groups filed a series of complaints against Thomas. The Heritage Foundation, a prominent conservative think tank, had paid his wife, Ginni Thomas, nearly US\$700,000 over multiple years. Common Cause, a nonpartisan watchdog group, revealed that Thomas didn't report that source of income on his financial disclosures, despite a legal requirement to do so.

The New York Times also raised the possibility that Thomas may have flown on Crow's jet at least three times. If Thomas had, in fact, taken those flights and Crow footed the bill, the justice failed to disclose that, too. The conference told the lawmakers and Common Cause that the Financial Disclosure Committee would look into both issues. Early in 2012, the committee held a meeting. Some of the judges in attendance expected a serious conversation about how to handle the matter. If there is "reasonable cause" to believe a judge might have intentionally falsified a disclosure or omitted information, the conference, through the Financial Disclosure Committee, is supposed to refer the case to the attorney general.

Instead, the committee's chair, a Kentucky district judge and President Bill Clinton appointee named Joseph H. McKinley Jr., said immediately that he had decided to end the inquiry, explaining that Justice Thomas already amended his filings to include Ginni's source of income, according to one of the judges in the room. McKinley asked the committee to bless his decision. The attendee interpreted that request as political cover for what was already a foregone conclusion. McKinley did not mention the plane travel, this judge said.

Maureen Dowd wrote:

I don't need a black robe to hand down a judgment on the Supreme Court. It's corrupt, rotten and hurting America. The once august court, which the public held in highest esteem, is now hopelessly corroded. It is in the hands of a cabal of religious and far-right zealots, including a couple of ethical scofflaws with MAGA (the far right movement, Make America Great Again) wives.

Chief Justice John Roberts, who dreamed of being remembered as a great unifier of the court, is refusing to rein in Justice Alito and Justice Clarence Thomas, who are thumbing their noses at the public and their own oaths to dispense fair and impartial justice. When Alito pushed a willing conservative majority into yanking away women's right to control their own bodies, he was, in essence, blaming women: You get pregnant, you'll have to live with it. In this latest firestorm, he blamed one woman in particular: his wife, Martha-Ann. Somehow, in Alito's world, women are to blame.

It was shocking when The New York Times' Jodi Kantor reported that the upside-down flag cherished by "Stop the Steal" marchers was hanging outside Alito's house. It was even more shocking when we learned that another flag carried by "Stop the Steal" rioters on January 6, the "Appeal to Heaven"

flag, was flying outside the Alitos' vacation home in New Jersey as cases concerning the January 6 assault and riot were pending at the court. This flag symbolises support for Donald Trump and a desire to infuse the federal government with a lot more Christianity.

"In coming weeks, the justices will rule on two climactic cases involving the storming of the Capitol on January 6, including whether Trump has immunity for his actions," Kantor wrote. "Their decisions will shape how accountable he can be held for trying to overturn the last presidential election and his chances for re-election in the upcoming one." Alito's conservative Christian, right-wing, deeply aggrieved views about the culture wars are reflected in his speeches, decisions and now flags that are red flags. He is refusing to recuse himself from the two cases about the attempted coup on January 6. (One concerns the question of whether Trump is immune from prosecution for his role egging on rioters; the other involves a federal obstruction law used to charge the rioters.)

When leading Democratic lawmakers demanded Alito's recusal, he wrote back, trying to make Martha-Ann Alito the fall guy. Alito has clearly heard enough criminal appeals to know you've got to point the finger at somebody else when you're guilty. "My wife is fond of flying flags," he wrote to the lawmakers.

"I am not. She was solely responsible for having flagpoles put up at our residence and our vacation home and has flown a wide variety of flags over the years." He's happy to take away the rights of millions of American women to control their bodies, but respects the right of his wife to control their incendiary flags. While he's on the Supreme Court, he said, Martha-Ann wields the gavel at home.

"I was not even aware of the upside-down flag until it was called to my attention," he wrote. "As soon as I saw it, I asked my wife to take it down, but for several days, she refused." He said there was absolutely nothing he could do to get that pesky seditious flag taken down sooner. He was oblivious about the symbolism of the "Appeal to Heaven" pine tree flag, he claimed.

Thomas is also awash in ethical snarls, some related to his wife. Ginni Thomas' supporters also tried to defend her activism related to January 6 by saying she is an independent spouse. But it doesn't wash. As Jane Mayer wrote in *The New Yorker*, Ginni Thomas is a lawyer and a prominent member of hard-right groups and "has declared that America is in existential danger because of the 'deep state' and the 'fascist left,' which includes 'transsexual fascists.'"

In a Facebook post, she linked to a news item about the January 6 protest and wrote "LOVE MAGA people!!!" Mayer noted that it is getting harder to dismiss Ginni Thomas' actions as harmless, given that the "Supreme Court appears likely to secure victories for her allies in a number of highly polarising cases – on abortion, affirmative action, and gun rights."

Senator Richard Blumenthal asked Roberts to make Clarence Thomas recuse himself from the case on Trump and the

insurrection, but Thomas refused. The Supreme Court has two decisions on abortion cases due any day. "The Fall of Roe," an insightful new book by *The New York Times* reporters Elizabeth Dias and Lisa Lerer, laid out the events and the strategy – and the failure of the Democrats to recognise the threat – that led to the fall of Roe. There was a determined group of religious zealots with a long-term master plan to pack the court with religious zealots.

"These conservative Catholic and evangelical Christian operators believed they were fighting the biggest moral battle of the modern age, and forced America to debate on their terms," they wrote. "But despite their public appeals, they did not convince broad swaths of Americans of the righteousness of their cause. Instead, they remained a minority, and leveraged the structures of American democracy in their favour, building a framework strong enough to withstand not only the political system but also a society moving rapidly against them."

They took power to remake the nation in their image. And they were far more organised than their opponents or the public ever knew. Now it's up to Democrats to turn the tables and see if they can use this issue in the November election to save the country and women's rights. ■

Source:

1) "How ProPublica Exposed Ethics Scandals at the US Supreme Court" by Clark Merrefield.

The Journalist's Resource
25.4.2024

2) Alison Durkee
Forbes Staff

3) Maureen Dowd
The New York Times
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