



IMPRECISE REPORTING OR MISSING THE POINT?

NPR'S COVERAGE OF MASKING AND THE SUPREME COURT

Award-winning legal affairs correspondent Nina Totenberg has been at National Public Radio (NPR) since its founding. But in January of 2022, Totenberg's reporting was criticized when she published a story claiming that Justice Neil Gorsuch was the only Supreme Court justice not wearing a mask as the justices "took the bench for the first time since the omicron surge" (Totenberg, 2022). Because of this, Justice Sonia Sotomayor (who has diabetes and could suffer severe health complications should she contract COVID) had opted for virtual participation in the court's activities through telework as she "did not feel safe in close proximity to people who were unmasked." Gorsuch sits next to her on the bench. Furthermore, Totenberg wrote that "Chief Justice John Roberts, understanding that, in some form asked the other justices to mask up" (Totenberg, 2022). Days later, however, both Sotomayor and Gorsuch issued a joint statement denouncing the article's central claim. "Reporting that Justice Sotomayor asked Justice Gorsuch to wear a mask surprised us. It is false. While we may sometimes disagree about the law, we are warm colleagues and friends," the justices said (Totenberg, 2022). Justice Roberts later issued a statement that he "did not request Justice Gorsuch or any other justice to wear a mask on the bench" (Totenberg, 2022). NPR immediately updated its story to include the statements of the justices but affirmed that it stood by its reporting.



In response to the dispute, NPR Public Editor Kelly McBride wrote that the "story merits a clarification, but not a correction" (McBride, 2022). McBride said that "Totenberg's story never claimed that Sotomayor directly asked Gorsuch to wear a mask," but acknowledged that Roberts' statement that he did not ask any justices to wear masks directly refuted NPR's reporting (McBride, 2022). The problem, according to McBride, was a poor choice of wording in the original story. While Totenberg had multiple sources who told her Roberts conveyed *something* to the justices over Sotomayor's concerns, McBride said Totenberg should've chosen a word other than "asked" (such as "suggested") because she didn't know exactly *how* Roberts communicated. Furthermore, McBride noted that Totenberg could've shared more about "the nature or even the exact number of her anonymous sources" without giving away their identity (McBride, 2022). While Totenberg revised her statement to "suggested" during an episode of *All Things Considered*, the original article was never corrected. With Totenberg's reporting directly disputed by its subjects and McBride noting gaps in coverage, many readers have questioned if the report was adequate.

For some, a lack of identifiable sources renders Totenberg's account arguably incomplete. According to Northeastern University journalism professor Dan Kennedy, it is "impossible to know what, if anything, went



wrong with Nina Totenberg's story ... without also knowing the details of Totenberg's interactions or unnamed sources" (Kennedy, 2022). The Society of Professional Journalists' Code of Ethics states that journalists should only use anonymous sources when it is "the only way to publish a story that is of importance to the audience" (Society of Professional Journalists). When used, anonymous sources should be identified as clearly as possible without pointing to their identity, something McBride said that Totenberg could have done better. Careful diligence is especially important when dealing with anonymous sources because nothing is known about their intentions for sharing the information. According to NPR's own Ethics Handbook, "it is unfair to air a source's opinion on a subject of coverage when the source's identity and motives are shielded from scrutiny" (National Public Radio). There is also the risk that a source can be an inaccurate source of information; shielding their identity compromises the ability of others to evaluate their access to the information in question. While Totenberg stands by the credibility of her sources, they could have had a poor motivation for sharing the information or been misinformed. Perhaps the sources favored a certain justice, had a political affiliation or interest in the dispute, or even just misremembered the details. These are all questions that the sources could answer for if identified, but they could also face retribution or political consequences for leaking details of court activities and relationships.

A second dilemma arises from a lack of context. Totenberg later said that she did not know how Roberts "asked" or "suggested" that the justices wear masks but that he did so "in some form" (Totenberg, 2022). McBride stated that Totenberg could have clarified that she didn't know "how Roberts was communicating" (McBride, 2022). One could argue, however, that knowledge of how Roberts communicated is necessary to understand what actually happened in the first place. NPR's Ethics Handbook states that "errors of omission and partial truths can inflict great damage on our credibility, and stories delivered without the context to fully understand them are incomplete" (National Public Radio). The Handbook further explains that journalists should use enough precision so that a statement isn't open to questions (National Public Radio). In this case, a lack of precision about Roberts' actions leaves readers with more questions than answers.

Others, however, believe that the dispute arises from a greater controversy in the court, not from Totenberg's reporting. Though she thought Totenberg could have clarified some information better, McBride nonetheless held that "no one has challenged the broader focus of Totenberg's original story, which asserts that the justices in general are not getting along" (McBride, 2022). Totenberg's report over the mask controversy was only included in the first few paragraphs of her story while the majority of the lengthy article goes on to discuss various conflicts between the court's liberals and conservatives. According to McBride, "the anecdotal lead ... intended to be illustrative, has overwhelmed the uncontested premise of the story" (McBride, 2022). This seemingly misdirected attention was not lost on various audience members, including one Twitter user who sarcastically commented "No word whether Gorsuch will now actually consider his dear friend's need for caution" and Northwestern Law School Professor Steven Lubert who said that the question of "whether Gorsuch was or wasn't asked to wear a face covering misses the point: He shouldn't have had to be asked in the first place" (Lubert, 2022 and @patl, 2022). *Washington Post* reporter Aaron Blake explains that the Supreme Court is known for "carefully parsing claims" and "assuring us that justices from different wings of the court work well together" (Blake, 2022). Because Totenberg's reporting was "a serious jolt to the court's carefully honed image of collegiality," it's possible that "the justices jumped on a small wording problem in order to back away from a controversy they regretted" (Lubert, 2022 and Kennedy, 2022).

Whether Totenberg's sources were inaccurate or the justices were simply dodging criticism is almost



impossible to determine. What readers can decide is if Totenberg was ethical in her coverage. Totenberg accomplished her job of making sure the Supreme Court's affairs are conducted in the open, but in sharing those affairs, she also needed to be transparent and complete as possible.

Discussion Questions:

1. What ethical values are in tension in this case?
2. Why might Totenberg have used unnamed sources in her reporting? Why might this use be problematic?
3. Do you agree or disagree with NPR's decision to leave Totenberg's original story published with "a clarification but not correction" (McBride, 2022)? Why or why not?
4. What steps can/should journalists take to ensure their reporting is accurate? What ethical principles should guide reporters in using anonymous sources in their reporting?
5. How should journalists respond to disputes over their reporting? How should newspapers and media sources respond to such criticisms?

Further Information:

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Authors:

Chloe Young, Kat Williams, & Scott R. Stroud, Ph.D.
Media Ethics Initiative
Center for Media Engagement
University of Texas at Austin
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