

Ginsburg and ethics

There's ethics, and then there's ethics.

Ethics of the first order – legitimate ethics – have a solid philosophical basis. Ethics of the second order often have little to do with ethics, but instead are client and/or financially driven.

True ethics often center on Immanuel Kant's "categorical imperative," or duty, to be true to one's self – to tell the truth. This approach emphasizes action. Often included in this discussion is John S. Mill's "utility principle," focusing on the greatest good for the greatest number, an outcome-driven concept. Kant's and Mill's ethics concepts are usually at odds with one another. But occasionally they converge.

In the case of U.S. Supreme Court Justice Ruth Bader Ginsburg, there is such a convergence. Justice Ginsburg was impelled to tell the truth about Donald Trump for the greater good of American voters. As such she was acting with the highest of ethical intent. (She subsequently apologized Thursday for earlier being quoted in the media by saying Trump was egotistical, inconsistent and a "faker," saying he says "whatever comes into his head at the moment.")

While her earlier remarks produced a conflict of interest, that does not mean her comments to the Associated Press or the New York Times were unethical.

It's not surprising "legal ethicists" might disagree. After all, "legal ethics," a subject taught at most law schools in the United States, focuses primarily on how attorneys should represent clients, irrespective of ethics per se or the ethics of a case. Genuine ethics? Hardly.

As the Los Angeles Times said in its July 14 story, "...the prospect of a President Trump is so upsetting to Ginsburg that

she felt compelled to set aside the usual traditions of justices staying out of politics.” In other words, she thought her ethical duty to warn Americans against a possible GOP presidential victory in November trumped a SCOTUS judge shying away from a political issue.

For that she deserves media laurels, not darts from “legal ethicists.”