

# Opinion: Trump, Roberts and the political ‘leanings’ of judges

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NJ State Supreme Court rules in favor of public records advocate seeking a list of emails from Galloway Township, saying that the township was required to create the list because it involved public information Abbott Koloff/NorthJersey.com



Roberts challenge President Donald Trump’s attack on federal judges last month. When the president derided the federal judiciary for political partisanship, describing one judge on the 9th Circuit Court of Appeals in San Francisco as an “Obama judge,” Roberts sharply denounced the claim.

“We do not have Obama judges or Trump judges, Bush judges or Clinton judges,” Roberts said in a statement. “What we have is an extraordinary group of dedicated judges doing their level best to do equal right to those appearing before them.”

“That independent judiciary is something we should all be thankful for.”

The president then took to Twitter to come back on Roberts: “Sorry Chief Justice John Roberts, but you do indeed have ‘Obama judges,’ and they have a much different point of view than the people who are charged with the safety of our country.”

If you ask me, it was particularly stupid for the president to get into a verbal war with the chief justice, who will surely be the swing voter when matters involving Trump and his administration

get to the high court, as they most surely will. But the truth is, Trump got the better of the argument.

Judges, like everyone else, have social and political leanings. Judges from a Democratic background will tend to favor social justice and individual rights, while Republican “leaners” will tend to favor government authority and business interests. And in cases without clear-cut legal authority (not many of which get to court), it is practically inevitable that judicial predisposition will influence the result.

That is why I loved practicing law in New Jersey. As a civil rights lawyer, generally for the American Civil Liberties Union, I would mostly go to court seeking relief against governmental abuse of power. As such, I would usually be seeking an order prohibiting the government’s conduct. That would mean getting an injunction. Injunctions are issued by courts of equity, known in New Jersey as Chancery courts. And Chancery courts do not have juries. Equity Judges decide such matters.



FILE - In this Sept. 24, 2016, file photo, U.S. Supreme Court Chief Justice John Roberts speaks in Washington. Roberts used his annual report on the federal judiciary Sunday, Dec. 31, 2017, to promise a careful evaluation of its sexual misconduct policies and to highlight the work of court employees following the year’s destructive hurricanes. (Photo: Pablo Martinez Monsivais, AP)

And in New Jersey, there is usually only one Chancery Judge in each county.

Which meant that as long as I could find plaintiffs willing to have me sue in their names, I could pick my judge. And since the practices I was challenging affected citizens all over the state, that was not usually too difficult to pick a client from the county in which I wanted to sue.

Indeed, the very first case I brought on behalf of the ACLU was a challenge to the constitutionality of a government program to spy on political activists. Attorney General Arthur Sills, in the wake of urban uprisings in 1967, issued an order to local sheriffs to surveil “protest” activity and submit reports to the state police.

Since the program did not require that the protesters had engaged in anything but lawful behavior, we claimed that it would “chill” constitutionally protected activity. There was no precedent under either federal or state constitutional law for such a claim.

But I was aware that the chancery judge in Hudson County was Robert Matthews, a strong defender of free speech. So, I sought out a local activist in Jersey City as my plaintiff. In the case of *Andersen v. Sills*, Judge Matthews ruled exactly as I expected, and ordered the state to destroy the surveillance files.

It was such an extraordinary ruling that it was reported the next day on the front page of *The New York Times*.

Over the remainder of my active legal career, I continued to have success in New Jersey’s Chancery courts. Indeed, Judge Thompson’s successor as the Chancery Judge in Hudson County was a former Democratic state senator named Martin Greenberg. I brought three cases before Judge Greenberg, and won every one.

It is also true that when the liberal (Earl) Warren U.S. Supreme Court of the 1950s and 1960s was replaced, in 1969, by the more conservative Berger/Rehnquist Court, I completely abandoned litigating in the federal courts and sued only in New Jersey courts, since the New Jersey Supreme Court was much more protective of individual rights.



Chief Justice Stuart Rabner of the New Jersey Supreme Court. (Photo: RECORD FILE PHOTO)

Exhibit One was my series of cases challenging restrictions on free speech in privately-run homeowners and property owners associations. Under hostile SCOTUS precedents, those associations are private property, and residents there have no free speech rights under the First Amendment. But the New Jersey Supreme Court, under a stream of progressive chief justices (including the current Chief Stuart Rabner), have interpreted the free speech clause of the New Jersey Constitution to protect speech by those invited to reside on the property. New Jersey is now the only state in the nation where such residents have protection for their expressional rights.

Given all these cases over the years, and having dealt with an assortment of judges, I can say with some certainty that judges are human and they all have their own political leanings. And that is why I must grudgingly admit that President Trump got the better of the argument with Chief Justice Roberts.

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