

# Judges' response to Trump criticism: Silence

Originally published February 9, 2017 at 12:20 am Updated February 9, 2017 at 12:21 am



Supreme Court Justice nominee Neil Gorsuch meets with Senate Judiciary Committee member Sen. Jeff Flake, R-Ariz., Wednesday, Feb. 8, 2017, on Capitol Hill in Washington. (AP Photo/J. Scott Applewhite)

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WASHINGTON (AP) — President Donald Trump's unusually personal criticism of federal judges has drawn rebukes from many quarters, including from Supreme Court nominee Neil Gorsuch, but not from the judges themselves.

And that's not likely to change, even if the tweeter in chief keeps up his attacks on judges. Bolstered by lifetime tenure, independent judges should not respond to criticism, no matter how harsh or that its source is the president, said a former judge, a law school dean and a constitutional law professor.

Judges "should basically give the tweets the attention they deserve, which means they should be ignored. This is basically a childish tantrum from someone who didn't get his way. And the judiciary should go about its business and decide cases, including cases involving him," said Vanderbilt University law professor Suzanna Sherry.

Trump's style may be different and his language more coarse, but the comments themselves are not the "threat to judicial independence that some commentators have made them out to be," said University of Pennsylvania law school dean Theodore Ruger.

Former U.S. District Judge Paul Cassell said judges would find themselves in unfamiliar territory "if they start critiquing the Twitter feed of the president."

Chief Justice John Roberts has apparently embraced that advice. Roberts declined through a court spokeswoman to comment for this article.

Roberts himself was Trump's first target during the presidential campaign. Last winter, Trump called the chief justice "an absolute disaster" and "disgraceful" mainly for the two opinions Roberts wrote that preserved President Barack Obama's health care overhaul.

Next in Trump's sights was U.S. District Judge Gonzalo Curiel, who was presiding over fraud lawsuits against Trump University. In June, Trump called Curiel "a hater of Donald Trump" who couldn't be fair to him because Curiel is "of Mexican heritage" and Trump had proposed building a wall on the U.S.-Mexican border.

Last week, Trump pegged U.S. District Judge James Robart as a "so-called judge" after Robart imposed a temporary halt on Trump's executive order barring people from seven predominantly Muslim countries from coming to the United States. On Sunday, Trump renewed his Twitter attacks against Robart: "Just cannot believe a judge would put our country in such peril. If something happens blame him and court system. People pouring in. Bad!"

On Wednesday, he said the "courts seem to be so political," in reference to the three federal appeals court judges who are considering the administration's plea to enforce the order.

Later Wednesday, Gorsuch said he found the president's attacks on the judiciary "disheartening" and "demoralizing." The comments were made in a private meeting with Democratic Sen. Richard Blumenthal of Connecticut, although senators often provide an account of what was discussed in such meetings. Gorsuch's confirmation team confirmed the essence of the remarks.

Trump is not the first president to object to court decisions or to opine about how a court should rule, said Paul Collins, a political science professor at the University of Massachusetts at Amherst. Obama used his 2010 State of the Union message to assail the Supreme Court's Citizens United campaign finance ruling, with several justices in the audience. Obama also delivered a lengthy pitch for his health care law while the court was weighing the case in 2015.

With the exception of John F. Kennedy, every president since Dwight Eisenhower has been critical of some Supreme Court decisions, said Collins, drawing on research he did with co-author Matthew Eshbaugh-Soha of the University of North Texas.

But past presidents did not make their displeasure known by “attacking judges ... or by questioning the decision such that there’s a possibility of undermining faith in the judicial system,” Collins said. “I get this uncomfortable sense that the president may be trying to lower confidence in judges in anticipation of defying a ruling.”

Ruger said Roberts, as the head of the judicial branch of government, or another justice might feel compelled to speak up about the importance of an independent judiciary if the attacks continue.

But Cassell, a law professor at the University of Utah who was a judge from 2002 to 2007, said Trump has the right to voice his disagreement. “We live in an age now where, for better or for worse, the language we use is getting rougher in a variety of contexts,” he said.