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Don't jump to conclusions about an 'Obama judge' who ruled against Trump

Rudy Giuliani, President Trump's lawyer, described a federal judge who ruled against the Trump campaign as an "Obama-appointed judge."

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After a federal district judge in Pennsylvania ruled conclusively and caustically against the Trump campaign in an election dispute, Twitter was consumed by comments about the judge's political profile.

Rudy Giuliani, Trump's lawyer, TV apologist and international man of mystery, tweeted out a statement Saturday evening describing U.S. District Judge Matthew W. Brann as an "Obama-appointed judge." That's true. But what were we to make of the fact, tweeted out by legal commentator Walter Olson, that Brann's biography lists him as a member of the Federalist Society, the conservative/libertarian law group that liberals like to demonize?

The answer is that Brann is both an Obama appointee and, according to Sen. Pat Toomey (R-Pa.), a "longtime conservative Republican." That seeming anomaly results from the fact that Pennsylvania's two senators — Toomey and Democrat Bob Casey Jr. — collaborate on making recommendations for federal judgeships, a not-uncommon arrangement. (Here's the 2012 press release in which the senators announced their support for Brann and another nominee, Malachy Mannion.)

Bipartisan cooperation is arguably easier for nominations to federal trial courts than for those to the U.S. Court of Appeals, the appellate court below the Supreme Court. Traditionally, appointments to district courts are regarded by home-state senators as part of their patronage, even though district judges are formally nominated by the president.

Last weekend's rush to pigeonhole Brann is partly a consequence, I suspect, of the now routine practice in which reporters and commentators describe a federal judge in a newsworthy case in terms of which president appointed that judge. It's a problematic reflex.

It's true that both party affiliation and ideology play a role in the selection of federal judges. Moreover, some important Supreme Court decisions have divided 5-4, with Republican appointees on one side and Democratic appointees on the other — not because the justices are in the parties' pockets, but because presidents of both parties seek to appoint justices who share their philosophies.

But, as I wrote in 2014: “[E]ven Supreme Court justices don’t robotically do the bidding of the presidents who nominated them. ... And when the judge in question sits on a federal district court, the ‘appointed by President X’ factoid is as likely to mislead readers as to inform them.”

Chief Justice John G. Roberts Jr. was mostly correct when he said in 2018: “We do not have Obama judges or Trump judges, Bush judges or Clinton judges.” Roberts was responding to criticism by President Trump of an “Obama judge” who had ruled against the president’s attempt to restrict asylum applications.

If conservative treatments have proven unhelpful, your doctor may recommend joint replacement surgery.

Most judicial decisions aren’t exercises in partisanship. Most of the time, federal judges rule on how they see the law — and in the case of the Trump campaign’s arguments, Brann clearly didn’t like what he saw. But that wasn’t because he was an “Obama judge.”