

New York Court Watcher

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Roberts' Goat--What Gets It? (Intro: The Chief Justice's Dissents)

What gets John Roberts' goat? What does the Chief Justice feel strongly about?

In the last few posts, we explored "Lippman's Goat--What gets It." (See [Lippman's Goat--What Gets It? \(Part 3: Civil Cases\)](#), Sept. 21, 2011, and the preceding 2 posts in the series. See also [Justice Alito's Goat--What Gets It? \(Part 4: One Last Thing\)](#), March 7, 2010, and the 3 preceding posts in that series.)

Looking at the 15 dissenting opinions written by Jonathan Lippman over the course of the last year, we got a good idea of the kinds of issues New York's Chief Judge feels strongly about. Strongly enough, that is, to author a dissent. As stated in one of those posts:

Strongly enough, that is, to spend the time, effort, and collegial capital to explain in a written opinion why the majority of the court is wrong. Strongly enough, that is, that the majority's position, the court's decision, gets the judge's goat.

Yes--and for that reason not surprisingly--those dissenting opinions were particularly revealing about the state's top judge.

Well, what about the *nation's* top judge? What can we glean from Chief Justice Roberts' dissenting opinions? That is, from the disagreements he has expressed publicly with the decisions of his Court--the positions he has taken in opposition to those adopted by a majority of his colleagues on the United States Supreme Court?

Since we looked at 15 dissenting opinions by Lippman, let's look at the same number by Roberts. Lippman authored his 15 over the course of the 1 year we examined; Roberts authored his 15 over the past 3 years--from the start of the 2008-09 term, through the end of the last term, 2010-11. But instead of looking at just 1 year for each of them, let's look at an equal number of dissents in the hope of getting an equal level of insight.

So, what do Roberts' dissents tell us?

Before we describe the cases themselves in any detail, let's just take a quick peek at the bottom line of Roberts' dissents. In short, stripped of the legal arguments, the policy considerations, the jurisprudential underpinnings, etc., etc., what were the decisions that



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Roberts opposed? I.e., the decisions that bothered him enough that he felt compelled to write a dissent?

Here's a list of what he dissented against:

- against a **sentence reduction to redress the 100-1 disparity** in punishments for crack cocaine and cocaine powder offenses
- against a **trial judge's rejection** of the sentencing guidelines which had set **the 100-1 disparity** for crack cocaine offenses
- against the Virginia Supreme Court's **restrictions on police stopping drivers** based on anonymous tips
- against the Pennsylvania Supreme Court's **restrictions on police arresting individuals in "bad neighborhoods"**
- against the **reconsideration**, by a military appeals court, of the **court martial convictions of an immigrant** serving in the U.S. Navy
- against **vacating an immigrant's deportation** and ordering **reconsideration** based on incompetent counsel
- against **upholding a criminal contempt order** punishing a **domestic violence convict** who violated an order of protection
- against **upholding a firearms conviction** of a convicted **domestic assailant**
- against **upholding a restitution order** requiring an **assault convict** to compensate his victim
- against **compensation** for railroad **employees injured** on the job
- against a federal suit by a state agency to **protect the rights of the mentally disabled**
- against a **credit card holder's right to sue** a law-violating bank in court instead of being forced into arbitration
- against **removal of a judge** from a case involving a company that contributed **3 million dollars to get him elected**
- against a multi-state commission's **claims** against a member state **for failing to complete** the agreed upon and funded **radioactive waste facility**
- against a bi-state water district and a power company's **right to participate in a dispute between 2 states over river water**


OK, there are Roberts' 15. A bare bones list of what he opposed.

Of course he had legal arguments supporting his positions. But, of course, so too did the majority of his Court with whom he disagreed.

So what is there in these cases, about these cases--the outcomes, the implications, the consequences, the ramifications--that he chose the legal arguments he did that supported the positions that he took? That he chose to go public with the differences he had with the majority of his Court and to expend the time and energy and collegial capital to author a dissenting opinion? That he felt strongly about?

Well, connect the dots!

Other than the last 2 listed dissents that may be quite technical, there certainly seems to be a pattern or two here. Indeed, upon closer

- [The Nature of Cardozo's Process: Testing it in Schloendorff and MacPherson](#)
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- [Marshall_Margaret](#)

investigation and reflection, even the last 2 would likely reveal something about Roberts.

But connecting the other 13 dissents, it's difficult not to see some common denominators. There are patterns that can hardly be missed. Who is he siding with in his dissents? Who not? And when does he seem to switch sides?

We'll discuss more about that in the next post or two. We'll look a bit more closely at the cases. Just a bit more detail--not so much that it gets too legalistic, tedious, boring, and, most importantly for our purpose here, out of focus. Then we'll outline some of the fairly evident patterns.

Just one final point to close. What gets Chief Justice Roberts' goat? Not at all the same as what gets Chief Judge Lippman's.



Labels: [Dissents](#), [Goats](#), [Lippman_Jonathan](#), [Roberts_John](#)

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