



THE ROBERTS(DALE) COURT

Robert A. James

THERE IS A SENSE OF “continuity with change”¹ after one has calculated the geographic centers of the United States Supreme Court, on and off and with tongue in cheek, for many years.² Even a radical switch of a Sacramento jurist for an Eastern seaboarder translates into a shift of only one-ninth of the continent, a few hundred miles of the American expanse.³ Yet the distance – in all senses – between Justices looms large in our national discourse.

It is cold comfort to any partisan that the exchange of Justices Antonin Scalia and now Anthony Kennedy for Justices Neil Gorsuch and Brett Kavanaugh produces the same appointment center as a counterfactual exchange for Judge Merrick Garland and Justice Gorsuch. Such is the dominance of the Court of Appeals for the Acela Circuit in recent nominations.⁴

Rob James is a partner in the San Francisco and Houston offices of Pillsbury Winthrop Shaw Pittman LLP. This article is dedicated to the memory of J. David Kirkland, Jr. (1958-2018), Yale Law School class of 1983, co-founder of the Journal of Attenuated Subtleties.

¹ The versatile campaign slogan of Julia Louis-Dreyfus’s character in *VEEP* (HBO, season 4, 2016).

² Robert A. James & Benjamin C. Zuraw, *The Supreme Court and the Westward Movement*, 11 GREEN BAG 2D 341 (2008), updating Zuraw, 1 JOURNAL OF ATTENUATED SUBTLETIES 9 (1982).

³ A good bar bet is whether Sacramento is north or south of Washington, D.C. I think of the Golden State’s capital as jutting far into upper California, but it sits beneath President Kennedy’s fabled city of northern charm and southern efficiency. Sacramento’s latitude is 38° 31’ while Washington’s is 38° 51’. In this article, all latitudes are North and all longitudes are West.

⁴ *From Pulaskiville to Delaware*, 12 GREEN BAG 2D 376 (2009); *From Delaware to Tappan Lake*,

In contrast to the emotions expressed during his confirmation process, there is little drama in assessing the regional roots of Justice Kavanaugh. A child of Washington and Bethesda, and a well-known graduate of Georgetown Preparatory School, he has been resident throughout his career in the vicinity of the nation's capital (lat. 38° 51', long. 77° 3'), where he served as a judge on the Court of Appeals for the District of Columbia Circuit.⁵

Substituting Washington for Sacramento unquestionably brings the appointment center from Columbus, Ohio, back into the thirteen original colonies for the first time in decades.⁶ The appointment center now resides squarely in the heart of Pennsylvania (lat. 40° 9', long. 78° 10').

One first notes that the center lies among several State Game Lands preserves. This is hunting country. Were all nine Justices suddenly deposited at their new center (always my mental image), they would be well advised to don Blaze Orange vests (or jabots) lest they be mistaken for a covey of Grey-Crested Muttering Sable Grouse.

One then notes that the center does not fall directly within the confines of any city or town. Any of several Pennsylvania hamlets could be selected. Authorial discretion, not unlike judicial discretion, is required to decide what to call the new home.

As a counterpoint to the comparison of judging to an umpire's calling balls and strikes,⁷ geography furnishes a novel frame of reference. We must

13 GREEN BAG 2D 377 (2010) (discussing geographic implications of President Obama's nominations from the Washington-Boston corridor); Adam Liptak, "Obama Has Chance to Select Justice with Varied Resume," N.Y. TIMES (May 1, 2009) (Acela Circuit label).

⁵ Within that D.C. region, however, the relation of his suburban upbringing to nearby urban gun violence emerged as a topic of conversation. *Confirmation Hearing on the Nomination of Brett Kavanaugh to be Associate Justice of the United States Supreme Court, Hearings before the Committee of the Judiciary*, U.S. SENATE, 115TH CONG. (Sept. 5, 2018). Between youth and law practice, Justice Kavanaugh did have excursions elsewhere, including a New Haven sojourn, a San Francisco law firm summer internship, and Third and Ninth Circuit clerkships.

⁶ *Howdy, Columbus*, 20 GREEN BAG 2D 229 (2017) (Columbus, Ohio, was the appointment center after Justice Gorsuch's swearing in). The Appendix to this article provides the prior and current data sets, in the interests of transparency and pedantry. The mean center of the Justices' birthplaces, for those who care, is now Milhousen, Indiana, leaving a Nixonian Presidential impression.

⁷ *Confirmation Hearing on the Nomination of John G. Roberts, Jr. to be Chief Justice of the United States, Hearings before the Committee of the Judiciary*, U.S. SENATE, 109TH CONG. (opening statement, Sept. 12, 2005); OFFICIAL BASEBALL RULES 149-150 (2016 ed.).

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label the center so that it takes its place in an archipelago of analogies, just as lawyers seek to fit a case in an archipelago of precedents.

Each island in an archipelago has a collection of traits that are both similar and dissimilar to those of the island at hand. G.E.P. Howard, a celebrated Wall Street lawyer at my firm, urged his associates to find for him a “green elevator case” – a precedent that was on all fours with his pending litigation, down to the color of the vestibule.⁸ But by the time one gets to the U.S. Supreme Court, green elevator cases are rare.

What, then, should we name the new center, from among all the candidates? Animal ethicists might be uncomfortable with Wells Tannery; it might have been an offal place. Coaldale plays to one of President Trump’s core constituencies, while Defiance describes his fervent opposition. Six Mile Run conveys something of the modern nomination and confirmation process. And Hopewell is perhaps the attitude of most of us.⁹

In the end I land on Robertsdale, Pennsylvania, as this iteration of Justices is widely considered to usher in the Roberts Court. The name suits the center of an institution in which the Chief Justice is himself heard as a mediating voice.¹⁰ May all Americans come together in seeing, metaphorically and geographically, where this Court goes.

⁸ WINTHROP, STIMSON, PUTNAM & ROBERTS: A HISTORY OF A LAW FIRM (1980).

⁹ See BARACK OBAMA, *THE AUDACITY OF HOPE* (2006); AURELIAN CRAIUTU, *FACES OF MODERATION: THE ART OF BALANCE IN AN AGE OF EXTREMES* (2016).

¹⁰ Julie Hirschfeld Davis, “With Kennedy Gone, Roberts Will Be the Supreme Court’s Swing Vote,” *N.Y. TIMES* (June 28, 2018).

APPENDIX

U.S. SUPREME COURT GEOGRAPHIC CENTER,
2010

Justice	Birth Location	Lat Deg	Lat Min	Lat Dec	Long Deg	Long Min	Long Dec
Roberts, J.	Long Beach, IN	41	45	41.75	86	50	86.83
Kennedy	Sacramento, CA	38	31	38.51	121	30	121.50
Breyer	San Francisco, CA	37	37	37.61	122	23	122.38
Sotomayor	New York, NY	40	46	40.77	73	54	73.90
Kagan	New York, NY	40	46	40.77	73	54	73.90
Thomas	Savannah, GA	32	8	32.13	81	12	81.20
Ginsburg	New York, NY	40	46	40.77	73	54	73.90
Alito	Hamilton Twp, NJ	40	10	40.17	74	40	74.67
Scalia	Trenton, NJ	40	17	40.28	74	49	74.82
Mean	Coal City, IN	39	12	39.20	87	1	87.01

Justice	Appointment Location	Lat Deg	Lat Min	Lat Dec	Long Deg	Long Min	Long Dec
Roberts, J.	Washington, DC	38	51	38.85	77	2	77.03
Kennedy	Sacramento, CA	38	31	38.51	121	30	121.50
Breyer	Boston, MA	42	22	42.36	71	2	71.03
Sotomayor	New York, NY	40	46	40.77	73	54	73.90
Kagan	Cambridge, MA	42	22	42.37	71	20	71.33
Thomas	Washington, DC	38	51	38.85	77	2	77.03
Ginsburg	Washington, DC	38	51	38.85	77	2	77.03
Alito	Newark, NJ	40	42	40.70	74	10	74.17
Scalia	Chicago, IL	41	54	41.90	87	39	87.65
Mean	Tappan Lake, OH	40	21	40.35	81	11	81.19

2010 US Population Center:	Plato, MO	37	31	37.51	92	10	92.17
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U.S. SUPREME COURT GEOGRAPHIC CENTER,

2017

Justice	Birth Location	Lat Deg	Lat Min	Lat Dec	Long Deg	Long Min	Long Dec
Roberts, J.	Long Beach, IN	41	45	41.75	86	50	86.83
Kennedy	Sacramento, CA	38	31	38.51	121	30	121.50
Breyer	San Francisco, CA	37	37	37.61	122	23	122.38
Sotomayor	New York, NY	40	46	40.77	73	54	73.90
Kagan	New York, NY	40	46	40.77	73	54	73.90
Thomas	Savannah, GA	32	8	32.13	81	12	81.20
Ginsburg	New York, NY	40	46	40.77	73	54	73.90
Alito	Hamilton Twp, NJ	40	10	40.17	74	40	74.67
Gorsuch	Denver, CO	39	45	39.75	104	52	104.87
Mean	Jerseyville, IL	39	8	39.14	90	21	90.35

Justice	Appointment Location	Lat Deg	Lat Min	Lat Dec	Long Deg	Long Min	Long Dec
Roberts, J.	Washington, DC	38	51	38.85	77	2	77.03
Kennedy	Sacramento, CA	38	31	38.51	121	30	121.50
Breyer	Boston, MA	42	22	42.36	71	2	71.03
Sotomayor	New York, NY	40	46	40.77	73	54	73.90
Kagan	Cambridge, MA	42	22	42.37	71	20	71.33
Thomas	Washington, DC	38	51	38.85	77	2	77.03
Ginsburg	Washington, DC	38	51	38.85	77	2	77.03
Alito	Newark, NJ	40	42	40.70	74	10	74.17
Gorsuch	Denver, CO	39	45	39.75	104	52	104.87
Mean	Columbus, OH	40	7	40.11	83	6	83.10

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U.S. SUPREME COURT GEOGRAPHIC CENTER,
2018

Justice	Birth Location	Lat Deg	Lat Min	Lat Dec	Long Deg	Long Min	Long Dec
Roberts, J.	Long Beach, IN	41	45	41.75	86	50	86.83
Kavanaugh	Washington, DC	38	51	38.85	77	2	77.03
Breyer	San Francisco, CA	37	37	37.61	122	23	122.38
Sotomayor	New York, NY	40	46	40.77	73	54	73.90
Kagan	New York, NY	40	46	40.77	73	54	73.90
Thomas	Savannah, GA	32	8	32.13	81	12	81.20
Ginsburg	New York, NY	40	46	40.77	73	54	73.90
Alito	Hamilton Twp, NJ	40	10	40.17	74	40	74.67
Gorsuch	Denver, CO	39	45	39.75	104	52	104.87
Current Mean	Milhausen, IN	39	10	39.17	85	25	85.42

Justice	Appointment Location	Lat Deg	Lat Min	Lat Dec	Long Deg	Long Min	Long Dec
Roberts, J.	Washington, DC	38	51	38.85	77	2	77.03
Kavanaugh	Washington, DC	38	51	38.85	77	2	77.03
Breyer	Boston, MA	42	22	42.36	71	2	71.03
Sotomayor	New York, NY	40	46	40.77	73	54	73.90
Kagan	Cambridge, MA	42	22	42.37	71	20	71.33
Thomas	Washington, DC	38	51	38.85	77	2	77.03
Ginsburg	Washington, DC	38	51	38.85	77	2	77.03
Alito	Newark, NJ	40	42	40.70	74	10	74.17
Gorsuch	Denver, CO	39	45	39.75	104	52	104.87
Current Mean	Robertsdale, PA	40	9	40.15	78	10	78.17

