

# Judges behaving badly

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## Low pay and partisan elections are threatening judicial integrity

A \$54m lawsuit over a pair of pinstriped trousers that went missing from a Washington, DC, cleaners was thrown out by a judge this week. It had attracted worldwide ridicule. The fact that the case was brought, not by a random loony, but by a former judge has added to the sense that something is wrong not just with America's litigation laws, but with the kind of men and women Americans choose to sit in judgment over them.

A whole series of judicial misdemeanours, ranging from the titillating to the outrageous, has emerged over the past year. Take the Florida state judge, John Sloop, who was ousted after complaints about his “rude and abusive” behaviour. This included an order to strip-search and jail 11 defendants for arriving late in traffic court after being misdirected. Or the Californian judge, José Velasquez, sacked in April for a plethora of misconduct, including extending the sentences of defendants who dared question his rulings.

Then there was the Albany city judge, William Carter, in New York, censored for his “utterly inexcusable” conduct after jumping down from the bench during a trial, shedding his robes and apparently challenging a defendant to a fist-fight. Another time, he suggested that the police “thump the shit out” of an allegedly disrespectful defendant. Mr Carter wasn't carrying a gun; many judges now do. In Florida, Charles Greene, chief criminal judge in Broward County, had to step down after describing a trial for attempted murder involving minority defendants and witnesses as “NHI” (No Humans Involved). Then there are the sexual peccadilloes. In Colorado, a (male) judge resigned after admitting having sex with a (female) prosecutor in his chambers. In California, a former judge was jailed for 27 months for downloading child pornography. And in Oklahoma Donald Thompson, a judge for more than 20 years, was jailed for four years for indecent exposure and using a “penis pump” to masturbate during trials.

More serious are the cases of corruption. On June 5th Gerald Garson, a former judge in Brooklyn, New York, was jailed for taking bribes to rig divorce cases. Another judge was convicted of accepting money to refer clients to a particular lawyer. Rumours of buying and selling of judgeships in the district abound. At one time, one in ten Brooklyn judges were said to be under investigation for sleaze.

“To distrust the judiciary,” said Honoré de Balzac, “marks the beginning of the end of society.” In Britain, judges are one of the most respected groups. But in America they tend to be held in low esteem, particularly at state level. For this many people blame low pay and the fact that judges are elected. In 39 states, some or all judges are elected for fixed terms. Federal judges, usually held in much higher esteem, are appointed on merit for life—as in Britain.

Most states allow judicial candidates to raise campaign funds. Huge sums are often involved, leading to inevitable suspicions that, once on the bench, judges will pass judgments that favour their benefactors. In 2004 the two candidates in one Illinois district (with a population of just 1.3m) raised a staggering \$9.4m between them. Some of the states with the highest levels of campaign spending—Texas, Louisiana and Alabama—are also those whose judges are most criticised.

In the past, judicial candidates were banned from discussing controversial legal or political issues on the campaign trail. But in 2002 the Supreme Court ruled such bans to be unconstitutional, leading candidates to advertise freely their views on abortion and suchlike. Personal attacks have also become more common. Indeed, Sandra Day O'Connor, a former Supreme Court justice, fears that judicial elections have turned into “political prize-fights, where partisans and special interests seek to install judges who will answer to them instead of the law and the constitution.”

The meagre salaries of judges, whether at state or federal level, do not help raise standards either. Federal judges have not had a real pay rise for 17 years; a district court judge earns \$165,000 a year, about the same as a first-year associate in a top law firm. John Roberts, chief justice of the Supreme Court, earns just \$212,000—half the salary of England's top judge and one-fifth of the average income of a partner in the majority of America's 100 top-grossing law firms. Around 40 judges have left the federal bench over the past five years.

In his annual report to Congress in January, Mr Roberts said that the issue of judges' pay had reached “the level of a constitutional crisis”. It was threatening the judiciary's strength and independence. In February, Patrick Leahy, the Democratic chairman of the Senate Judiciary Committee, promised legislation to fix it within the current session. The judges are still waiting. Meanwhile, state judges in New York are preparing to sue the state for their first pay rise since 1999. The battle is joined.