

Sinners and judges

Solicitors Journal 30 March 2007

We should do everything to prevent our courts going the same way as Parliament, says Kerry Underwood

Abraham Lincoln said: "Show me a man without vices and I will show you a man without virtues."

At my firm, probationary trainees know the parable of the talents off by heart by the end of the first week. In other words it is better to take a chance and lose than not to take a chance, a concept with which most lawyers struggle. Recent disclosures and allegations about the sexual conduct of members of the judiciary has aggravated a concern that has been nagging at me for some time.

It is this. Do we risk a situation developing whereby we lose sight of the real qualities required of judges and instead appoint only people who have never done, and are unlikely to do, anything vaguely embarrassing or controversial?

Those who will only make politically and publicly acceptable decisions after "victim impact statements"?

Surely the whole point of judges is that they are not the victims.

Politics has gone that way already – the bland leading the bland. Few people of talent now enter politics and those who do are unlikely to make it to the top. Leaders make mistakes. Mistakes now appear to be unacceptable to a society that has become so risk-adverse that its idea of living is sitting in front of a TV screen or a computer screen.

As far as I am concerned, provided it is not a criminal offence, the sexual behaviour of judges (and politicians) is irrelevant. The key requirement is absolute financial probity and incorruptibility.

We are very fortunate in this country to have a judiciary totally free of corruption, totally uninfluenced by financial consideration, a point that is not made nearly enough. Even in a population weaned on sub-Orwellian reality show television and barely able to think, it is extremely rare for a loser in a court case to ever suggest that a judge is "bent". Indeed in 33 years of practice no client has ever suggested that the court or judge was dishonest. Every obscenity under the sun and more, but not bent.

Any lawyer who has dealt with the court system in any other county knows how rare and valuable this is. The public instinctively know it, which is one of the reasons why arbitration and mediation are so deeply unpopular with clients – they know that with a real judge and a real court they will have a tribunal whose honesty is beyond doubt.

That should not be a licence for the judiciary to behave in any way they want as long as they are financially honest, but as long as the behaviour is not criminal the judiciary

should be given a fairly long leash. The last thing we want is United States-style elected judges who have to pander to media-driven public opinion and where any unusual behaviour or characteristic makes you unelectable.

Anecdotally most lawyers suspect certain judges have been appointed for politically correct reasons – quota judges as they are rather unkindly known. The mass of information on ethnicity, gender, disability etc. collected by the Department for Constitutional Lord Chancellors, soon to be the Ministry of Justice for Constitutional Lord Chancellors, strongly suggest that illegal positive discrimination is taking place. (This department is now outdoing Sellafield/Windscale for changes of name – always a bad sign).

Even in South Africa, where one can see the argument in favour of positive discrimination in those very special circumstances, it just is not working. If women and ethnic minorities are not coming through on merit then it is the class system and the education system that needs looking at, not the judiciary. Obviously university fees mean that you will get fewer women and fewer black judges. How stupid do you have to be not to realise that? Is there a single reader who believes that judges, especially at the junior level, are now being appointed on merit?

True it is that this did not happen in the past either. The old boy network operated then, as it still does for the senior judiciary. We now risk the worst of both worlds – politically correct lip-service at the junior level and a tap on a barrister's shoulder at the senior level.

If there is to be positive discrimination how about positively discriminating in favour of people of working-class backgrounds? How about judges with fewer than three forenames?

Why is there a retiring age for judges? Surely the older the better. It is ironic that long before we had age discrimination laws there was no retirement age but now there is!

Apparently magistrates are now being appointed in their twenties, which is crazy and undermines the judicial system. Anyone who at that age is so well-behaved as to be suitable for the bench is not fit to judge anyone ever. Goody Two Shoes makes a bad leader and a bad judge.

So some old opinionated judges who have been around the block a bit and who are utterly incorruptible, not trendy young politically correct people please.

Abraham Lincoln was spot on. Show me a person without vices and I will show you a person not fit to be a judge.

We do have the best judiciary on earth. We should do everything to prevent our courts going the same way as Parliament.

Postscript:

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