

# THE WALL STREET JOURNAL.

## Trump and the Judge

There's plenty to be outraged about.

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Donald Trump's latest outrage is genuinely outrageous. It also casts a useful light on behavior by conventional politicians that should be considered outrageous but isn't.

The Wall Street Journal's [Reid Epstein](#) reports on Trumps "extended tirade," during a rally in San Diego, about the federal judge presiding over a civil fraud trial against Trump University:

"I have a judge who is a hater of Donald Trump, a hater. He's a hater. His name is Gonzalo Curiel," Mr. Trump said, as the crowd of several thousand booed. "He is not doing the right thing. And I figure, what the hell? Why not talk about it for two minutes?"

Mr. Trump also told the audience . . . that Judge Curiel is "Mexican."

"What happens is the judge, who happens to be, we believe, Mexican, which is great. I think that's fine," Mr. Trump said.

Judge Curiel was born in Indiana.

Trump also issued this strange threat against the judge: "Wouldn't that be wild if I'm president and I come back to do a civil case?"

[David Post](#) of the Cato Institute, at the Washington Post's Volokh Conspiracy blog, describes Trump's comments as "truly appalling and, given that this guy could become president, terrifying":

From a man being seriously considered to head one of the three branches of our government, it is a not-too-thinly-veiled attack on the notion of judicial independence and the rule of law. If the guy in charge of executing the laws thinks the system is "rigged"—against billionaires, I suppose he means—and a "total disgrace," then . . . well, you can figure it out. Enforce the law against himself? Or against his pals? That's for suckers.

On those points we mostly agree with Post. We part company from him, however, on this one: "Our republic has survived some terrible presidents, with terrible ideas about how to run the country; but this is something different."

There are also ways in which it is something familiar. In 1997, Bill Clinton asked the Supreme Court to hold that presidents were immune from civil lawsuits (in his case, a claim for sexual harassment in his previous job). The U.S. government, in the person of the solicitor general, officially supported Clinton's position, though the justices rejected it in [Clinton v. Jones](#) .

Fifteen years later, Barack Obama publicly declared that he expected the high court to rule in his favor on a constitutional challenge to ObamaCare. “I’m confident that the Supreme Court will not take what would be an unprecedented, extraordinary step of overturning a law that was passed by a strong majority of a democratically elected Congress,” he said at a press conference.

When asked in a follow-up question if he had any contingency plans in case the administration lost the case, he said no. The president was widely understood to be playing a game of chicken with Chief Justice John Roberts, who did in fact cast the deciding vote in the administration’s favor in *National Federation of Independent Business v. Sebelius*.

Trump is attempting to achieve Clinton’s means using Obama’s ends. It is appalling and wrong, but it’s hardly novel.

What about Trump’s invidious reference to Judge Curiel’s ethnicity? (Curiel is the American son of Mexican parents, according to a 2002 New York Times article citing his work as a drug prosecutor.) Where might Trump have gotten the idea that *that* would be relevant?

Maybe from Sonia Sotomayor, who was a judge on the Second U.S. Circuit Court of Appeals in 2001, when she gave a speech noted by the New York Times eight years later:

In her speech, Judge Sotomayor questioned the famous notion—often invoked by Justice Ruth Bader Ginsburg and her retired Supreme Court colleague, Sandra Day O’Connor—that a wise old man and a wise old woman would reach the same conclusion when deciding cases.

“I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn’t lived that life,” said Judge Sotomayor, who is now considered to be near the top of President Obama’s list of potential Supreme Court nominees.

The occasion for the Times’s noting this was Obama’s nomination of Sotomayor to the Supreme Court, to which of course she was confirmed. When a judge on the country’s highest court openly aspires to deliver rulings biased by her ethnicity (and her sex), can a litigant be blamed for not trusting the judiciary to deliver impartial justice?

On that score, Obama didn’t help matters when he said last month of his current high-court nominee, Judge Merrick Garland: “Yeah, he’s a white guy, but he’s a really outstanding jurist. Sorry.”

Nor is Trump alone, even among this year’s expected presidential nominees, in vowing to use the presidency to advance his own self-interest in court. Hillary Clinton has said a litmus test for her Supreme Court nominees is a commitment to overturn *Citizens United v. Federal Election Commission*, a First Amendment case that vindicated the right to distribute a movie *critical of Mrs. Clinton*.

The media almost inevitably ignore Mrs. Clinton’s self-interest in the Citizens United case. One exception was an Associated Press dispatch last September headlined “Hillary Clinton Is Going After Campaign Finance, and It’s Personal.” The gist of the story was not that in seeking to shut down criticism of Herself, Mrs. Clinton is a budding tyrant, but rather that she is humanlike:

“I want to tell you, Citizens United was about me,” the Democratic presidential front-runner said last month in Iowa. “Think how that makes me feel. A lot of people don’t know that, but the backstory is eye-opening.”

As deplorable as Trump’s attack on Judge Curiel is, we, in contrast with David Post, do not find it “terrifying.” In addition to being widely denounced by commentators of the left, right and center, it has already proved self-defeating in court, as the Washington Post reports:

A federal judge has ordered the release of internal Trump University documents in an ongoing lawsuit against the company, including “playbooks” that advised sales personnel how to market high-priced courses on getting rich through real estate. . . .

The ruling was a setback for Trump, whose attorneys argued that the documents contained trade secrets.

In his order, Curiel noted that Trump had emerged as a leading presidential candidate over the course of the civil case against Trump University and that Trump had “placed the integrity of these court proceedings at issue.” The judge pointed to a previous case to say that courts deciding on public disclosure must weigh “whether a party benefitting from the order of confidentiality is a public entity or official; and . . . whether the case involves issues important to the public.”

As a rule, a show of public disrespect for judicial authority is a foolish litigation strategy. It worked for Obama with Chief Justice Roberts because, like Mr. Clinton before him, he had virtually all Democrats and most of the media cheering him on. Criticism of a Democratic president for traducing democratic norms is inevitably discounted for partisanship. President Hillary Clinton would get away with it for the same reason.

President Trump would not—at least not if his many detractors on the right and in the Republican Party are half as principled as they keep saying they are.

### **Diagram This Sentence**

“A persistent chill in the ocean off Antarctica that defies the global warming blamed for melting Arctic ice at the other end of the planet is caused by cold waters welling up from the depths after hundreds of years, scientists said on Monday.”—Alister Doyle, Reuters, May 30

### **We Blame George W. Bush**

“Stuck in Your Parents’ Basement? Don’t Blame the Economy”—headline, FiveThirtyEight.com, May 27

### **We Blame Global Warming**

- “I’m Sorry for Helping Make Kale Cool”—headline, Daily Beast, May 29
- “ ‘I Am Not Cool With Donald Trump and I Am Not Cool With Hillary Clinton’: Jill Stein Unloads on Both Parties, a Rigged System, and Dems’ Bernie ‘sabotage’ ”—headline, Salon, May 31

### **You’re Gonna Need a Bigger Vote**

- “Global Warming Is Blamed for Record Number of Shark Attacks in America”—headline, [DailyMail.com](#), May 29
- “#NeverTrump Has ‘Jumped the Shark’ ”—headline, [CharismaNews.com](#), May 25

### **Hypothesis and Proof—I**

- “Hillary Clinton Doesn’t Have to Prove She Has a Personality”—headline, [Bustle.com](#), May 24
- “Study Shows Sharks Have Personalities”—headline, [Macquarie University](#) press release, May 27

### **Hypothesis and Proof—II**

- “Now THAT’s a Horny Dinosaur! Triceratops Ancestor With a Spiky Bone Shield on Its Head and ‘Devil’ Horns Is a New Species—and It May Have Used Them to Attract a Mate”—headline, [Daily Mail](#) website (London), May 18
- “Donald Trump Is a ‘Vulgar, Demented, Pig Demon’ Says Hillary Clinton’s Ex Adviser”—headline, [Telegraph](#) (London), May 30

### **Hey, Kids! What Time Is It?**

- “It’s Time to Look in the Mirror, Bernie: Now, More Than Ever, Sanders Needs to Be Criticized for His Failed Political Theories”—headline, [Salon](#), May 28
- “Stasi: After Latest Email Disaster, Time for Clinton to Drop Out”—headline, [Daily News](#) (New York), May 28

### **Question and Answer—I**

- “Where Does Food Come Into Play This Election?”—headline, [Article-3.com](#), Oct. 24, 2012
- “There’s a Diet That Really Works, if You’re Okay With a Year of Misery”—headline, [Qz.com](#), May 28

### **Question and Answer—II**

- “My Name Is Bill Kristol—and How I Became a Renegade Jew”—headline, [Forward.com](#), May 24
- “A Renegade Muscles In on Mister Softee’s Turf”—headline, [New York Times](#), May 31

### **Question and Answer—III**

- “Who Would Win in a Three-Legged Race With Bill/Michelleand [sic] Hillary/Barrack [sic]??”—headline, [Yahoo! Answers](#), May 26, 2008
- “Hillary Clinton Struggles to Find Footing in Unusual Race”—headline, [New York Times](#), May 29, 2016

### **Question and Answer—IV**

- “Where do polar bears vote? The North Poll. #ClassicJokeTuesday”—tweet, [@TheEllenShow](#), Oct. 2, 2012
- “New Poll Out of Oregon Bears More Bad News for Hillary Clinton”—headline, [Twitchy](#), May 29, 2016

### **Question and Answer—V**

- “A New Way to Secure Male Domination?”—headline, [Nuclear Monitor](#), Jan. 24, 1997
- “Sausage-Wielding Gang Attacks Vegan Cafe”—headline, [WNYW-TV](#) website (New York), May 31, 2016

### **Life Saver Could Be an Adderall—Now That Would Be News**

“ ‘Kiddie Adderall’ Could Actually Be a Lifesaver for Parents and Children”—headline, [Daily Beast](#), May 28

### **Jumbo Shrimp Could Be Bigger Than a School Bus—Now That Would Be News**

“Giant Squid Could Be Bigger Than a School Bus”—headline, [NationalGeographic.com](#), May 27

### **Look Out Below!**

“The Fall of Salon.com”—headline, [Politico.com](#), May 27

### **It’s Always in the Last Place You Look**

“A Transgender Divinity Student Finds Peace as a Man”—headline, [Washington Post](#), May 29

### **News of the Tautological**

- “Kitty Genovese Had a Life, Not Just a Death: ‘She Wasn’t Just This Murder Victim’ ”—headline, [Salon](#), May 29
- “Iran’s Holocaust Denial Is Part of a Malevolent Strategy”—headline, [Washington Post](#), May 28

### **Breaking News From 1938**

“What Just Happened in Austria Should Be a Wake-Up Call for American Voters”—headline, [Salon](#), May 29

### **Breaking News From 2008**

“Hillary Clinton Is Not Very Good at Running for President. In the End, It Probably Won’t Matter.”—headline, [Washington Post](#) website, May 30

## **News You Can Use**

“If You Don’t Want to Get Nuked Don’t Bomb Pearl Harbor”—headline, Breitbart.com, May 27

## **Bottom Story of the Day**

“Plans for U.S. Women’s Match at RFK Stadium Fall Through”—headline, Washington Post, May 30

## **No Fear of Lying**

An anxious nation has finally exhaled now that Erica Jong, the writer best known for coining a phrase—unprintable by a family newspaper—referring to a sexual encounter free of emotional meaning, has announced her endorsement for president. It’s Bill Clinton’s wife. Here’s our favorite bit from Jong’s brief for Mrs. Clinton, published over the weekend at CNN.com:

When people complain that Hillary Clinton is “shrill” I think they’re worried about their mothers. I’m not. When they call her a hawk, I’m also not worried. Grandmothers don’t go to war unnecessarily. That’s why Native Americans often used a council of grandmothers to decide on war and peace.

Remind us, how did that work out for the Native Americans?