

# Pols rule courtrooms

## Acting judges owe their jobs to Pataki, Rudy

(Last in a series)

New York State's 25-year-old system of appointing acting justices to the Supreme Court has made it easier than ever for top politicians to influence, intimidate or remove New York City's judges.

Thanks to the system of acting judges, Gov. Pataki and Mayor Giuliani have gained enormous power over the choosing of Supreme Court justices — something the state Constitution never envisioned.

As this column reported last week, 146 out of 298 of the city's Supreme Court justices are now appointed, even though the Constitution has required for the past 150 years that all members of the Supreme Court be elected.

Nearly half of those acting justices owe their seats either to the mayor or the governor, because to remain on the Supreme Court bench, they must be appointed or renominated by Pataki or Giuliani to lower court positions.

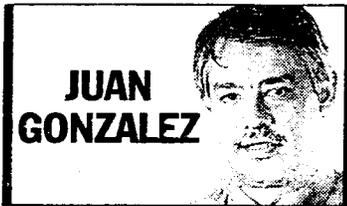
The readiness of both men to demote or remove judges with whom they disagree has undermined the independence of all judges, interviews with dozens of judges, lawyers and court employees suggest.

"Most of the judges are scared, and the actings are in total mor-

tal fear," one veteran Brooklyn Supreme Court justice said.

Politicians attacking the decisions of judges is normal in this town. But Giuliani and Pataki have gone beyond the usual criticism to forcing the removal of certain judges.

Back in 1996, both the mayor and the governor made big headlines when they successfully pushed for the removal of Criminal Court Judge Lorin Duckman,



who had granted low bail to a man accused of stalking an ex-girlfriend. The man killed the woman while on bail, triggering widespread public outrage.

Giuliani, in addition, has refused to reappoint several judges to Criminal or Family Court even though they had been approved for reappointment by his own judicial screening panel. Among those were three who were serving as acting Supreme Court justices.

Those examples have not been lost on the others.

"He [Giuliani] has effectively destroyed the merit system that I created," said former Mayor Ed Koch. "Judges can no longer feel secure in making decisions [in court] on the merits. Knowing the furor of the mayor, not every judge is a hero."

Others insist the Office of Court Administration is just as guilty of intimidating acting Supreme Court justices as the politicians are.

"All [the office] wants is numbers," said one Bronx judge. "They judge the actings on how fast they move cases."

The pressure on judges often makes them sacrifice justice to satisfy their superiors, critics of the system claim.

A perfect example was the Manhattan trial last year of schizophrenic Andrew Goldstein for pushing 32-year-old Kendra Webdale to her death on a subway platform.

In that case, Acting Supreme Court Justice Carol Berkman permitted both prosecutors and defense lawyers only 30 minutes each to question 30 potential jurors. No one bothered to ask one of the jurors who voted for acquittal if he'd ever been arrested.

"What are you going to find out from a juror when you have a minute to question each of them?" said Goldstein's lawyer,

Jack Hoffinger. "But that's the idea nowadays, to rush. . . . What does speed have to do with fairness? If some of the actings open their mouths, they're not actings anymore."

Acting Supreme Court justices get reviewed once a year by the chief administrative judge of the state courts, Jonathan Lippman, who, like Giuliani, has shown a willingness to demote judges who don't meet his standards. Elected Supreme Court justices, on the other hand, enjoy the protection of 14-year terms, so they have a lot more independence.

"Some of the elected judges will tell Lippman, 'Go to hell, I'm in charge of my courtroom,'" said a longtime court official.

"I've had judges who told me right from the bench, 'I can't take that plea, I'm an acting supreme,'" said one veteran criminal defense attorney.

So, our city has two groups of Supreme Court justices — the elected ones who still cling to independence, and the actings, who must worry each day about keeping their jobs.

Lippman believes there's nothing wrong with holding one group of judges to a higher productivity standard than the other.

"You can't have judicial independence without judicial accountability," he said.

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