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Temper in the Court: A Forum on Judicial Civility

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TEMPER IN THE COURT:
A FORUM ON JUDICIAL CIVILITY*

The Association of the Bar of the City of New York
October 26, 1995

NORMAN GREENE:

My name is Norman Greene. I chair the Committee on Lectures
and Continuing Education at the Association of the Bar of the City
of New York. We are bringing you this program along with the
Committee on Professional and Judicial Ethics, chaired by Steven
Krane, and the Committee on Tort Litigation, chaired by Lenore
Kramer.

The program subcommittee includes, besides me, Richard Maltz,
who is also a panelist, and a member of the First Department Disci-
plinary Committee, which disciplines lawyers, not judges; Joan
Gabbidon of the Kings County District Attorney's Office; and Su-
san Bryant, our moderator, of the City University of New York
(CUNY) Law School.

I want to thank certain people who were involved in planning
this program, including: Mary Zulack and Frank Valente. I also
would like to thank Roy Reardon for his inspiration.

Tonight we are talking about judicial decorum, as in judicial be-
havior, not corruption. It is behavior.

Where does this program come from? To some extent, I confess
to being the troublemaker. Part of it came from my own experi-
ence. Part of it came from my talking to other people. I also did
some market research. I asked around. I asked people whether I
was "off base," whether I was being too sensitive about judicial
behavior, and whether others share the same feeling that there was
a problem involving judicial intemperance.

* Editor's Note: The transcription underwent minimal editing to remove the
cadences of speech that appear awkward in writing. Long, run-on sentences were
broken down into two or three shorter sentences and contractions, such as "it's" and
"doesn't," were unjoined. In addition, where it was absolutely necessary for
clarification, the structure of a sentence was rearranged or a sentence or two was
added. For example, one speaker said that certain behavior was inappropriate for
"judges, in my mind." In that instance, the phrase "in my mind" was moved to the
beginning of the sentence so as to avoid any confusion over whether the speaker was
referring to judges that reside in the speaker's head. The addition of a sentence or
two occurred primarily in Dr. Carni's remarks, which referred to a particular
sociological study and psychological phenomena.
I learned that there is a problem. Everyone knows about it, but no one is doing anything about it. I received an earful of detailed stories about specific judges and what they did from lawyers, all of whom were eager to talk to me.

There was also the *Litigation* magazine article on the subject.\(^1\) Copies of the article are available in the back of this room. You should take a copy if you have not already done so.

That article lays out the problem as well as it can be laid out. One item says, “Be Civil (Or, Just Because You are a Judge, Doesn’t Mean You Have a License to Insult).”\(^2\) The introduction reads, “Everyone has experienced appearing before judges who are simply gratuitously mean and nasty.”\(^3\)

But perhaps one of the best things I came across was a letter from a prominent member of the bar. I know it is not good to read when speaking, but this is really good stuff:

If one begins with the assumption that judges should be no more irascible as a group than the rest of us, and yet we seem to find that they are, then it’s only right to look into the reasons.

We have all been at the swearing-in ceremony of judges. They are grand affairs. The parents, the spouse and kids, the close relatives and friends, the lawyers there to be seen, and the new judge all smiles and beaming at everyone in an atmosphere of professionalism and good will.

What happens and how long does it take to turn this paragon of judicial wisdom and goodness into a snarling demon who lawyers fear to come before? For most judges, thankfully, that complete metamorphosis never happens. But to many it does, and the answers to why are very complicated and multi-faceted.

I am now going to turn over this program to Susan Bryant, the Academic Dean at CUNY Law School. She will introduce the panel. This is one of the largest panels we have ever had—ten people—and as I told Susan, we really need a pro to handle this. I think Susan will do a great job. Susan Bryant.

(applause)

**SUSAN BRYANT:**

Thank you, Norman. One of the goals that we have for this evening is to bring together a group of panelists whose experiences in

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2. *Id.*
3. *Id.*
the court will shed light from various perspectives on what has largely been discussed only in private conversations. The goal is to have a more open conversation about a topic that often is not discussed in public: judicial incivility.

Our intent is not to decide whether any particular judge that we know is, or is not, intemperate. We will not mention any names. Instead, our aim is to look at a broad brush of the judiciary. We will do this through some hypotheticals, so that we are talking concretely at the same time that we are trying to address the problem from a broad perspective.

You are going to hear the perspectives of the people who are on our panel. Those who come from public offices are not necessarily representing their office. They are giving their own personal reflections on the issue of temperance, temper in the court.

We want to talk about this subject, first, as a matter of what is the floor below which judicial intemperance is not acceptable and, second, we also want to talk about the ceiling. What is it that we aspire to? What kind of atmosphere do we want for the people who people the courthouse, including the judges? So we will be talking about the subject from two perspectives: the minimally acceptable behavior and the aspirational behavior.

Let me do a quick introduction of our panelists. First, we have Robert Tembeckjian, who is the Deputy Administrator of the New York State Commission on Judicial Conduct. Next to him is Dr. Ellen Carni, a clinical psychologist who specializes in issues of concern to lawyers. She has a handbook on stress management for lawyers and was a senior clinical psychologist in the Family Court for five years.

Next to Ellen is Ron Kuby, who practices as a private practitioner with the firm of Kunstler & Kuby. Next to Ron is the Honorable Robert W. Schmidt, a justice of the Supreme Court of the State of New York, Nassau County. Before becoming a judge, he was the Nassau County Attorney. Next to Judge Schmidt is the Honorable Sterling Johnson. Judge Johnson is a judge of the United States District Court, Eastern District. Next to Judge Johnson is the Honorable Leo Milonas. Justice Milonas is the Chief Administrative Judge of the New York State Courts.

Then we have Barbara Underwood. Ms. Underwood is the First Assistant United States Attorney in the Eastern District of New York, and formerly an executive supervisor in the District Attor-

neys' offices in Brooklyn and Queens. Next to Ms. Underwood is Harvey Weitz, a very experienced practitioner from Schneider Kleinick Weitz Damashek & Shoot.

Next to Mr. Weitz is Richard Maltz who is the Deputy Chief Counsel of the First Department's Departmental Disciplinary Committee. Finally, we have Daniel Kolb, who is a partner at Davis Polk & Wardwell and, more importantly for this panel, is the Chair of the Judiciary Committee of the Association of the Bar.

I want to start with the following hypothetical and ask each panelist to think about this hypothetical from the perspective of the supervisor in a prosecutor's office. One of your supervisees comes to you at the luncheon recess very upset. She is in the middle of a homicide trial, and the judge has been consistently mean and curt to her throughout the time leading up to the trial. She tells you that for the past few court appearances in the case, the judge has been, in addition to mean and curt, loud and in bench and chamber conferences has been cursing at the lawyers.

The judge is angry that the case has not been resolved and that a trial is taking place. The judge continually tells the lawyer at bench conferences that she is stupid and does not know how to ask questions and that she is unnecessarily prolonging the case. The judge will not permit arguments in front of the jury; nor will the judge allow the lawyers to approach the bench for comments.

The judge continues to pressure her to offer a plea, which the lawyer feels is unwarranted. During the last break, when the jury was out of the room, the judge—red-faced and in a loud voice—told the courtroom that this case should never have been tried. The victim's family was sitting in the gallery and heard the judge and became very upset. It is now the luncheon recess.

Barbara, you have been a supervisor for many lawyers who litigate cases. Is this a familiar scenario, and what do you say to this lawyer who has come to consult you about what she should do?

BARBARA UNDERWOOD:

Fortunately, it is not something that happens every day, but things like this do happen. The first thing I would try to do is figure out from whatever sources are available what is really going on in that courtroom: Is this really a dispute about a plea or is there some kind of personal friction going on. This lawyer, or other people in my office, may have had prior experiences with this judge that would shed some light on the current problem.
If the dispute is really about a plea, which is what this hypo suggests, I might reevaluate the plea. Maybe given the way this trial is going, a plea that we thought inadvisable before, will seem more attractive now. We would certainly consider that issue. Maybe the victim’s family that has been sitting there very upset at the way the trial is going would be more inclined to favor a plea now than they were before. We have some new information to consider.

If we are not going to resolve this with a plea, then the question is how to keep the trial going with minimum damage to the trial. We would try to figure out whether something the lawyer said set the judge off, whether an apology of some kind is in order, or whether some adjustment in the lawyer’s behavior might be helpful. This does not necessarily mean judging that the lawyer has done something wrong, although that may be true too. It merely means that some alteration in the way the lawyer is behaving might calm the situation down.

And, probably, if we are going to go forward, and if we are going to try to get this lawyer to behave in a way that will calm the judge down, I or some senior person known to the judge will go to the courtroom and watch what goes on henceforth in order to monitor the lawyer, the judge and the whole situation in the hope that we can calm it down.

These actions are all in the short term. Then there is the question of what to do in the long term, after the trial is over. That depends on our judgment, on whether we think there is some kind of misconduct here that requires further attention.

**SUSAN BRYANT:**

Judge Johnson, you have been in this situation before, too, I take it, as a supervisor of many lawyers in your role as Special Narcotics Prosecutor. Do you go and talk to the judge at this point? What do you do?

**HON. STERLING JOHNSON:**

First of all, everybody has a reputation, judges included. If this is a judge who has a reputation for acting this way, you would know about it. If it is a judge who is a very good judge, even-tempered, and then every once in a while he blows up, you can understand that. But I would not countenance any judge, no matter who he is or where he comes from, to really become a bully and to berate or insult a young person. You just do not do things like that.
I think one of the first things I would do is to send someone over to the courtroom to see what is going on. The second thing I would do is order the transcript—if there was a transcript—to see whether some of the statements could be corroborated. If it is a judge who is a reasonable judge but just had a bad day, I would make a telephone call to that judge. I would ask him, “What are you doing? This is a young lawyer who is trying a case. You were a young lawyer at one time. This is the perception that he or she has.” Hopefully, these measures will change the situation.

If it does not change, then I will have a transcript of what is going on. If for some reason the judge does not allow you to come up to the bench and present your legal arguments, or he has you sit down, I would put it on paper, file it with the court, not on public record. And if you have to go to war with that particular judge, you go to war, but you have to be right.

I would tell the assistant that you have to be very respectful of that judge and, if you do not respect the judge as a person, you have to respect that judge for the title or the position that he or she has. But you do not have to endure bullying tactics or be the subject of abuse.

Thankfully, we do not have many judges of that sort who are around, and when a judge acts in the manner described, a call from the supervisor will make it stop. And if that does not work, then you make a call to the administrative judge, and you inform this administrative judge. Something could happen that way.

Bullies are people who will always back down when you stand up to them; but you have to be right yourself. I think for the duration of that trial, I would have someone there standing by my assistant for moral support and also as an observer. Even when the assistant was called up to the bench and they berated him, I would have my supervisor go up there also. If the judge says, “No, I do not want you up there,” then I would have no conversation with that judge off the record. Everything would be on the record.

RONALD KUBY:

I am still savoring the notion of a prosecutor getting screamed at for bringing a homicide case to trial. I am sort of playing that over in my mind. If I were in the bureau chief’s position, I would go downstairs and grab Mike Pearl of the New York Post, and I would
say, "Mike, we have a New York Post story. Call Eric Breindel right now because we are going to get an op-ed piece on this tomorrow. There is a judge who is torturing a victim's family in court, screaming at my prosecutor, saying this case should never have been tried."

Of course, Mike is going to come up and Eric is going to be on the phone because this is going to be the stuff of tomorrow's editorial.

Then I would tell my prosecutor to wait for Pearl to get up there with his little note pad and, if the judge does it again, let Mike get it all down. Then the prosecutor should be very deferential and very polite while the judge goes ballistic. Then when he is done, you say, "Judge, I would like access to the record," and then you make your "I am-standing-up-for-the-victims, somebody-has-to-in-this-courtroom" speech, which will make very good copy in tomorrow's paper. The next day the judge will read the paper and discover that he is the villain in New York, and the families of murder victims will take out a petition against him. Curtis Sliwa will be out there marching. The judge will be derided in the papers, humiliated and forced to apologize. That will be the last time that judge messes with a prosecutor. That is why we do not see many judges yelling at prosecutors.

What is more problematic is what happens when the person being hammered is representing someone who is poor, who is oppressed, who is despised. In that case it is much harder to use the media to inform the people. In that case, when a judge has a meltdown at your client, the New York Post describes the judge as being "no nonsense." When the judge is interrupting you as defense counsel and mocking and deriding your defense, he or she is showing a "firm judicial hand." We see this happen over and over again. It is a much more difficult situation.

Lastly, I would, with all due respect, disagree with Brother Sterling Johnson to the extent that I do not think initiating any sort of ex parte, off the record contact with this judge would be a proper or an appropriate thing. If the court is actually acting like this, it all has to be in public, it all has to be on the record.

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5. Eric M. Breindel is a columnist and the editorial page editor for the New York Post.

6. Curtis Sliwa is the founder and president of the Guardian Angels, a New York-based volunteer anticrime patrol organization, and the host of a radio talk show in New York on WABC (770 AM).
SUSAN BRYANT:

Let me just add, I have had many conversations with prosecutors, Ron, and although you say, in your experience, it is not happening, I have gotten a number of stories that say that it is happening. Maybe you are not experiencing this, but let me go on with the hypothetical.

BARBARA UNDERWOOD:

Sometimes the judge does not believe that a particular homicide should be prosecuted or, in light of the crushing volume of cases, he believes that a particular case should be resolved by a plea and not by trial. That is a very strong motivator for many of the outbursts at prosecutors.

RONALD KUBY:

I just think the people who initially bear the brunt in this system of judicial intolerance are defense lawyers. And in the end, it is our clients who go off to jail, who suffer from institutional racism, who face the consequences of unfair and intemperate judges.

SUSAN BRYANT:

Any other thoughts for the supervisor here to give to the young lawyer? If not, let us go on. Let us assume that during the closing argument, the judge took phone calls, engaged in conversations with his clerk, allowed other court officers to engage in disruptive and disrespectful behavior and, when it came time for the defense summation, the judge paid little attention except to continually interrupt the defense counsel. At one point, the judge called counsel to the bench and told defense counsel he better get on with the point because they did not have all day. He told the prosecutor to object to the irrelevant arguments, and when the prosecutor did not, the judge scowled.

Assume that at the completion of the case, the jury informed the court that the verdict is in at about 9:30 in the morning, but the judge refused to take the verdict and waited until after the lunch recess. During the long delay, the judge’s court clerk was overheard saying that the prosecutors had been tying up this courtroom for over two weeks, and the judge wants to torture them a bit.

A few days later, the judge saw the lawyer who had tried this case and told her that he was a powerful person, that she should learn that he was intelligent and sophisticated and knew how to
affect cases and that as a prosecutor she had better learn that. He also said that the lawyers who appeared in front of him should not whine, should not show disrespect and should not run out of the courtroom, with their tails between their legs, to their supervisors or to others.

Let us have some discussion about what is problematic and what is okay here. Harvey, any thoughts here about the judge’s behavior?

HARVEY WEITZ:

The whole scenario is problematic. I do not find anything that was done within the bounds of temperate conduct.

I do not do criminal work, and the example is a criminal case. I think that on the civil side almost anything that happens is harmless error, but that is not true on the criminal side, at least not from my reading of advance sheets. The scenario you described certainly is one that cries out for the making of a record. In my mind, none of what transpired is acceptable conduct on the part of any judge.

As we spoke before, I think the thing that really has been lost in all of the press to dispose of cases and to meet quotas and to be “productive” is civility. That notion has become a cliche almost. But that is what is absent on the bench; it is absent among lawyers; and it is also what breeds that sort of conduct. I think judges have to be taught to be more civil to the litigants and understand that they are public servants first and not there to pile up numbers. Piling up of numbers does great harm to everyone.

My feeling is that you have to make a record to preserve your client’s rights. I would not be loathe to have my client complain to the Committee on Judicial Conduct. I have been around a few years, and there has been a vast improvement. Believe it or not, even though the subject of this symposium is temperance in the court, there has been a vast improvement in the way the judiciary handles matters.

SUSAN BRYANT:

Okay, well, I think that is a clue to our panelist from the Judicial Commission. Is this a case that you would expect to be referred to the Commission and what would happen to the case if it was?
ROBERT TEMBECKJIAN:

First of all, in terms of what is problematic about the judge's behavior, I would agree that virtually everything that the judge did in this situation is problematic and probably is contrary to the specific rule that requires a judge to be courteous, patient and civil at all times to all of those that come before the court—litigants, lawyers and others.7

Nevertheless, the question of whether or not it is proper and the question of whether it is a disciplinary matter are two different questions. I can tell you that within three days of Mike Pearl writing the story in the New York Post that Ron Kuby has referred to, the Commission would probably get a hundred letters from various litigants, none of whom would be writing about this particular case. Most of them would be writing about their own personal experiences in the court and expressing dissatisfaction or disappointment with the outcomes of their own cases.

The individuals who would be in the best position to help the Commission establish a provable, discipline case against the judge are the ones who are least likely to cooperate, specifically, the lawyers and others within the court system who observed the behavior. Lawyers have in some sense or another an economic interest in getting along, and going along, with the system, and they do not want to be identified as the troublemakers or rabble rousers or the like.

Typically speaking, I think that is a reasonable assessment of how the legal profession views itself, at least among those who deal with the courts for a living virtually every day.

Also, lawyers, from my experience, make terrible witnesses, even when they do cooperate, because they tend to see everything five or eight questions down the road. Oftentimes, it is very difficult for them to give a straight, unadulterated reaction or recollection of what they saw and observed. Probably the only category of witnesses who are more problematic for us than lawyers are other judges—not because they have an economic interest, but because they have a collegial interest in closing ranks. It is just a fact of human nature.

The other problem from a disciplinary point of view with this particular hypothetical is that as bad as it is, most of what the judge did here does not, for a single incident, cross a clearly defined line of inappropriate behavior. If the judge uses a racial epithet, if he

uses a gender epithet, if he or she makes some other extremely
gross and grotesque comment or acts in a way that is clearly be-
yond the pale—for example, if he forces a lawyer to stand in the
corner figuratively wearing a dunce cap—a single incident like that
will result in a public discipline.

But in the absence of some demonstration that this judge en-
gages in a pattern of behavior like this—and such a demonstration
is going to require a number of witnesses over a long period of
time—lawyers and others who are going to be in a position to
know what happened and who will be willing to come forward and
say that it happened—chances are, under the disciplinary system
that we have now—if the facts were undisputed—the most this
judge would get is a private letter indicating that this kind of be-
havior ought really not to be repeated.

That is neither an endorsement nor an affirmation of what the
process is, but I think it is a fair description of what would happen.
Some of the reasons why it is difficult to take action in cases like
this is simply because it is very difficult to make the proof.

SUSAN BRYANT:

What kind of screening goes into selecting judges to try and pick
out potentially problematic behavior, Dan?

DANIEL KOLB:

I am from the City Bar Judiciary Committee, so I will describe
our procedure, which I think is replicated in the boroughs by the
individual bar associations and so forth to a large extent. What we
do—and in this context it may be particularly helpful—is canvass
the bar, those who have contact with judges over time. We then
review conduct and, certainly, as already mentioned we look for
patterns. We look for patterns of conduct like those mentioned in
this hypothetical. Our hope is that the bar will not be reluctant to
talk about such conduct because it is a confidential procedure. As
a result of that, we are able to make a judgment on whether the
judge should be approved or disapproved for either electoral office
or appointment.

I would say that one thing that holds true is that if our committee
does disapprove a candidate, it usually does have an impact. The
mayor usually respects that. So, if a judge engaged in patterns of
conduct like this—not that he had an individual bad day, but dem-
onstrates patterns of conduct—I think that there is a potential at
least for a disapproval of a candidate.
I would say, though, that it is not the general pattern that you see judges like this. You see individual examples of this, unfortunately, but based on the reporting that we get—and we do see virtually everyone who is up for appointment or election in the city over a year's period—it would be a mistake to assume that a majority of the judges or even a small minority have a problem like this.

HARVEY WEITZ:

I want to turn this around for a moment. As I looked at the question and thought about it, it put me in mind of several judges who are no longer on the bench and one who has long since passed on to his reward. You can guess where that is.

(laughter)

ROBERT TEMBECKJIAN:

Is he affirmed or reversed?

HARVEY WEITZ:

Well, I will tell you what happened. I think this is why it is important when I say make a record. Patterns develop. The appellate courts eventually recognize who these people are because the records come up to them time and again. Some of them have. Just their language tells you who they are.

Not in your department, Judge, but I remember seeing an appellate argument in the Second Department in which the lawyer was quoting from the record, where the judge said, “Sit down, Mister.” I remember the appellate court saying to the lawyer “Wait a minute, was that Judge so-and-so?” The lawyer replied, “Yes.” The appellate court then said, “You do not have to argue your point any more.” That was with the appellate courts. If you make a record, they get to learn who engages in this sort of conduct and who is intemperate. Under today's setup the problem will get taken care of eventually, if you make a record.

For example, in this situation there was a sidebar. If you deal with somebody of that nature, who at the sidebar is going to make remarks to you that clearly should not be made or pressure you in a fashion that should not take place, there is a very simple solution: Tell that judge, No, I will not go sidebar, I want everything on the record. That is a great leveler, and it is a great weapon that a lawyer has to bring the judge back to reality, as I would call it, to start
living in the real world, and to say, Wait a minute, I cannot treat people like this.

Many years ago I had a situation where the judge and the stenographer had some sort of signal for things to stop, no record would be made. If that happens, just refuse to go forward. Make your record. If you do that, eventually, whatever committee has to deal with it, whether it be the appellate courts or some other committee, they will know who they are dealing with.

Everybody knows now, whether it is the appellate courts or whether it is the Committee on Judicial Conduct, who the bad apples out there are, and they know who the good guys are.

**SUSAN BRYANT:**

We have heard several references to going to the administrative judge. I wonder if the Chief Administrative Judge would talk a bit about what is appropriate to refer to the administrative judge and what the role of the administrative judge is.

**HON. LEO MILONAS:**

The conduct you described is appropriate to refer to the Stern Commission.⁸ It is really outrageous. You know who the judges are by reputation; the legal community knows who they are; and the administrators know who they are. We know basically who would act in an irrational or insensitive way only on occasion. Unfortunately, we have judges who are elected and appointed through another process over which we have no control. We must accept the better judges with the ones that are not as good.

How you deal with intemperance is a problem. The situation you described, I would just say, is off the charts.

Let us take a case where the judge does not act as outrageously, but nevertheless acts in an offensive way. If it was a judge that was not known for such kind of conduct or if it was a judge that seemed to be having a very particular problem, I would want to find out what is wrong with the judge. Is he okay? Is she okay? Is there a problem with this judge?

If I got the case, I would call the administrative judge and find out what happened. I would ask, What is going on with the judge? Or I might suggest, Why do you not go speak with the judge, see

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⁸ Gerald Stern has been the administrator of New York State's Commission on Judicial Conduct since the Commission's creation in 1975; the Commission is often referred to as Stern's Commission on Judicial Conduct. See John Caher, *Judge Buster Fears Losses in Funding, Not in Court*, THE TIMES UNION, Dec. 18, 1995, at B2.
what is wrong. The judge may not be well. He may need some
time off because of stress problems or who knows what. So I
would try to find out what is going on with the judge.

If it was a judge with a persistent pattern of this kind of behav-
ior, you would try—with all due respect to the civil side—to mini-
mize the impact by getting this judge away from criminal cases.

(Smiling) Seriously. You know, the old adage: “It’s only money.” On the
criminal side, someone’s life is at stake. You have to take the de-
fendants away from harm’s way. That is what you have to do.

Clearly, this kind of conduct violates the Canons of Judicial Con-
duct. Incidentally, I promulgate the Canons under the Constitu-
tion,9 and under the Canons of Judicial Conduct, a judge must be
patient, dignified and courteous.10

Very often judges are not patient, dignified or courteous, and it
very often has to do with the physical conditions under which they
work. Very often it has to do with the stress of case management.
Very often it has to do with the lawyers that drive you crazy. There
are a lot of reasons why it happens, none of which perhaps are
acceptable. But we are human; we make mistakes.

Unless it is a pattern of behavior of that kind, lawyers generally
know how to live with it, and we have to live with that. Lawyers
are the same way also. But as was indicated before, when it rises to
the level of profanity, a racial slur, a gender comment, then the
Stern Commission has stepped in and has been very, very severe in
its treatment of the offender.11

Suppose a case where a judge’s offensive behavior is an ongoing
pattern and we as administrators are aware of it—we see it going on—but cannot make any headway with the judge. On some occa-
sions I have advised attorneys to write to the Judicial Commission.
On other occasions, the courts themselves should make referrals to
the Commission, depending on how bad the intemperance is.

9. N.Y. CONST. art. 6, § 20 (McKinney 1987) (“Judges and justices . . . shall also
be subject to such rules of conduct as may be promulgated by the Chief Administrator
of the courts with the approval of the court of appeals.”).

10. Under the Code of Judicial Conduct, a judge is required to “be patient, digni-
fied, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he
deals in his official capacity . . . .” New York Code of Judicial Conduct, Canon

11. Since the creation of the Commission, 4,000 complaints of judges have been
investigated, leading to sanctions against 400 judges and compelling another 222
judges to quit while a probe was in progress. Caher, supra note 8, at B2.
ROBERT TEMBECKJIAN:

When a matter like this comes to the Commission, there are any number of possible resolutions, all of which do not involve public discipline of the judge. On a single incident that does not go beyond the pale of racial or gender epithet language, even a confidential letter cautioning the judge will have a significant salutary effect. It can have an effect subsequently, if the judge persists in the behavior, notwithstanding the fact that he or she has been disciplined confidentially by the Commission.

There are benefits even where there is no public, formal discipline of the judge for engaging in this kind of behavior. Our experience has been that judges take confidential admonitions very, very seriously because they do not want to get in trouble again. There are alternatives that we have, even where those who might be cooperative and help to make a public case, such as attorneys or other witnesses, are not available.

DANIEL KOLB:

These are extreme cases that we are being given. The more usual situation is a more limited problem. Where our Committee [the Judiciary Committee of the Association of the Bar] clearly does not have enough to disapprove of the judge, but does have complaints from the bar which are confidential, we will question the judge, both during the subcommittee interview, which occurs before our Committee meeting, and then at the Committee meeting, which is conducted with essentially twenty-five to thirty lawyers.

We ask the judges questions such as: Have you used offensive remarks? Have you interfered in the trial of cases? Have you taken steps that might result in disrespect for the system of justice? These questions are asked without really anticipating a disapproval rating, but rather for the purpose of confronting the judge with the fact that these are things that the bar is reporting about the judge. Our belief is that in many cases that kind of questioning shows judges, who may actually overall be well intentioned, that they do have problems that they themselves may not even realize people care about.

The only way our Committee and the others here can know of intemperate conduct by a judge is if the bar reports it or other judges do. Otherwise, you just do not know. I think the most important part of our process is probably in that form [asking ques-
tions of the judge] because most judges just are not as bad as these examples.

HON. STERLING JOHNSON:

Often, some of the abuses that are heaped upon minority lawyers are so subtle and so crushing that only they know what is going on. And they will not report it to the authorities or to the Stern Commission because they hear nothing is going to be done.

This judicial system has traditionally been a white male institution that is policed by a white male institution. If you make a complaint to a Commission and for some reason it is not substantiated or the judge is not disciplined, the days in the profession of the minority lawyer who makes that complaint are numbered.

Another thing that some of the judges have done if they have a problem with a young minority lawyer is, as they say, drop a dime to their supervisor. Now their supervisors are looking at them. So it really is a catch-22.

We do not have, thank goodness I have not experienced, the extreme cases that you have given in this example. I have had some situations where a judge who will do some outrageous things, but this is aberrant behavior. And if you talk to them, they will slow down. If you talk to them once and it does not slow them down, then you have to do what you have to do. But if there is a judge—and I have been around a long time—that I know and knew before he was a judge and if he did some of the things that were not as outrageous as the example that you have given, I can go to him and say, “What the hell are you doing?” And it would stop for the most part.

HARVEY WEITZ:

I do not think you should overlook the role of the Bar Association. Again, I am speaking from past experience where a judge had developed a pattern of conduct. Enough of these instances came to the Judiciary Committee of the Association, it was then brought to the president of the Association who took it upon himself to speak to the administrative judge to say, “We have a problem with Judge so-and-so and this is what is happening. Is there some way to speak to that individual and see if some word from his or her boss can moderate the conduct or bring some sense back into what they are doing?” With judges who have gone astray for some reason, it brings them back into line.
Of course, if you have someone who has a serious problem, it does not work. But then again, the administration knows they have somebody with whom they have a problem, and they will try to deal with it. It may not be something that is subject to discipline, but it is another way to try to meet the problem of the intemperate individual.

SUSAN BRYANT:

I am going to ask Ellen Carni, who has done quite a bit of work on stress in the legal profession, to talk to us about what is the harm in this kind of behavior, even if it is not as extreme as this?

ELLEN CARNI:

My perspective is not as the supervisor; I am not the press; and I am not the disciplinary committee. The lawyer in our hypothetical comes to my office because she has an ulcer or major depression, or she is in my office because she is so anxious that she cannot sleep at night. She has thousands of dollars of medical bills, and she thinks, “Maybe I made a mistake,” and, “Is this what I want to be doing for the rest of my professional life?”

There are a number of forces going on here. Looking at it from the experience of the lawyer, she is probably feeling humiliated. She has not only been devalued as a professional, but—if she is a prosecutor as in the example given earlier—she has been publicly humiliated in front of the victim’s family.

There is a situation set up where there is unilateral control on the part of the judge, and she may be feeling totally powerless. If the lawyer is a woman and she is in front of a male judge, it may make a difference to her. She may also be blaming herself, even though she puts on a good face. So all of these things impact on her and people like her.

What would I say to her? The first thing I would tell her is not to personalize the situation (and that is assuming she has not contributed to it) because the more one takes this personally and blames oneself, the harder it is to deal with it. Secondly, I would tell her not to be isolated with the experience, though that is probably the thing she wants to do the most because it is a humiliating experience.

There could be many forums to talk about it. It could be a mentor; it could be a colleague; it could be somebody who knows her well. As long as it is in confidence, and there is a certain degree of trust. This does a number of things. First, it cuts the feelings of
humiliation. Second, somebody who is outside of the situation can see it more objectively, what is really happening. Third, it can help the lawyer to brainstorm alternatives.

One of the things that happens—that has happened here—is the lawyer’s sense of control may be lost, so she does not know what to do. Anything that helps to restore the lawyer’s sense that she has options in this situation will help, whether that is talking it over with someone or taking herself out of the situation enough to see things clearly.

What can she do? Get advice and feedback. Maybe a peer support group for lawyers in this situation, where she can talk to other lawyers in this situation and get advice and feedback. Of course, she can report the problem to someone. But the main thing is try to see that she has choices in this situation.

**HON. LEO MILONAS:**

With regard to peer support groups, one thing I omitted to say was to speak to the administrative judge. You assume that the administrative judge knows how to reach the judge that is in trouble. The administrative judge obviously knows the trial judge, knows his friends, knows the people he listens to or she listens to. We will call him a “he” for the sake of simplicity here. If the administrative judge feels that he cannot reach this judge alone, he will talk to his colleagues. In that regard, there is peer pressure.

And there have been instances where judges have gotten together and talked to a colleague and have tried to get the colleague through whatever this problem or crisis is. So the judges have done it, and I assume the lawyers in a professional office can do that also, unlike when they are single practitioners, then it is rough.

**BARBARA UNDERWOOD:**

I want to comment on some of the advantages and some disadvantages, but mainly the advantages, that the institutional players in the system have in dealing with this sort of thing. By that I mean the prosecutor’s office, legal aid and any organization that is a repeat player in the court. Institutional players provide peer support.

If you are dealing with a judge that acts in the manner described in our hypothetical, or even a less extreme manner, other people in the office will know about it. They will reassure you that you are not crazy. They may have some suggestions about how to deal with this particular judge. They could tell you the buttons that get pushed, ways of talking to this judge that may diffuse the situation,
and whether the administrative judge or some particular friend of this judge might be able to calm the situation down. That is on the peer support level.

Then if it is something that requires referral, whether it is to the administrative judge or to the Commission on Judicial Conduct, the institutional players are in a position to collect the information that provides a basis for assessing whether there is a pattern here, or whether this is an isolated situation. Whereas an individual lawyer may or may not be able to collect that information.

The one big disadvantage—the same disadvantage I guess that everybody faces—is that if you are a repeat player in a system, you cannot afford to alienate the system. So you have to be very careful about how you proceed.

SUSAN BRYANT:

Are there other thoughts that have not surfaced about what the harm is to the lawyers, to the public, to the case where you have this kind of behavior going on?

ROBERT TEMBECKJIAN:

It is probably worth articulating that one of the most intangible but greatest harms to the system relates to the perception of the system of justice that the public gets when judges behave intemperately and when the institutional players are incapable or unwilling to do anything about it. Even when something is done about it, the resolution—as waiting for an appellate court to reverse that judge because they know about the judge—takes so long, that often it can be years before a particular situation like this is redressed. This is a problem even if it is not a criminal defendant who is sitting in jail while the appellate process is working its way.

All civil cases are important to the people who are in them. Some of them are for enormous amounts of money or property or other tangible resources that can be held in suspension while the system is waiting.

HARVEY WEITZ:

Actually, there is just less pressure on the civil side. There really is, on the criminal side, a lot more pressure.
ROBERT TEMBECKJIAN:

No question about that. The public perception—the public confidence in the integrity and the impartiality of the courts—is damaged. This is sometimes the case even when the system disciplines an offensive judge like this because the due process of law requires a substantial amount of time between the event itself and the eventual discipline. I am not sure how to resolve that problem.

DANIEL KOLB:

I would just add—again, to take a more moderate case—a judge can do a tremendous amount of harm to the perception of justice by doing a third of what is listed in our hypothetical, or even 25 percent. Just the act of taking of phone calls on the bench while a case is proceeding, or showing no respect for an argument, obviously leaves the people in the courtroom with an impression that this is not justice at all.

RONALD KUBY:

I have this overwhelming sense that I practice in a set of courts that other people do not practice in. In my experience, judges are forever taking phone calls on the bench while things are going on. That is not atypical. That is the most common feature of what happens, at least at 100 Centre Street, and that is on a good day.

DANIEL KOLB:

I do not believe I said it was atypical. What I did say was that various forms of behavior that have been listed here do show up when we canvass candidates across the city. Most of the time, though, they just do not all show up at once. I do think that it is a fact that as a general matter there is too much of this by far, and one of the sad things is that, beyond a point, maybe none of us on this panel can do all we would like to do about it.

RONALD KUBY:

As to the fine judicial screening process, I am not sure what State you have been talking about. However good or bad the screening process is, the actual procedure by which the citizens become judges, in New York City, is in the control of a byzantine, political machine that has been repeatedly challenged over the years, as unconstitutional, corrupt and bizarre. This is the system that we have been working in for decades.
So, to talk about how well you do screening I think ignores the reality of how people actually ascend to the bench. In addition, with all respect to Brother Weitz, we know who these bad judges are. We make the records. You are right, the Appellate Division knows. We all know—everybody in this room knows (we are not going to mention any names), at least five judges who are seriously troubled and it is reflected in their conduct on the bench. Nobody is capable of actually doing anything about them. I respect Judge Milonas’s harm reduction policy, and I have seen it in operation, but that is not getting this person off the bench. We know who is drinking. We know who is on medication. We know who is going through a particularly ugly divorce. These are not secrets. This is a small community.

**HARVEY WEITZ:**

I just cannot subscribe to what you say about this being a universal problem. I have seen it; it is an aberration. I think we are talking about the aberrations. I try civil cases. I have tried them everywhere from Putnam County—I know that is not considered upstate but to me that is in the boonies—all the way out to Riverhead. I am in the courts everyday. I am on trial almost everyday.

It is rare that I see judges taking phone calls while on the bench. I do not believe that this is everybody or that this is a rampant thing where there is rampant disrespect. Maybe there are five judges that we all know. They may be the very same five judges or maybe ten judges, but how many Supreme Court judges do we have? Several hundred by now, at least if you judge by the license plates. (laughter)

So we have hundreds of Supreme Court judges, which I think should put this back in perspective. We do have a small number of really bad judges, and something should be done about them. We have a larger number of judges who are not civil, who have lost sight of what their role is and what their function is and what the function of the courts is. That is something I think we should talk more about. As far as judicial selection, well I will leave that for another time and another place.

**SUSAN BRYANT:**

Let me just bring in a couple of other perspectives here. If a lawyer responded to any of the situations that we have been talking
about so far with their own form of intemperance, Richard, from a
disciplinary committee perspective, what would be the reaction?

RICHARD MALTZ:

I know Ron would disagree with me, but I would say do not act
in-kind and do not do anything similar to what the judge is doing.
What you have to do—and it has been said before—is make a rec-
ord to the best of your ability, and that is really your remedy for
the most part.

Everybody else has talked about the other remedies—going to
the administrative judge, filing a complaint with the Judicial Con-
duct Commission—but the one thing the lawyer does not want to
do under any circumstances is to be held in contempt of court.

I think something that most lawyers and judges do not know is
that when a judge holds a lawyer in criminal contempt, at least in
the First Department and the court rules there, the Disciplinary
Committee must bring a proceeding against the lawyer. It is not
discretionary. We have to bring a proceeding against the lawyer,
and that starts an unbelievably burdensome process. The lawyers
are sometimes just reacting to one aberrational situation.

SUSAN BRYANT:

There does not have to be a pattern or practice for the charge to
be brought against the lawyer?

RICHARD MALTZ:

That is correct. As some lawyers know, a judge can hold the
lawyer in summary criminal contempt of court, which requires very
little due process, can be ordered without any extensive record be-
ing created and creates a situation where the lawyer is brought
before the Disciplinary Committee.

ELLEN CARNI:

It is very hard not to respond in-kind when you are in a situation
like the one we are talking about, and you are being called names,
and your reputation is being trashed in front of the victim’s family
if you are a prosecutor. You and I, and the people here, are listen-
ing with a fair amount of distance from these situations. But when
you are in it, it does not feel good. That does not justify like behav-
ior on the part of the lawyer. It means that the lawyer has to find
some other arena for dealing with the raw feelings so they do not get played out in the courtroom.

**RICHARD MALTZ:**

I understand what you are saying—as some of the other people here have already said—about some of the other remedies, such as going to the Judicial Conduct Commission or complaining to the administrative judge. Unfortunately, because there is no discretion on the part of the Disciplinary Committee in a contempt situation, the lawyer has to be very careful about what he or she does.

In a slightly different situation, where the lawyer is protecting the client, the client’s rights are the most important. If the record is being made and the client is not going to be harmed, that is really what the lawyer has to strive for. If the lawyer is going to get into an argument with the judge and prejudice the client by making the judge even more enraged at the client, the lawyer is really in a dilemma.

So the one lesson from my perspective and probably one of the few things I have to add—because my perspective is very specific here tonight—is for the lawyer not to be held in contempt, and for the judges to know that when they hold the lawyer in contempt, it has tremendous ramifications. The judges have other options. Judges can file a complaint with the Disciplinary Committee without holding the lawyer in contempt. That may be a difference in degree and even kind, but it is an important difference that will have the effect of not tying the hands of the Disciplinary Committee.

Obviously the judge can go to a supervisor in an institutional office as we have been talking about. There are other remedies for the judge; so he or she does not have to hold the lawyer in contempt. And there are other remedies for the lawyer. That is what I have to add to this perspective.

**SUSAN BRYANT:**

If we are thinking about what else judges can do—the hypo that we have given is a fairly extreme example, but I think one of the things that I heard routinely from the judges and lawyers in talking about this problem—is the need to strike a balance between, or make a distinction between, the judge who has a firm hand and runs a tight courtroom and one that uses an abusive style in an attempt to run a tight courtroom.
I guess I would like to hear from the judges a bit about what are the alternatives the judges have in terms of being both civil and in control of a courtroom. Some thoughts about that. Judge Schmidt, do you want to start us?

**HON. ROBERT SCHMIDT:**

Well, I guess I better contribute to the conversation somewhere along the line. First of all, I would like to move a little bit away from Ron here. (laughter) I do not want to see my name in the New York Post.

I am a civil part judge—a Supreme Court judge—in Nassau County. We do civil work out there. I do not know if that is regarded as lesser or not. I am surprised tonight to find out that I may be put there because I am intemperate.

**HON. LEO MILONAS:**

As a matter of fact, you are great. You are going to the criminal side.

**HON. ROBERT SCHMIDT:**

I am going to the criminal side. That is what I am worried about. Judges have several options in controlling their courtroom. I try to have sidebars. I try to have conferences in my chambers. I try to get all the problems out on the table between the lawyers and the judges so that at least I know if these guys, for example, are litigating a nasty divorce that has been going on for five or six years and these lawyers hate each other. I must know that. Before I walk out into that pit, I want to make sure that I know that these guys cannot talk a civil word to each other because then you must pull the reins in a little bit tighter.

If the lawyers are cooperating and the case is moving, and they really just have clients to represent, and they want to get it over with but just cannot agree on something—they want a trial—that is fine too. It directs the case. If the judge sees that it is starting to go off because somebody said something they promised they would not say—they had agreed amongst themselves before the trial that it would not come in and now one lawyer is changing his position—then you get a sidebar going. You get them out in the hallway. You talk it out away from the client.

Often, the lawyer is trying not to lose face in front of his client also, so you must remember that. It is a business and the lawyer
cannot afford to go back and have a judge reprimand him in front of the client. So you try to bring them in. You try to get them out of the limelight. You try to get them into a situation where they will talk straight to you, and I think you have to talk straight to them. If they ask you questions that you can answer up front, you give them the straight answer. You tell them where you are going to go and what the requirements are.

In all fairness, we do have a system. I do not know about the civility. We have to be that. But I also have 2,000 cases I have to dispose of that are beyond standards and goals, that every month Judge Milonas sends back to us and says, “How come?” So we do have pressure. We have to move cases. There are 35,000 cases every year being filed in Nassau County, and we must move them. So there is a lot of pressure, even on the civil side, to make these cases move.

We know from experience—the statistics are very clear—that 99 & 44/100 percent of the cases settle. That is how the system works. Now there are cases that will never settle. One of the notes I made here is that one of the most important things you should do is to recognize the insolvable. If there is something that is not going to be solved, know going in that you are going to have to go through this because there is no way you are going to be able to solve it.

But—the rest of it is—if 99 percent of the cases settle, maybe there is some avenue that these people can be brought together in. I think you must try every opportunity. You may try to negotiate a settlement up front and be unable to work it out. But as the trial goes on, the testimony before the examination before trial and the trial may change a little bit. Somebody may have gotten hooked up on cross-examination and their case has fallen off a little bit. At every opportunity you must go back to these people, you have got to keep going at them and talking to them, giving

12. Robin Topping, Around the Island Crime & Court/Law and Order/When Settling a Case is Unsettling to Jury, NEWSDAY (Nassau & Suffolk Edition), Feb. 13, 1996, at A23 (“In Nassau County, where the number of cases filed is more than in any other area in the state, with the exception of Manhattan, there are more than 7,000 civil cases pending, with 2,688 of them ready for trial.”).

them the opportunity to come to you. You must be available to them to discuss the situation they are in, and to give the best guidance you could give them towards reaching a solution.

Sometimes you have all the dirty tricks we had talked about: threatening them that I am going to charge against you; telling them, "You are a lousy insurance carrier," or, "I will remember you the next time." Do we use them? Absolutely not. (laughter)

But the reality is, the best part of justice I could see is if the parties can come to a conclusion that is satisfactory to them. That is certainly quick justice, and certainly they agree to it. So I think it helps the system an awful lot.

On the criminal end, I do not practice there although I am being promised I am being moved, probably into Brooklyn too. (laughter)

Judges do some of those things that could lead to the opportunity where they are getting called up for being intemperate. I have sidebars. I have hallway conferences. I have conferences in my chambers all the time, off the record, and they are the most productive part of the case. If I have to get rid of a hundred cases in a year, ninety-nine of them are getting out that way.

Now the one case—and that is going to be a tough one, and that is going to be a problem—you must handle it. As a judge you are supposed to be smart enough to know that, and you are supposed to be in the middle and neutral. So you are supposed to be smart enough to know that this is going to be a problem and it must be pushed to its conclusion. You must get those people out with a jury verdict, whatever it is. Then get on to the next case.

Because as the elevator takes that jury down, and you thank them very much, there is another elevator on the other side of the building bringing the next jury up. You start all over again. You get another bite at the apple and you try over. That is my input.

SUSAN BRYANT:

That takes us to some questions about what is appropriate pressure and behavior in encouraging settlement. Let me just throw out some of the complaints that I have heard. Perhaps the question of propriety depends on whether they are civilly conveyed or conveyed with a degree of anger. But let me just throw them out:

(1) A judge refusing an adjournment when a witness is not available, although both sides agree to the adjournment, and the judge is adamant, saying, "Either settle or pick a jury. No adjournments."
(2) A judge setting trial dates, and on the date of trial forcing the parties to sit in conference rooms until they have settled the case; and when they do not settle, adjourning the trial for further negotiations. When the parties appear again ready for trial, the judge sends them back to the conference room.

Or, (3) a judge threatening a party or a lawyer, irrespective of the evidence in the case, that an adverse impact will occur if the case proceeds to trial. We know, and the judge reminds the lawyers, that there is a tremendous amount of discretion in the course of a trial, huge amounts of decisions that will never be appealable. It could be your client will get a higher sentence, or it could be that you will get a different charge to the jury than you want. All to encourage settlement.

Is any of this intemperate or uncivil behavior?

HON. STERLING JOHNSON:

All of it is totally inappropriate. I think it is wrong. I think that it should be brought to someone else's attention. It is also very unprofessional. I would make a record if this was so, or I would somehow get it to the attention of someone.

I get the impression that there are many lawyers out there who are afraid to make complaints because—you talk about the police department and the thin blue wall of silence—I think there is a perception among lawyers that there is a thin black robe of silence: If you make a complaint against this judge, then you got to watch out for the other judges.

But the scenarios you have just described are totally inappropriate. Somehow such behavior should be brought to the attention of a Judge Milonas who is assigning someone. If the judge is in a criminal part, stick him in a civil part. (laughter)

HARVEY WEITZ:

I hate to be a naysayer, but you heard just a few moments ago from Judge Schmidt, "I also have 2,000 cases I have to dispose of that are beyond standards and goals," and, I am going to get a letter from Judge Milonas or whomever, or from his own administrative judge, Judge McGinity,¹⁴ saying, "How come you are not moving any cases?"

¹⁴. The Hon. Leo F. McGinity was the Administrative Judge of the Nassau County courts for ten years before being appointed by Governor Pataki in January 1996 to the Appellate Division, Second Department. Today's News Update, N.Y. L.J., Feb. 1, 1996, at 1.
Except for the last example—the one relating to court’s conduct during the trial—the other examples are devices that I think most trial lawyers have learned to live with. The settle-or-pick-a-jury example, when a witness is not available, so the lawyers go ahead, they pick their jury and then maybe the case gets settled. If it does not get settled, when you come back before that judge or another judge, you replead your problem. Not infrequently the case is adjourned until the witness gets back. So that is not really intemperate. That is just a device that judges use.

All of us on the civil side hate what is going on in some of the counties today, and I do not have to tell you, Judge, what counties they are, where lawyers are made to sit forever waiting to select a jury or waiting after they select a jury to go to trial. I do not think that is intemperate. I think that is a system problem that has to be solved, but that is not—I do not think—within the ambit of what we are discussing.

Threatening people with an adverse charge or rulings is a terrible thing that is very hard to make a record of. I mean no disrespect to anyone, but you have to know the beast that you are dealing with. If you are before someone who has an intemperate disposition, nothing should be off the record.

A court on the state level certainly cannot do business without sidebars and conferences in chambers. When I say “do business,” I mean conduct the affairs of court. I do not mean to put it in terms of commerce. So you have to do those things. But if you are dealing with a judge who has a reputation of trying to blackjack somebody because the court is going to favor one side or another during the trial if you do not go along, then never have an off-the-record conversation. Insist that everything be on the record.

There is even a remedy of demanding that you select a jury before a judge, which brings the court to a grinding halt. The judge does not like that either.

**HON. STERLING JOHNSON:**

When you speak of sidebars, you are talking about East Coast sidebars as opposed to West Coast sidebars.

**HARVEY WEITZ:**

Oh, yes. (laughter)
RONALD KUBY:

You know, on the criminal side, which is really the only kind of work I do, if a judge were to ever say to me—on or off the record—"Your client will get a higher sentence if you go to trial, so you better take a plea," or, "I have got a lot of discretion here, counselor, and I am going to rule in this adverse fashion unless your client takes a plea," I would move for recusal. I would make a record and file the papers.

Unfortunately, it is not expressed like that. What the judge will say is: "Mr. Kuby, I am sure you have told your client what my reputation is for sentencing on gun cases if there is a conviction." Are they saying the same thing? You bet. Am I telling my client the same thing? You bet. But it is a much more difficult thing to get a handle on.

As to the thin black robe of silence, lawyers are terrified for the most part of filing these complaints because suddenly they find themselves off the CJA panel. You make a good living on that CJA panel—a quarter of a million dollars a year—and you are no longer on it, counselor. The vouchers that you have submitted in the past, sort of promiscuously, that have been approved, suddenly receive a lot more scrutiny than they got before you started making a lot of noise.

Judges have a tremendous amount of power to retaliate. People are very afraid to make complaints.

HON. LEO MILONAS:

It is outrageous to say that lawyers are removed from the 18B panel because they made a complaint against a judge. That is an absolutely outrageous accusation and absolutely not true.

RONALD KUBY:

It certainly happens with respect to the Criminal Justice Act panel in the Eastern District.

HON. LEO MILONAS:

I am talking about the 18B panel. It is all I can speak for.

RONALD KUBY:

In terms of the perception—in the bar—that there is this kind of retaliation that will affect your livelihood: It is absolutely a perception that exists out there.

HON. ROBERT SCHMIDT:

Did you say something about getting a letter from your administrative judge? I do not send letters to judges telling them that their stats are falling. I doubt if Leo does either.

But there is something to be said for judges all working together, trying to try to survive with these crushing case loads, and there is a lot to be said for judges talking to each other, the peer pressure. Knowing how productive we are and how hard we work is important, and we judges talk about it. Judges of the same court talk to each other about it. If a judge is not carrying his or her load, I think the most effective way to do something about that is to have his or her colleagues talk to that judge, and we do that.

BARBARA UNDERWOOD:

Before we relegate these three examples to the realm of the totally unacceptable, it seems to me that everything has a context. If the judge senses that the parties could be brought to settlement with just a little bit more pressure or a little bit more avoidance of the trial, that is a reasonable thing to do. If, however, as Judge Schmidt said, it is clear that there is not going to be a settlement—that this cannot reasonably settle—and this is the hundredth time or the tenth or whatever that the judge has acted as described in these examples, it could reach the level of intemperance.

I do not think you can look at any one of these, at least either of the first two here, and say without knowing a context whether it is the kind of reasonable behavior appropriately geared toward inducing settlement or whether it is an abuse.

On Ron Kuby's point, it is a reality, whether a judge says it or not. No judge threatens adverse rulings in so many words. He does not even have to say what you quoted him as saying. It is usually a reality of the world that if a judge is displeased, he or she can make the trial more unpleasant in a great many ways. That is part of the reason why lawyers do not complain; it is part of the reason why this problem goes uncorrected. Nobody needs to say a word for it to be true and for it to guide people's behavior.
Right. We have had some conversations about off-the-record conversations. Let me just read a couple of other examples that people have given to me about off-the-record conversations they have had with judges:

(1) You are a lawyer in a case in which your client is about to be sentenced, and the judge has asked to see lawyers in chambers, and in chambers the judge refers to your client as a “vicious little bastard.”

(2) Again, in chambers, at the time of sentencing in a case involving a sodomy of a mentally retarded woman, the judge says, “This is a heinous crime, although I do not understand what satisfaction could be gained from sodomizing a mentally retarded person.”

(3) Again, in chambers, in the course of a plea discussion involving an ongoing rape and sexual abuse of a thirteen-year-old female by her stepfather, counsel for defense commented that the stepfather really did not appreciate that this was criminal activity because it was a cultural thing in some Hispanic communities. The court said that that fact would be considered at the time of sentencing.

(4) Or, in chambers, a judge makes a racist or sexist speech, using racial or sexist epithets—all off the record. What do you do about this? Barbara?

I would just like to distinguish the third example—the one about it being a cultural thing in some Hispanic communities—which, I suppose, is a factual and a legal claim that is being made or being suggested by defense counsel in support of a sentencing position. If you are the prosecutor, which is the only role that is left for you here, I think you deal with it. You may want to bring in an expert to dispute it as a matter of fact, or you may want to argue the claim should be rejected as a matter of law.

I do not think that is a temperament issue. It offends me as a claim, but I think it is an argument that the defendant is entitled to make. If he has made it, then the thing to do is to respond to it.

You just have to listen to it. If that is the defense argument, then make your argument. The other examples are outrageous. The
Commission would remove the judge from the bench for the rest, I assume, pretty close to it, or recommend it.

**HARVEY WEITZ:**

Or you are going to put him on the civil side, right? (laughter)

**HON. LEO MILONAS:**

As a matter of fact, one of the problems that we are talking about—the wall of black secrecy or whatever—we also, as judges, have an obligation to make referrals to the Stern Commission when we hear of such conduct. The rules we are recommending to be amended by the way, because of the revisions by the American Bar Association and the New York State Bar Association, is that if a judge is aware of a substantial likelihood of a substantial violation, the judge must make a referral to the Stern Commission or else the judges who know of this can be brought up on charges.

It is an absolute must. The charge here—if you know of these things—you really have an obligation to refer it to the judicial commission. Incidentally, many referrals have been made to the commission by judges. We just do not go about publicizing it in the *New York Post.*

**HON. STERLING JOHNSON:**

I have never heard of a judge making a complaint against another judge.

**HON. LEO MILONAS:**

Oh, absolutely.

**HON. STERLING JOHNSON:**

And then what happens to the judge complaining though?

**SUSAN BRYANT:**

Well, what does the Commission say at the end to the comment that nothing happens to the judges?

**HON. LEO MILONAS:**

We cannot talk about cases, but things have happened, believe me.
RONALD KUBY:

With respect to the “vicious little bastard” situation, it actually is a sensitive thing. Let us assume you have gone through the trial with this judge and this judge has basically given you a fair trial and you have some expectation that the judge is going to be decent at sentencing. Let us assume, arguendo, that the description “vicious little bastard,” as applied to your client, quite frankly is not off the mark.

(laughter)

Honestly, honestly, friends. Suppose another judge—if you get rid of this one—is going to come to the same conclusion but may not be as fair and as even-tempered. You really must make a judgment call as to whether you want to proceed in front of this judge and hope that this judicially acquired bias against your client will be overcome by the judge’s basic sense of fairness or ask for another judge. Here you must defend the client and represent the client’s interest, and the sort of overall interest of the justice system has to sort of take a back seat on this one.

ELLEN CARNI:

Yes. I want to add something. Not to excuse judges for making these kinds of statements, but it is very hard to see these kinds of cases over and over again, day after day, week after week, year after year. Having worked in the family court, a civil court, and also on a maximum security prison ward—where every day you see child beaters and murderers and rapists—it is hard not to have feelings towards these clients.

How you handle your feelings is another matter. But it is very important to recognize that it is human to have these reactions. What you are going to do with them is a matter of deciding to choose what is appropriate or not.

ROBERT TEMBECKJIAN:

I want to underscore a couple of points that Judge Milonas made. Although judges, as a category, might not be the largest of our number of complainants every year, it is a fact that every year we get complaints about behavior by judges that are made by other judges.

Sometimes, because of the nature of the misconduct, the judge is going to be the only person in a position to know that something inappropriate happened. This would occur, for example, where
one judge privately approaches another judge and makes a request for a favorable treatment for one of the parties before the presiding judge. That is not the kind of conversation that happens on the record. It is not the kind of conversation that happens in public, but it does happen. Sometimes the intent might be venal, sometimes it might be just inadvertent or out of a sincere motivation to see that a particular individual gets a fair shake, or whatever.

But it is inappropriate, and often we do get complaints from judges about other judges. We also, with respect to the examples that we are dealing with here—and by the way, I am not aware of any judge who made a complaint having been adversely affected professionally by the act of having made a complaint. As a matter of fact, more than one trial judge who has made a complaint against another judge is now on an appellate division in one of the four departments. (laughter)

I will not go so far as to say that having made the complaint gave them a leg up, but certainly that evidence cannot suggest that a judge has adversely been affected by having made a complaint or cooperated in an inquiry. In fact, I would like to think that a judge, who was sensitive enough to an ethical impropriety when he or she saw it to report it, would somehow be the kind of judge that would impress the bodies that elevate, or make recommendations to elevate, judges along the ladder because that is exactly the kind of person that you want to see succeed.

The kinds of hypotheticals that we are dealing with here, "vicious little bastards," or "what satisfaction could be gained from sodomizing a mentally incompetent individual," and so forth, happen to represent situations in which the Commission has, in fact, removed judges from office for making such utterances. Even in a single incident the remark is inappropriate.

In more than one instance, we have removed judges from office who were accused of making racial or ethnic epithets, or who have demonstrated a bias that reaches the level of a predisposition in handling cases involving defendants or litigants of a particular racial or ethnic group. And the Court of Appeals has been extremely forceful in affirming those decisions.

HON. LEO MILONAS:

Bob, is there one case where the judge made such a comment in an out of court context, in a parking lot or a store? The judge was somewhere else totally far away from the courthouse.
ROBERT TEMBECKJIAN:
Right, without invoking the powers of office, off the bench you cannot say this kind of thing and expect to stay a judge, let alone on the bench.

SUSAN BRYANT:
We have had some discussion about what causes intemperate behavior. Some people have referred to the high volume of cases. We have had some discussion of judges being human beings responding with human emotions. Let us have a bit of a discussion about other factors that people think cause the behavior and then maybe some thoughts about how to address them.

HARVEY WEITZ:
I am repeating a conversation I had earlier this evening. One of the things I think engenders some of this problem is the facilities, the crowded courtrooms themselves. Some of the courtrooms are no better than pool rooms, with lawyers standing in the hall, hundreds of lawyers trying to crowd into a room that is not even the size of the average person's living room. And the court personnel have to deal with all of these people. Just the crush of humanity degrades the entire atmosphere. So everyone is angry with one another, and it just seems to build. That is something that has to be corrected.

HON. LEO MILONAS:
In fact, Harvey and I were talking about it earlier. Recently the courts conducted a public awareness program where we tried to talk to the court employees around the state about the importance of being polite to the public, responding to their questions and just being professional in the way they conduct themselves. We found that as the court conditions got better and better, the problems were lesser and lesser.

In the dilapidated, disgusting courthouses that we have in New York City, it is hard not to allow the environment that you are working under to affect you.

ROBERT TEMBECKJIAN:
If you can imagine the disappointment that an individual experiences by going to court once in his or her life, you can imagine the effect it would have on people having to go into it day after day.
The average person who sees the decrepit condition, the overcrowding, and the otherwise difficult environment tends to walk away with a perception that justice cannot be done in these kinds of circumstances, even when it is. So for those who have to toil under these circumstances all the time, there is no doubt it is going to have an effect that perhaps Ellen might see in her capacity.

**HARVEY WEITZ:**

The conditions do not excuse the judge though.

**ROBERT TEMBECKJIAN:**

No. Harvey, to me, under any circumstances it is inappropriate behavior by a judge. I am probably the only person here whose living is made by seeing a judge in the place of the defendant. But the conditions do have an effect. They do not excuse inappropriate behavior, but they certainly do have an effect. Certainly over the last several years, to the extent that resources can accommodate the problem, the court system has been trying to make improvements and with some success.

**ELLEN CARNI:**

I would make a distinction between intemperance arising from situational forces on the judge and from personality issues in the judge. If the problem is mainly situational factors, the judge is more likely to take some responsibility for inappropriate behavior. If the problem resides primarily in the personality of the judge, especially where the judge has no awareness of being inappropriate, you have a much more difficult case. In this case, you will usually see a repeated pattern of intemperate behavior with no motivation on the part of the judge to change. The problem is compounded, of course, when the judge who has a personality problem to begin with has to deal with decrepit and overcrowded conditions, a high volume of cases, and decisions that may affect clients forever.

Maybe all these things add up to a loss of control over the courtroom. Then the issue is how you handle it. Do you handle it by intemperance or some other way? But the underlying issue may be the same, a sense of powerlessness in the judge.

To see how this happens, we have to look at the models in that judge’s life for handling stress and for dealing with authority. Suppose that judge had a family background in which one or both par-
ents were authoritarian and intemperate themselves; those were the judge’s models for communicating with others. The judge might have felt that there was no recourse other than to behave intemperately. Plus, you add a scenario where the judge had no better models in school than at home. Where is that judge going to learn skills for good communication?

Communication skills are not taught in the formal education judges have, nor in the formal education that most of us have. So, we are talking about developing continuing education and training programs for judges so that at least their options for handling difficult situations are more appropriate.

I would like to add one thing. The role of the judge—the way our current judicial system is set up—may allow for intemperance where that behavior in some other setting may be unacceptable. There is research to the effect that when a role is set up so that abuse of power is sanctioned and even supported, people tend to conform to that role. This study is from a noted social psychologist, Philip Zimbardo at the University of California.17 I think it is worth mentioning.

Zimbardo set up a mock prison at the university and randomly assigned college students to the role of either prisoner or guard.18 These students were pre-screened for mental health.19 In a matter of days, the guards became sadistic towards the prisoners, especially as the prisoners tried to stand up for their own autonomy.20 Although the study was intended for two weeks, it had to be stopped after six days because the student “guards” were conforming to their role too well, even though they had not been taught the skills of being a guard.21

Zimbardo said that his subjects’ abnormal social and personal reactions became normalized because the setting sanctioned those reactions, not because the basic moral character of the subject was at fault. In other words, the subjects acted out of character because of situational forces. In another situation, the same behavior would have been considered totally inappropriate and probably would not have occurred. Looking to behavior in the courtroom,

18. Id.
19. Id.
20. Id.
21. Id. (“At the end of only six days we had to close down our mock prison because what we saw was frightening. It was no longer apparent to most of the subjects (or to us) where reality ended and their roles began.”).
one can make the leap that when the role of judge supports abuses of power, individuals sitting in role of judge may be more likely to abuse power because of subtle systemic forces that support intemperance regardless of the basic moral character of the judge.

RONALD KUBY:

I am somewhat perplexed about this notion of the judicial sense of powerlessness. If you are a federal judge, you are appointed for life. You have a guarantee. The only way you can be removed from the bench is through articles of impeachment voted by the House of Representatives after a trial by the Senate. It has only happened, what, two or three times in history? And you feel powerless? Imagine how some kid walking in from Bed Stuy or Harlem must feel in that particular arena.

In fact, rather than a sense of powerlessness—and this is particularly on the federal side which tends to be more isolated—I think there is far too much power in the hands of people who never get any real feedback.

They are abusing their power, and so eccentricities get magnified. We all know of judges whom we define by their eccentricities. He is the one who does this; she is the one who does that. And nobody can ever say to them, “You know, Judge, stop doing that.” I think that is what we see too often, particularly on the federal side.

ELLEN CARNI:

Well, my comment to that is that what certain individuals feel on a deep emotional level can be at odds with their stature and achievement on the job. People can feel emotionally powerless despite being in a position of power. The problem lies in their ability to recognize and accept that sense of powerlessness in themselves. People who cannot accept and recognize their own helplessness often act out in ways that restore their self-esteem at the expense of others. That is the nature of a bully. A bully overcompensates for feeling powerless by asserting domination over others. But in

\[22. \text{See U.S. Const., art. III, § 1 ("The judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour 
... "); Hon. Harry T. Edwards, Regulating Judicial Misconduct and Divining "Good Behavior" for Federal Judges, 87 Mich. L. Rev. 765, 766 (1989) (citing The Federalist No. 78) ("Although the Constitution does not explicitly say that federal judges are appointed for life, the Framers contemplated 'permanency in office' and rejected the possibility that judges might be required to stand for reelection or reappointment.").}\]
many work settings, they cannot get away with it. Judges have the power to bully people and get away with it and many do. They may still feel powerless underneath. That does not excuse their behavior. It does help to understand its roots.

**HARVEY WEITZ:**

I have to agree with Ron finally. (laughter)

**SUSAN BRYANT:**

We have agreement.

**HARVEY WEITZ:**

Absolutely. When it comes to the federal judiciary—with all due respect for Judge Johnson—you are dealing with a whole different animal. Federal judges have absolute power, and you do not see them reversed, hardly ever. They know whatever they do is going to stand up. They suffer from what I call McMahon’s Disease.\(^2\) Some of you are old enough to know what I am talking about.

**BARBARA UNDERWOOD:**

I think that facilities and conditions and environment are important causes of judicial incivility. Maybe the Eastern District is especially temperate, but having served in both the state and federal system, it appears to me that the kind of gross intemperance that these examples are drawn from occurs in the state courts. I have not seen anything like that in the federal court. In my experience, federal judges sometimes are curt or unreasonable but not in the manner we are discussing.

This may be explained partly by the selection process, but more importantly I think it is explained by the very different stresses that state judges face: the volume of cases; the positions taken; the way in which witnesses and victims and parties and lawyers behave in those high volume courts. State judges have much less security than federal judges of course. I think the power and the security of federal judges is not really as big a contributor to this kind of behavior as the volume of cases that threatens to overwhelm many state judges.

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\(^2\) The reference is to The Honorable Lloyd McMahon, formerly a district judge in the Southern District of New York.
HON. LEO MILONAS:
The state courts handle 98 to 99 percent of the litigation in America; the federal courts handle between 1 to 2 percent.\textsuperscript{24} I think the family court in New York City handles more cases than the entire federal judiciary put together. There is an enormous amount of pressure obviously on the judges.

To defend the state judges, the scenarios we are discussing here are wild. There are incidents, I submit to you, in both courts where the judges go over the bounds and act unreasonably.

SUSAN BRYANT:
Judge Schmidt, I saw you shaking your head on a lot of this.

HON. ROBERT SCHMIDT:
I agree with my boss. (laughter)

HARVEY WEITZ:
On a practical difference between state and federal judges, if a federal judge says, "Counselor, call your next witness," and you respond, "Judge, well, the witness is on the way and the witness will be here in a half hour," the federal judge may say, "Okay, you rest, your case is over, sum up." That is never going to be reversed. It will be reversed on the state side. I think that such conduct is intemperate whether it is done on the federal or the state side, but on the federal side there is no recourse, and it has become a pattern of conduct. That is a problem because there is no place to go on the federal side.

HON. STERLING JOHNSON:
I was brought up and raised on the state side also, not only as a prosecutor but also as a police officer. So I know what the system is. I have a great deal of sympathy for my colleagues over there.

When lawyers come over to the federal court, they will find out that they are in a different ball game, a real different ball game. If court starts at 9:30, you have to be there at 9:30. If you say that you have four witnesses ready to testify, there better be four witnesses ready to testify.

\textsuperscript{24} Frank M. Coffin, On Appeal-Courts Lawyering and Judging 56 (1994) (reporting that 99\% of trial level cases are handled by state courts); Marc Galanter, The Day After the Litigation Explosion, 46 Md. L. Rev. 3, 6 (1986) (estimating that federal filings account for only 2\% of all civil action claims nationwide).
I recall an incident in federal court—not the Eastern District—where a lawyer had a habit of coming late or missing court appearances. The judge got fed up, sent the marshals out, arrested him, gave him a trial, contempt, convicted, jail. I have never heard of that in state court.

HON. LEO MILONAS:

I must tell this story: I was trying a case on the state side. It was in the Supreme Court, a felony case; it was a multiple defendant narcotics case. And I had a bunch of lawyers before me. After about two years I finally got them all together. It was a miracle. They were in the middle of trying their case, and I got a call from a law clerk to a federal judge that the judge wanted Mr. so-and-so to come right over and try a case. I said, "Like hell, are you kidding, it took me forever to get this group here."

So I was advised that the marshal was coming over to pick this attorney out of my courtroom in the middle of a trial for the purpose of trying a case over there. But I took care of it, obviously, by calling up the judge directly and saying, "You do not know what is really going on here." In any event, I advised my court officers that when the marshals hit the door, arrest them. (laughter)

HON. STERLING JOHNSON:

I would have liked to have been a fly on the wall to see that. (laughter)

ROBERT TEMBECKJIAN:

As long as we are telling anecdotes, let me relate to you the very first removal case that the Commission had twenty years ago. It involved a judge who was obviously unhappy with the taste of a cup of coffee which he had ordered from a local vendor who dealt with the court system. So the judge ordered his sheriff to go out and bring the vendor into court with handcuffs. The vendor was hauled in and the judge excoriated him for the lousy coffee and threatened him with all kinds of things. Here is a guy who was paraded through the courthouse in handcuffs by the local sheriff at the judge's direction. The judge was removed from office for having done that.

Judge Johnson, every once in a while, something really off the wall happens even in the state courts in that regard.
Well, I never tasted the coffee, but the coffee vendor actually won a civil judgment against the judge for something like $60,000 for an *ultra vires* act. There are remedies.

**HON. STERLING JOHNSON:**

Expensive cup of coffee.

**ROBERT TEMBECKJIAN:**

The most expensive.

**SUSAN BRYANT:**

We have had a lot of talk about what the causes of judicial incivility are, and some suggestions for what we can do about the problem. Maybe we could hear from the panelists, not just about what do we do about behavior that is actionable or really exhibits some kind of extreme behavior, but what can we do to maximize civility in the courtroom?

**HON. STERLING JOHNSON:**

On the state side, I think you can give them raises. Give them better physical plants. I will never forget, there is a friend of mine, I stopped in to see her in criminal court, and she took me in the back to her robing room with chambers. There was nothing but one chair and a naked lightbulb. She put her foot up, lit up a cigarette, and a mouse ran by while we talked. She was telling me how much she envies me in the surroundings and the support that I have.

So I think little things like that, and—I hate to say it, Leo—but you are going to see in your generation the state give state court judges what I think they need to work with. And as long as they do not have it, you are going to have the problem.

**HON. LEO MILONAS:**

I really think you could give more work to the federal courts. (laughter)

I am only kidding. Obviously, the courts do have training programs and we do have seminars. We do have presentations. We try to make the judges aware of what is appropriate, what is inappropriate, and what the reasons for it are. Accountability is the most important factor.
The most important thing, I really think, is a judge’s particular personal pride in the way in which he does his work every day and how the judge is treated by lawyers and his colleagues. I think the most important and significant way of making a judge accountable to change his behavior is make him aware of it, talk to him about it, help him through, and try to teach the judge by example of how to conduct himself.

HON. ROBERT SCHMIDT:

Let me add my two cents in this position anyway. I agree with my boss again about doing all the things that we are supposed to do, but one of the things that could also keep down the court intemperance is for lawyers to do their job. All of this has got to be taken in the context. Unless the judge is some sort of problem person, he does not go off on his own.

It is normally the third or fourth case that has come in that has promised to be ready by 2 o’clock to try a case. You put everything else off because you are coming in at 2 o’clock, and you walk in and say, “Oh, no, my guy cannot make it today. He has another case.” We are trying to make these cases move.

The point I was trying to make before about the case load is if you got somebody on the calendar since 1988, they are entitled to an answer. They are entitled to some decision because they filed their papers and paid their $75. So we have to bring them up so they get their justice.

You juggle your calendar to get the most ready case. Then when the lawyer walks in at 2 o’clock and says, “Judge, I cannot do it because of this, that, and the other thing,” you may start to hear some of those things we have talked about, things that we should not be doing because of the fact that you just put a whole downtime in the judge’s calendar or maybe two or three days of downtime in the judge’s calendar because he had pushed everything back for you.

So one of the things I would think that would help the situation an awful lot is—first of all—be ready with your case, and if you are not ready, tell the judge. You must tell him the truth. I mean, sometimes it is really terrible to stand up and say to the judge, “Really, I am not ready.” I know you do not want to do it because of what you think is coming so you give him an excuse. But what happens is that when they find out the excuse is an excuse, then the intemperance I guess would start.
So I think it would help an awful lot if you just talk straight to each other. Tell us where you are, and if you promise to be ready at 2 o’clock, be ready at 2 o’clock. If you are not, tell the judge at 9 o’clock so he can get on with something else so that he can get back to the work and to the other people who are waiting for his time and for his decisions on other matters.

RONALD KUBY:

I do not want to be a voice of moderation— (laughter) —but, in truth, especially those of us who do criminal work, it is really difficult. There are people’s lives at stake. It is difficult for all of us. When somebody loses their temper on occasion, we can get over it. If you, as an attorney, lose your temper, you can say, “I am sorry, I lost it, I apologize.”

One of things that Bill Kunstler did very well was stand up to the judges. He was very well known for that. But he was also known for acknowledging when he made a mistake, apologizing and moving on. There is really nothing wrong with that. You are not backing down; you are not kissing up to anybody. I think that gesture on the part of a lawyer, unexpected as it is by the judiciary, really goes a long way to make it bearable to spend a day in court.

HON. LEO MILONAS:

Bill Kunstler had the extraordinary ability to be an extraordinary advocate, a forceful attorney, and a very gentle person at the same time. He was an incredible lawyer to have appear before you.

SUSAN BRYANT:

Any other thoughts about what can be done to promote that which we came to talk about tonight?

I think we have heard a number of good suggestions from the panelists that include: carefully considering the role of the administrative judge in this process; and the important role that lawyers play in reporting behavior to the various committees that select judges, to their supervisors, and to the Commission on Judicial Conduct if it is warranted. But importantly, it was suggested not to keep these conversations totally private, but to try and surface them in ways that are constructive and helpful.

It is important for all of us to take some responsibility for the quality of the conversation and, especially in the age of budget cuts, to think about the role that we as lawyers can play in promot-
ing courthouses that are respectful of the people who use them, including the lawyers and the judges. We can ask ourselves about that. Finally we must be responsible for conducting ourselves in a civil manner whether we are judges or lawyers.

That concludes our panel presentation. I invite anybody in the audience who has something that they would like to talk to the panelists about, to please come forward and have some conversations with the panelists. We welcome that. Thank you.

(applause)