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A Perspective on "Temper in the Court: A Forum on Judicial Civility"

Cover Page Footnote

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A PERSPECTIVE ON "TEMPER IN THE COURT: A FORUM ON JUDICIAL CIVILITY"

Norman L. Greene*

[I]f the allegation is that he yells at people, if *that's removable conduct, then no judge would be left sitting.***

For years, complaints have circulated about the lack of civility among lawyers; no reasonable observer could deny that lawyers could treat each other much better.¹ Today, the focus on civility in the profession has broadened to include judges as well as lawyers.² The issue of judicial civility is not about the merits of any particular decision or an improvement in decision-making. Nor is it intended to be a threat to judicial independence to make appropriate decisions.³ Instead, its aim is to improve the *tone* of justice in the courts.

* Copyright (c) (1996) by Norman L. Greene. Mr. Greene is a partner in the New York City law firm of Schoeman Marsh & Updike. He is the Chair of the Committee on Lectures and Continuing Education at the Association of the Bar of the City of New York, a co-sponsoring committee of "Temper in the Court."

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1. Some judges have complained that lawyers could treat judges better as well. Although this article focusses on judicial intemperate conduct, it is not to excuse or overlook intemperance on behalf of others in the judicial system, including lawyers.

2. Pamela Coyle, *Bench Stress*, ABA J., Dec. 1995, at 60 (noting that although the "affliction [of intemperance] is not so pervasive as to rule the bench, many say it is further undermining the public's already shaky confidence in the legal system."). The article surveys the problem of judicial intemperance and considers reforms already underway to deal with the problem. See also, Mark A. Neubauer, *Things You Have Wanted To Tell A Judge (But Didn't Dare)*, 21 LITIGATION, Fall 1994 at 17. It is perhaps no accident that these two articles have appeared so recently on the subject of judicial temperance, and they underscore the growing sense of the temperance problem.

3. In a recent statement, four sitting judges of the United States Court of Appeals for the Second Circuit (Judges Newman, Lumbard, Feinberg and Oakes) spoke out against criticism of a federal judge sitting in the Southern District of New York and the calls for his impeachment or resignation for ruling that certain evidence against a confessed drug courier should be suppressed. Dan Van Natta, *Judges Defend Colleague from Attacks*, N.Y. TIMES, Mar. 29, 1996, at B1-2 (noting, among other things, that "[a]ttacks on a judge risk inhibition of all judges as they conscientiously endeavor to discharge their constitutional responsibilities."); potential threats by the President to call for the federal judge's resignation constituted " 'extraordinary intimi-

ation.'") (The federal judge subsequently reversed himself, and decided the evidence would be admissible.).

Chief Justice William Rehnquist likewise stated that federal judges should never be threatened with removal because of their rulings, noting that judicial independence is "one of the crown jewels of our system of government." Linda Greenhouse, *Rehnquist Joins Fray on Rulings, Defending Judicial Independence*, N.Y. TIMES, Apr. 10, 1996, at A1. According to the Chief Justice, "there is a wrong way and a right way to go about putting a popular imprint on the judiciary." *Id.* at B7. Cf. Katharine Q. Seelye, *Dole Rejects Rehnquist Criticism on Judges*, N.Y. TIMES, Apr. 11, 1996 (not suggesting that "we ought to be able to pressure judges, but we ought to be able to criticize judges when we think they've made a mistake.'").

Judge Judith Kaye of the New York Court of Appeals has recently stated her "grave concern" about "the tone, frequency and volume" of recent criticism of the courts; she noted that "the harsh criticism threatens the judiciary's independence, without which judges are 'at risk of being chilled, tempted to reach results that conform to opinion polls and popular passions.'" Daniel Wise, *Kaye Warns Judiciary Is Threatened*, N.Y. L.J., Feb. 22, 1996, at 1.

Twenty-six bar groups and six law school deans subscribed to a statement supporting the independence of the judiciary and undertaking to create a "Joint Committee to Preserve the Independence of the Judiciary." Daniel Wise, *26 Bar Groups Join to Defend the Judiciary*, N.Y. L.J., Mar. 8, 1996, at 1-2. See also, Letter from Governor George E. Pataki to the Editor, N.Y. L.J., Mar. 18, 1996, at 2 (responding to resolution by the bar groups and law school deans and defending his request for the removal of a particular judge on grounds of the judge's alleged belief that domestic violence is not a crime).

According to the statement of the bar groups and law school deans, among other things, the "mission of the Joint Committee [shall be] to develop proposals for insuring the independence of the judiciary from partisan attack and to coordinate timely responses to intemperate or misleading attacks upon individual judges or the judicial system." Daniel Wise, *26 Bar Groups Join to Defend the Judiciary*, N.Y. L.J., Mar. 8, 1996, at 1. The statement further noted that judges "should not be subject to the fear of sanction or removal from office solely upon the basis of a decision, ruling or opinion, lawfully taken pursuant to the exercise of judicial discretion." *Id.*

These statements by the Second Circuit, the Chief Justice, the Chief Judge and the joint group of deans and bar associations were preceded by other strong statements in favor of judicial independence and objections to attacks on particular judges and the courts.

For example, to mention a couple of them, a letter to the editor of the New York Law Journal complained about a recent attack on a judge, whose "virulence . . . creates an atmosphere of intimidation for all judges who must from time to time make unpopular decisions," as a "personal attack" which "was lynch-like in its nature," and as "an assault on judicial independence which is the cornerstone of our system of justice." Letter from Arthur L. Liman, Esq. to the Editor, N.Y. L.J., Feb. 16, 1996, at 2.

Another letter to the editor from President Barbara Paul Robinson of the Association of the Bar of the City of New York in the New York Law Journal (Mar. 6, 1996, at 2), responded to calls by the governor for impeachment of a judge and his removal from office regardless of the findings of the Commission on Judicial Conduct reviewing the matter by stating that it threatened "the independence of the entire judiciary." She added that "vitriolic attacks on individuals and specific court decisions intimidate all judges, not only those few that deserve scrutiny and, in doing so, undermine our system of justice." *Id.*; see also, John Feerick, *Judicial Independence and the Impartial Administration of Justice*, N.Y. L.J., Apr. 3, 1996, at 2.

"Temper in the Court" arose from the experience of seeing some judges conduct themselves in the courtroom impolitely, if not abusively, toward persons who appeared before them. These judges acted in ways unacceptable in almost every other setting, whether in a home, on a playground, or in an office. As a letter read at "Temper in the Court" stated, the judge may at times become a "snarling demon who lawyers fear to come before." This is despite the fact that the Code of Judicial Conduct mandates temperance as part of a judge's job.⁴

Judicial incivility is of a markedly different magnitude than lawyer incivility. When a lawyer is uncivil to fellow lawyers, the recipient of the abuse may respond in kind, seek judicial assistance or walk away from the miscreant. When a lawyer is uncivil to a judge, the judge has numerous remedies, including, in extreme cases, holding a lawyer in contempt.

Where the judge is abusive, however, the remedies are fewer. If a lawyer responds in kind, he risks prejudicing his client's rights or being subjected to a disciplinary proceeding. Judicial assistance is not ordinarily available, certainly not immediately; nor is walking away an option. Too often the lawyer sees himself as having no other option than to take the abuse.

Some types of judicial abuse have already reached the public's moral radar screen. A judge who engages in abuse exhibiting a racial, religious, or gender bias, for example, courts serious trouble. If the newspapers or voters hear about it, let alone the state commission on judicial conduct, an uproar should follow.

A recent study of the impact of popular sentiment on judicial impartiality in death penalty cases appears in Stephen B. Bright and Patrick J. Keenan, *Judges and the Politics of Death: Deciding Between the Bill of Rights and the Next Election in Capital Cases*, 75 B.U. L. REV. 759, 760 (1995) (noting that "unpopular decisions in capital cases, even when clearly compelled by law, may cost a judge her seat on the bench or promotion to a higher court."); see also, *id.* at 832 (adverting to judges who "continue to be voted off trial and appellate courts for their decisions in capital cases" to be "replaced with judges who are little more than conductors on railroads to the execution chambers"; "only federal judges have the independence and job security that enable them to enforce the protections of the constitution when doing so would be vastly unpopular.").

4. See N.Y. CODE OF JUDICIAL CONDUCT, Canon 3A(3) (McKinney 1984):

A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

See also, *id.* at Canon 3A(7) (Commentary) ("Temperate conduct of judicial proceedings is essential to the fair administration of justice.").

But blatant rudeness, nastiness, and arrogance are just beginning to become a public issue and, although rarely covered in the press, are well known to people who are frequently in the courts.⁵ For example, when recently asked what happened to his motion for summary judgment, a client responded, "The judge denied the motion, and she was nasty." Before becoming a litigant, the client would not even have known about such behavior.

A trial attorney's frustration with a judge's conduct recently came to light when the attorney sought an ethics opinion permitting him to publish a letter discussing the conduct of the particular judge. According to the ethics opinion, the lawyer, using surprisingly colorful language, stated in his request for the opinion that he believed that the judge had "committed serious acts of judicial misconduct during [a] trial, including hostile, belligerent, aggressive, abusive, intimidating and generally intemperate conduct directed at the inquirer and his co-counsel."⁶ The attorney added that he believed that the "judge did so because of a combination of incompetence, animus and lack of judicial temperance," and based upon

5. See Neubauer, *supra* note 2, at 17 ("Everyone has experienced appearing before judges who are simply gratuitously mean and nasty. They hurl insults at lawyers needlessly. Their attacks on lawyers' honesty and intelligence are handed out without discrimination to everyone who appears before them. They build their own egos by tearing down the dignity of others, knowing that lawyers cannot answer the judge without fear of contempt or at least a loss of their clients' position. So we sit stoically as we are verbally abused."); e.g., Jim Dwyer, *Making Dumb Remarks is Judge's Only Blunder*, DAILY NEWS, Apr. 23, 1996, at 5, 30. ("[Judge] got very high-handed with some prosecutors. To one, he said: 'When I say sit down, you sit. When I say stand, you stand. When I say speak, you speak. When I say don't speak, you don't speak. Now, get out of my courtroom.'"). A recent example of judicial intemperance becoming a public issue is the nationally reported case of a federal judge who filed a writ of mandamus to regain control over two cases that were removed from his docket by an administrative judge. The administrative judge claims the reason for the removal was the federal judge's "abusive and intemperate attacks." *One Federal Judge Does Battle With 19 Others*, N.Y. TIMES, May 1, 1996, at B6; Gordon Hunter, *Vitriol Mounts as McBryde Mandamus Arguments Approach*, TEX. LAWYER, Apr. 15, 1996, at 2. To bolster his position that the case removals were improper, the federal judge's reply brief footnotes "rather unflattering assessments lawyers made anonymously of three members of the judicial council in the current *Almanac of the Federal Judiciary*." *Id.* The chief judge of the Eastern District of Louisiana is portrayed as "rude, hostile and extremely overbearing . . . reduc[ing] lawyers to tears." *Id.*; see also *Today's News*, N.Y. L.J., May 7, 1996, p.1 (quoting federal judge in granting a lawyer's motion to withdraw as stating, "You were too weak as a lawyer and as a man to handle a case of this importance.").

6. *Formal Opinion 1996-1 of the Association of the Bar of the City of New York's Committee on Professional and Judicial Ethics*, N.Y. L.J., Feb. 29, 1996, at 2 [hereinafter *Ethics Opinion*].

his inquiry from others with experience with the judge, "that his conduct in this case was typical of him."⁷

The ethics opinion, with qualifications, permitted the attorney to publish such a letter.⁸ The consequences of attorneys publishing such letters about abusive judges, especially if such letters were widespread, might be substantial. To the extent that judges are prohibited by professional rules from responding to defend themselves, there also may be issues of fairness raised. Whether the letters or the threat of them would be a deterrent to abusive conduct is unclear, although judges would undoubtedly prefer not to see letters about themselves in the newspapers. Lawyers might likewise prefer not to write such letters and become embroiled in a controversy that might leave some doubt concerning who was right and who was wrong.

What constitutes intemperance may vary substantially from case to case. Without cataloging the range of intemperate conduct, much is in the tone, not just the words. "Sit down, mister," or "where do *you* practice, counselor," "take off your hat [or coat] in my courtroom" can be as abusive, with the proper (or improper) tone, as common insults, such as "shut up" and the like. Unfortunately, the transcript does not capture any tone whatsoever, let alone the vicious and nasty one; but rest assured, no one in the courtroom misses it.⁹

A lawyer sitting in a courtroom all morning after watching a judge handle motions turned to another lawyer and said: "Where's the psychiatrist?" When asked what he was talking about, the first lawyer gestured toward the judge with a look of disgust and said, "Did you see that guy?" An out-of-town lawyer, after observing one motion day, a judge's repertory of nastiness, insults, and threats to one person after another who came before him, asked a

7. *Id.*

8. The Committee's opinion urged the inquirer "to avoid petty criticisms, and to make critical statements only when motivated by a desire to improve the quality of the judiciary and the legal system in general, and then to present his views only in a temperate, dignified manner." *Id.* As the opinion further noted:

[A]n attorney may properly criticize a judge for conduct in an action that is no longer pending so long as the attorney is not knowingly making false accusations against the judge and strives to voice the criticisms in a temperate and dignified manner.

Id.

9. Coyle, *supra* note 2, at 62 ("An often expressionless court transcript also does not give voice to impatience, to rudeness and other demeanor issues."). The article quotes an official at a judicial conduct agency to say that "[t]one makes all the difference." *Id.*

colleague, in amazement, "What do lawyers in this state think about him?" The response was, "They hate him."

The United States Court of Appeals for the Second Circuit in *Santa Maria v. Metro-North Commuter Railroad*¹⁰ found that abusive conduct by a judge reached such a magnitude that it vacated a judgment and granted a party a new trial before a new judge.¹¹ Among the abuses catalogued by the Second Circuit were a "sarcastic cross-examination by the court of the plaintiff's expert witnesses";¹² attacking plaintiff's counsel for failing "to sit down quickly enough to suit the court"; and failing to grant a modest continuance to allow a replacement counsel to prepare.¹³ The court "displayed an antipathy to [plaintiff's] claim that went beyond judicial skepticism"¹⁴ as well as hostility toward plaintiff's trial coun-

10. —F.3d—, No. 95-7230, 1996 WL 118585 (2d Cir. Mar. 18, 1996).

11. *Id.* at *12. The Second Circuit recounted several incidents that demonstrated a problem between the trial judge and the counsel for the plaintiff. In vacating the judgment, the circuit court did not focus on any failings of the attorney, but on the trial court's responses. The problem the trial court had with plaintiff's counsel culminated in a finding of contempt against plaintiff's counsel, for what the trial court described as:

[A] failure to obey a direct order of the Court and for your display of absolute arrogance and just an intent not to pay any attention on [sic] the order of the court. It is very simple. I told you to sit down. You wouldn't. I told you to sit down again. You wouldn't.

Id. at *10. One example of the trial court's interaction with the attorney that is recounted in the circuit court opinion occurred, during one recess, when the trial judge gave the attorney the following warning for asking a question over a sustained objection:

Counsel, I have to tell you something. You pull what you pulled before where there was an objection taken that's to purely objectionable material and you repeat it as if it were a fact, I will declare a mistrial and I will charge you for the costs of impaneling the jury and recommend that you not be permitted to practice in this district again. Got the picture?

Id., at *2. Still another example occurred on the third day of trial, when plaintiff's attorney said to a witness, "I want to show you what I have marked as Plaintiff Exhibits 11, 12 and 13 which the defendant has supplied us with, the exact cost involved in the accident. And I want you to look at that, please." The defendant's attorney objected and the court told plaintiff's attorney, "If you want to testify I will swear you and I will disqualify you to be the lawyer because you cannot testify and be the lawyer in the same case. The way to show an exhibit to the witness is: 'I show you exhibit so-and-so. Can you tell me what it is?' Period." *Id.* On another day, the trial judge sustained an objection to a question posed on cross-examination by the plaintiff's attorney. Plaintiff's attorney tried to rationalize the appropriateness of the question and the trial judge responded: "You're finished. Sit down. Ladies and gentlemen, take a break. I've made a ruling. Sit down. Mr. Marshal, assist him to sit down." *Id.* at *4.

12. 1996 WL 118585, at *9.

13. 1996 WL 118585, at *10.

14. 1996 WL 118585, at *9.

sel.¹⁵ The Second Circuit left no doubt that judicial incivility is not merely a problem of overly sensitive lawyers but a problem of substantive rights. As the Court stated, “[J]udicial decorum is necessary to preserve the litigant’s right to a fair trial.”¹⁶

The issue of judicial civility is not about lawyers who are not “tough enough to take it.” Litigation should not be about fighting for one’s client’s rights in the face of abuse and living with humiliation. Rather, the issue is about what is the legal system going to do about judges who insist on dishing it out, or as stated by at least one speaker in “Temper in the Court,” about “bullies.”¹⁷

Some explanations for judicial incivility heard in “Temper in the Court” and elsewhere are that judges are human and have human frailties; their courtrooms are congested or dilapidated or their resources are inadequate; they are underpaid; they have a need to manage their crushing caseload and to achieve settlements or otherwise dispose of cases; they have a sense of their own powerlessness; they are unable to deal with stress and feel that they have no recourse other than to act intemperately;¹⁸ they are upset that a case is being prosecuted rather than being the subject of a plea; and they are baited by lawyers or frustrated by unprepared lawyers (“defenses” recently rejected by the Second Circuit).¹⁹

A panelist also noted that the judicial role is so set up within the legal system that abuse of power may be sanctioned and even supported; and she referred to research on related matters. In other words, the amount of power judges have encourages intemperate behavior, including in those judges who might not otherwise have been predisposed to behave in that manner.²⁰

15. 1996 WL 118585, at *7.

16. 1996 WL 118585, at *10.

17. See Coyle, *supra* note 2, at 61 (quoting judge that “[t]here is no sorrier sight that a judicial bully . . . because [a judge is] not fighting people who have equal power.”).

18. See also, Coyle, *supra* at 61 (“Judges and scholars agree that the combination of too much stress and too much ego may be behind these judicial outbursts.”).

19. *Santa Maria*, 1996 WL 118585, at *5 & *10 (criticizing judge for “chiding” attorney “for having ‘poorly, if ever, prepared’”) (“A judge must strive to be a model of patience and impartiality, even when faced with an irritating attorney.”). The Second Circuit’s opinion insisted on a higher level of judicial civility than even some lawyers do—*e.g.*, those who would make excuses for judicial incivility by suggesting that “it is not as bad as all *that*,” “you have to learn to put up with it,” it is the lawyer’s fault, and the like. After *Santa Maria*, such lawyers may well find themselves in the peculiar position of accepting or advocating a lower standard of behavior for judges than the Second Circuit established as necessary for the benefit of themselves and their clients.

20. See Neubauer, *supra* note 2, at 17:

Another panelist suggested that defense lawyers for unpopular defendants may be more vulnerable to abuse.²¹

There are some obvious responses to these explanations. First, the Code of Judicial Conduct allows no "affirmative defenses" to abusive behavior by judges (whether it be the "defense" of dilapidated facilities or anything else), and following that Code is their job. Second, in some cases, blaming the lawyer wrongly shifts the focus of the problem to the victim of the intemperance (namely, the lawyer), rather than to the intemperate actor. Third, no one forces a judge to serve, and if his working conditions are so unpleasant, he need only resign to put himself out of his misery.

A judge may improve civility in the courtroom by setting an example. For instance, in a recent case, a judge calmly observed a dispute among cantankerous lawyers, without comment, on a motion before him. When the judge's turn came, he held up one of the lawyer's letters and said:

I see that you have used the word "outrageous" in referring to your adversary's conduct. Such a word demeans you and demeans the Court. There is no reason for that. I also see that you have indicated that because your adversary is just a couple of years out of law school, she does not know anything. Again, there is no reason for that, and just because she is young, that does not mean that this is true.

It will be some time before the lawyers abuse each other in that judge's courtroom.²²

Some panelists cautioned that most judges have no incivility problem and that the subject of the panel was a small minority of them. Yet others agreed that the problem was significant and should be addressed. Different measures for dealing with intemperance were suggested by the panelists, depending upon whether the judge was having a bad day or had exhibited a pattern of abuse. These included the following: make a record of the abuse; send a senior lawyer to sit in on the trial; complain to the administrative

They sit like feudal lords, high upon exalted thrones. They wear special robes to signify their supreme authority. They wield wooden scepters that they pound to emphasize their power. We approach their thrones with supplication, asking if we could please them In response to the insults and the denial of our pleas for aid, we bow our heads in tribute and hypocritically say, 'Thank you, Your Honor.'

21. See also, Letter from Thomas F. Liotti, Esq. to the Editor, N.Y. L.J., Apr. 4, 1996, at 2 ("Why do we not hear calls for removal when a judge unfairly attacks a defense lawyer? The reason is clear. It is not politically correct.")

22. Neubauer, *supra* note 2, at 17 ("Judges cannot expect lawyers to be civil to one another until the judges themselves demonstrate civility on the bench.")

judge, who might speak to the judge, or if the judge is in criminal term, transfer him to civil to lessen the impact on the system (lives being more important than property); make a recusal motion; report the conduct to the New York State Commission on Judicial Conduct (although intemperance will not always lead to action by the Commission, or if it does, only in a private letter of reprimand which we were told frequently has a salutary effect);²³ complain to the judiciary committee of the bar association which may have occasion to evaluate the judge for appointment or in connection with an election;²⁴ and provide judges with additional education and training.²⁵

Other judges are also encouraged to report the misconduct should they become aware of it. Although there was skepticism about whether many judges would make such reports because of a human tendency of judges, like others, to “close ranks” to protect

23. As noted in the *Ethics Opinion*, *supra* note 6, the trial lawyer seeking the opinion had complained to the New York State Commission on Judicial Conduct, which had declined to take action against the judge. The opinion noted, however, in permitting the lawyer to write about the episode, that there is conduct that “does not rise to the level of a violation of the Code of Judicial Conduct, but that is nonetheless of sufficient magnitude—particularly when viewed in the aggregate—to be worthy of the legal community’s attention.”

The Commission on Judicial Conduct has been attacked as ineffective. See Joyce Purnick, *Low Priority for the Judging of the Judges*, N.Y. TIMES, Mar. 7, 1996, at B1 (stating that Commission’s budget dwindled from \$2.2 million in 1988 to \$1.6 million in 1996, and it has half the staff that it had five years ago; “it has one half-time investigator, takes two years to resolve a serious case and operates in officially sanctioned secret.”); *State Politicians to Scrutinize Judicial-Conduct Panel*, N.Y. POST, Mar. 1, 1996, at 6 (quoting Congresswoman Nita Lowey stating that “[w]e must ensure that the Commission on Judicial Conduct doesn’t become the Commission on Judicial Cover-ups”; quoting Michael Letwin of the Association of Legal Aid Attorneys to state, “The commission is not known for exercising a great deal of control over judicial misconduct”; and Gerald Stern of the Commission to state that the budget of the Commission has been cut, and together with cuts in staff, the Commission’s ability to investigate has been hampered.).

The failure adequately to discipline judges and other professionals has been noted. Purnick, *supra*, at B1 (quoting Prof. Stephen Gillers of New York University School of Law: “The state of New York and American jurisdictions do not adequately discipline professionals, whether they are lawyers, doctors or judges. . . . As a result, you have triage. Judicial conduct commissions pick the really worst cases, cases in which lawyers steal or judges accept bribes or appear on the bench drunk.”).

24. Coyle, *supra* note 2, at 63 (quoting judge to say that “screening for temperament is the most difficult part of picking judges, and that even the painstaking federal appointment process sometimes misses.”).

25. See *id.*, at 62 (“As the judicial distemper problem has gained recognition, states have streamlined discipline processes and added lay members to bolster public input and support. Federal courts are making it easier to file complaints. Court-watch groups seem to be growing and gaining power. Training for judges now routinely includes ethics and demeanor sessions.”).

their own or because there was a “thin black robe of silence” among judges, some judges have apparently made a report. No one suggested that the lawyer respond in kind; the advice was strongly to the contrary. A lawyer who does so invites criminal contempt, which, among other things, *requires* the disciplinary committee to bring an onerous proceeding against the lawyer. (Because of the drastic ramifications of contempt, judges were cautioned to consider other lesser means for dealing with the problem lawyer.) There was also a comment that if the lawyer does not respect the particular judge, he should at least respect the office.

But no one seriously contended that the lawyer needs to endure bullying judicial tactics. Reference was made to the injurious psychological effect on an individual lawyer of humiliating judicial abuse. Yet one speaker suggested that too many lawyers will accept it, perceiving that they have an interest in getting along and going along with the system and fearing to be identified as “troublemakers.” Lawyers may also worry that if they report the behavior, they may suffer retaliation, even from *other* judges. They may also believe that nothing will be done, or if something is done, it may take too long.

The forum was not intended to be an exercise in “piling on” judges. The important work performed by judges—in resolving “the most difficult and complicated issues facing a society: how best to get citizens to obey society’s rules, how to punish them when they do not, and how to ensure that the agents of our government do not exceed the authority they have been given”—are well known.²⁶ Judges are concededly entitled to “somewhat more than the daily barrage of sniping and second-guessing” to which they have sometimes been subjected.²⁷

But there seems to be a consensus that the lawyer’s public image needs a shine. If the chief lawyers in our system, judges, do not lead the way, the overall effort to improve civility in the profession may well fall short.

The sponsoring committees of the Association of the Bar of the City of New York, the Committees on Lectures and Continuing Education, Professional and Judicial Ethics, and Tort Litigation,

26. Editorial, *It's Time to End Open Season on Judges*, N.Y. L.J., Feb. 26, 1996, at 1-2.

27. *Id.*

were fortunate to have attracted such a wide audience and diverse participants to its panel on judicial civility.²⁸

28. See *Ethics Opinion*, *supra* note 6 (noting that public criticism of intemperate judge must be “motivated by a desire to improve the quality of the judiciary and the legal system in general.”).

