

WHEN JUDGES SPEAK UP

ETHICS, THE PUBLIC,
& THE MEDIA

INSTRUCTOR'S MANUAL



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American
Judicature Society



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WHEN JUDGES SPEAK UP: ETHICS, THE PUBLIC, AND THE MEDIA

INSTRUCTOR'S MANUAL

<i>Page 1</i>	INTRODUCTION
1	The curriculum
1	The videotape
2	The study materials
3	The instructor's manual
4	Space and audio-visual requirements
5	Introducing the program
6	Discussion of standards
<i>Page 7</i>	SCENARIO 1 — THE CHAMBERS INTERVIEW
7	Notes for the session leader
7	Introducing the chambers interview scenario
8	Small group discussions
9	Discussion questions for the chambers interview
10	Other exercises
11	Conclusion
12	Ohio State Bar Association Program for Responding to Public Criticism of Judges or Courts — Guidelines for Action
13	Judge's checklist for news media interviews
<i>Page 14</i>	SCENARIO 2 — THE COMMUNITY GROUP
14	Notes for the session leader
14	Introducing the community group scenario
15	Small group discussions
16	Discussion questions for the community group
17	Other exercises
18	Conclusion
<i>Page 19</i>	SCENARIO 3 — INTERVIEW ON THE COURTHOUSE STEPS
19	Notes for the session leader
19	Introducing the courthouse steps scenario
20	Small group discussions
21	Discussion questions for the courthouse steps interview
22	Other exercises
23	Conclusion
<i>Page 24</i>	SCENARIO 4 — THE TALK SHOW
24	Notes for the session leader
24	Introducing the talk show scenario
25	Small group discussions
26	Discussion questions for the talk show
27	Other exercises
27	Conclusion
28	State variations of Canon 3B(9) of the 1990 ABA Model Code of Judicial Conduct
<i>Page 29</i>	ADDITIONAL RESOURCES
<i>Page 31</i>	STUDY MATERIALS

STUDY MATERIALS

Page 1 OBJECTIVES

Page 4 FORMATS AND FORUMS

- 5 Call-in radio show
- 6 Television commentator

Page 7 COMMENTING ON PENDING CASES

- 7 The rule and the rationale
- 7 Commenting on a case pending before the judge
- 9 Commenting on a case pending before another judge or jury in the same court or jurisdiction as the commenting judge
- 9 Commenting on a case pending on appeal
- 10 Commenting on an impending case
- 11 Commenting on a pending or impending case in another jurisdiction
- 12 Responding to criticism about a pending case
- 14 Exceptions
- 14 Explaining court procedures
- 17 Scholarly teaching and writing
- 18 The First Amendment

Page 19 COMMENTING WHEN A CASE IS NO LONGER PENDING

- 20 If a judge is criticized about a case that is no longer pending

Page 22 PRESERVING IMPARTIALITY WHO SPEAKING UP

- 22 Statements on controversial issues
- 25 Statements on political issues
- 26 Statements about lawyers
- 26 Expressions of bias or prejudice
- 27 Speaking to the appropriate audience
- 29 Speaking to political gatherings

Page 30 SPEAKING UP ABOUT A PROBLEM IN THE COURTS

- 30 Accusing other judges of misconduct
- 32 Criticizing the justice system
- 33 Criticizing other public officials

Page 34 LENDING THE PRESTIGE OF OFFICE TO ADVANCE PRIVATE INTERESTS

Page 36 TABLE OF AUTHORITIES

- 36 Decisions (alphabetical by jurisdiction)
- 37 Decisions (alphabetical by judges' name)
- 39 Advisory opinions by state

Page 41 ADDITIONAL RESOURCES

WHEN JUDGES SPEAK UP: ETHICS, THE PUBLIC, AND THE MEDIA INSTRUCTOR'S MANUAL

INTRODUCTION

THE CURRICULUM

When Judges Speak Up: Ethics, the Public, and the Media, a curriculum developed by the American Judicature Society under a grant from the State Justice Institute, provides all the materials necessary for an educational program on ethical considerations in judicial relationships with the public and the media. The curriculum consists of a videotape, this instructor's manual, study materials for distribution to participants in the program, and a self-study guide.

The goals of the curriculum are:

- To describe how a judge's public education efforts and discussions with the media can comply with the code of judicial conduct.
- To encourage judges to educate the public about the role of the judge and the importance of an independent judiciary.
- To encourage judges, where appropriate, to help journalists provide competent news coverage that can foster public understanding of the judge's role and build public support for the judiciary.
- To promote thoughtful response to public criticism, media inquiries, and conflicts within the justice system by stimulating judges to consider and discuss the ethical issues before any problem arises.

THE VIDEOTAPE

The videotape *When Judges Speak Up* is approximately 30 minutes long and has four scenarios in which professional actors portray judges, reporters, and members of the public. All four scenarios need not be shown in the same program; each raises issues that are severable from those raised in the other scenarios, and many issues are raised in more than one scenario. Each scenario requires one-and-a-half to two hours for effective discussion of the issues raised, and, therefore, one scenario could form the basis for one session of a conference or all four scenarios could be the basis for a one-day program.

The four scenarios are:

1. **The chambers interview:** a judge gives an interview in her chambers to a local newspaper reporter.
2. **The community group:** a judge gives a speech to a community group about jury reform and answers questions from the audience.
3. **The courthouse steps interview:** a judge is stopped by a reporter on the courthouse steps and asked questions about a supreme court opinion reversing a custody decision by the judge and about criticism of the judge by a police officer.

4. **The talk show:** two judges appear on a talk show to discuss a case pending on appeal. One of the judges presided in the case; the second judge is from a different state.

The session leader should caution that the videotape is not intended as a model for what judges can say when speaking to the public or the media but only provides a background for discussion of the ethical issues raised and should be used with the accompanying study materials. In each scenario, some of what the judge says is clearly ethical, some is clearly unethical, some may be ethical but not necessarily prudent, and some is debatable. It may be helpful to explain to participants that the situations and statements presented in the scenarios are inspired by actual cases, advisory opinions, or newspaper articles.

The session leader may wish to “pause” the videotape at certain points in each scenario to ask the participants for immediate responses to how the judge is doing so far.

THE STUDY MATERIALS

The study materials discuss the ethical issues that judges confront when they are involved in community programs and when they receive inquiries from the media, in other words, the issues raised by the scenarios in the videotape. The study materials include the relevant portions of the code of judicial conduct, examine cases in which judges have been disciplined for violating the code with respect to public comments, and analyze advisory opinions issued by state judicial ethics committees giving guidance in the area.

The study materials should be used by judicial educators, session leaders, facilitators, and any other faculty to prepare for the program. In addition, the study materials are designed to be distributed to judges at or before the program as a resource when discussing the issues raised in the videotape and as a useful reference after the program is finished.

The materials:

- list the formats and forums that have been permitted and forbidden for judges, discussing in detail participating in call-in shows on the radio and acting as a commentator on television;
- describe how a judge’s education efforts can comply with the requirement that a judge refrain from commenting on pending and impending cases, consider whether the restriction applies to cases pending in other jurisdictions, discuss exceptions to the rule such as explaining court procedures and comments in scholarly presentations;
- examine First Amendment cases;
- cover guidelines for responding to criticism of a judge in a pending case;
- explain the requirement that extra-judicial activities not cast reasonable doubt on a judge’s capacity to act impartially and the effect that requirement has on a judge’s speaking, writing, and teaching, including limiting statements on controversial or political issues, criticism of lawyers, expressions of bias and prejudice, and appearing before certain audiences;
- relate under what circumstances and in what manner a judge can draw the public’s attention to a problem in the courts or criticize judges and other public officials; and

- report how a judge can engage in education activities without lending the prestige of the judicial office to advance the private interests of others.

Judicial educators or session leaders are encouraged to call the American Judicature Society's Center for Judicial Conduct Organizations to see if cases or advisory opinions were issued after publication of the study materials that would supplement the coverage of the topic. To enable each state to tailor the materials to stress its state code, case law, and advisory opinions, the study materials are available on a computer disk.

THE INSTRUCTOR'S MANUAL

Following is a description of a program using the videotape. The manual refers to a "leader," meaning a judge, law professor, judicial educator, or other expert who is both knowledgeable of the substantive issues discussed and proficient at facilitating group discussion and who has been chosen to plan and present the program. A current or past member of the state judicial conduct commission or judicial ethics advisory committee may be a good leader for the program.

The program begins with an introduction of the topic, including a review of the relevant ethical standards. For each of the four scenarios, the manual includes:

- notes for the session leader,
- an exercise for preparing the participants for the scenario,
- instructions for small group discussions of the ethical issues raised in the scenario, including discussion questions, and
- other educational activities.

The manual suggests that each scenario be described before it is shown and the participants asked to look for statements by the judge in the scenario that:

- comment on pending cases,
- explain for public information the procedures of the court,
- promote or fail to promote public confidence in the integrity and impartiality of the judiciary, or
- cast reasonable doubt on the judge's capacity to act impartially as a judge.

Prior to showing each scenario, the leader should emphasize that the scenario is not intended as a model for what judges can say when speaking to the media and only provides a background for discussion of the ethical issues raised.

The manual recommends discussions in small groups to give all participants an opportunity to talk about the issues raised, with the groups reporting back to the larger audience in a dialogue moderated by the session leader. To expedite formation of the small groups, the room should be set up so that the participants are sitting at round tables of 8 to 10, with the participants at each table comprising a group. The instructor's manual includes questions for each scenario, and the groups should be instructed that they have 15 minutes to discuss the questions and any additional ones

developed by the session leader or judicial educator. Depending on the length of the program, the leader may wish to omit some of the questions, assign each group a different set of questions, or have every group answer the same questions.

The session leader or judicial educator should arrange for some of the participants to have received the study materials enough before the session so that each group will have one member who will have reviewed the materials and can facilitate the discussion. This individual would not be a teacher but could point the group toward any relevant authority in the study materials and keep the discussion headed in the right direction.

As an alternative to small group discussions, a panel of experts could give their responses to the questions.

Another way of ensuring that the judges are given adequate direction is to have a role play in which participants act out, before the whole group, the situations from the scenarios and give better responses than those presented in the videotape. The participants for the role play can be arranged before the session to provide time for preparation or the leader may ask for volunteers after the small group discussions. To facilitate the role play, these materials include the script for those portions of the scenarios that raise the most ethical questions.

The manual also includes suggestions for other activities such as panel discussions, debates, group writing, and group discussion.

Although the curriculum is not a “how to handle the media” guide with recommendations about question and answer techniques, the scenarios can be used as a basis for such training, in addition to ethics education. This manual includes the National Judicial College’s judge’s checklist for news media interviews (with the College’s permission), which can be used to critique the performance of the judges in several of the scenarios. Other resources include court information officers, public relations experts, local journalists, *Statewide Program for Improving Media and Judicial Relations 1989* (SJI-89-924), and *A Manual for Managing Notorious Cases* (SJI-89-06X-B-037).

SPACE AND AUDIO-VISUAL REQUIREMENTS

The room for the presentation should be set up so participants are sitting at round tables of 8 to 10, with the participants at each table comprising a small group for the discussions. The tables should be arranged so that all participants can see and hear the session leader speaking from a podium or similar set-up at the front of the room. Depending on the leader’s preference, a flip chart or overhead projector should be placed at the front to be used by the leader to note points during the discussion. The leader should have a wireless microphone to facilitate the dialogue between tables during the reporting back after the small group discussion. Several exercises involving a panel of judges or other experts are suggested, which would require a table with chairs and microphones for each speaker set up at the front of the room.

A television monitor, preferably the largest available, and VHS videoplayer are needed to show the videotape. If the group is very larger or pillars obstruct sight lines, more than one monitor may be necessary.

INTRODUCING THE PROGRAM

1. The leader should explain the goals of the program in his or her own words or by referring to the goals of the curriculum, which are:
 - To describe how a judge's public education efforts and discussions with the media can comply with the code of judicial conduct.
 - To encourage judges to educate the public about the role of the judge and the importance of an independent judiciary.
 - To encourage judges, where appropriate, to help journalists provide competent, fair news coverage that can foster public understanding of the judge's role and build public support for the judiciary.
 - To promote thoughtful response to public criticism, media inquiries, and conflicts within the justice system by stimulating judges to consider and discuss the ethical issues before any problem arises.

2. In the month or so before the program, the leader should collect newspaper and magazine articles about judges, cases, and the justice system and include copies of interesting ones in the materials given to participants or perhaps copy them on a transparency so they could be shown using an overhead projector. Using the stories, the leader can moderate a discussion of how the media is portraying the judicial system, what misconceptions about the law appear in the press, and similar issues. The leader should use the following questions (or similar ones) to get the audience thinking and talking about judges' relationship with the public and the media.
 - Do you agree with the statement "The public interest in the justice system and judges has been as high in the last few years as it has ever been"? Why or why not?
 - Do you agree with the statement that, in addition to speaking within the legal profession, judges "should also speak at colleges and high schools, the PTA, the Junior League, and the Elks. They should write articles for the Sunday supplements and Reader's Digest"? (Marna S. Tucker, "The Judge's Role in Educating the Public about the Law, 31 Catholic University Law Review 201, 205 (1982)). What are the benefits of such activities? What are the drawbacks?
 - Why should judges talk to journalists? (For reference, there are reasons listed in the materials, but the participating judges may come up with more.) What are the drawbacks of talking to journalists?

The leader may want to list the answers on a flip chart or transparency for use with an overhead projector.

DISCUSSION OF STANDARDS

The leader should:

1. Review the relevant canons from the state's code of judicial conduct, describe any recent changes, describe any differences between the state's code and the 1990 ABA model code, and explain the rationale for the code's restrictions on judges' speech.
2. Highlight any cases or advisory opinions from the state in which the program is being presented. It was not feasible to cite every relevant advisory opinion in the study materials so the leader should review his or her state's advisory opinions (contacting the judicial ethics advisory committee if necessary) to ensure that the state's authority in this area is thoroughly discussed.
3. Describe the standards established in four to six of the cases or opinions cited in the materials. Depending on the focus of the program and the authority in the state, a description of the holdings or advice from the following cases and opinions will provide a good basis for discussion of the issues raised in the videotape.

In the Matter of Sheffield, 465 So. 2d 350 (Alabama 1985) (comment to a reporter in a pending case)

Illinois Advisory Opinion 96-5 (responding to a reporter's questions in a pending case)

South Carolina Advisory Opinion 14-1991 (participation in a radio call-in show)

California Advisory Opinion 24 (1976) (responding to criticism)

In re Gridley, 417 So. 2d 950 (Florida 1982) (expressing religious opposition to the death penalty)

In re Broadbelt, 683 A.2d 543 (New Jersey 1996), cert. denied, 117 S. Ct. 1251 (1997) (appearing as a commentator on Court TV)

The leader should refer the participants to the specific places in the study materials where these sources are discussed.

SCENARIO 1 — THE CHAMBERS INTERVIEW

NOTES FOR THE SESSION LEADER

The first scenario is designed to raise questions about

- when it is appropriate for a judge to talk to the media,
- the distinction between an inappropriate comment on a pending case and an explanation of the procedures of the court,
- appropriate responses to criticism, and
- bringing to the public's attention problems within the court system.

The leader should be careful that any discussion does not deteriorate into a recitation by judges of horror stories about the media. Although a few of these may be appropriate to strike a cautionary note, a session spent bashing the media without suggestions for handling them ethically and effectively will not be very constructive.

It may be helpful to point out to the participants that, unfortunately, Judge MacKenzie's explanation of the attitude of some judges toward domestic violence cases is based in fact and her quotations are taken from an actual case. See *In the Matter of Bender, Determination* (New York Commission on Judicial Conduct February 7, 1992) (admonishing judge who had, during an arraignment, asked a police officer whether the alleged assault of the complaining witness, a woman with whom the defendant lived, was "just a Saturday night brawl where he smacks her around and she wants him back in the morning" and advised the defendant to "watch your back" because "women can set you up.")

INTRODUCING THE CHAMBERS INTERVIEW SCENARIO

1. To set the stage for scenario 1, participants should be asked for a show of hands in answer to the following questions:

Would you agree to an interview with a reporter —

- to educate a reporter new to the court beat?
- to explain a change in the law, procedures, court innovations, etc.?
- to mark a personal landmark (for example, 10 years on the bench, appointment to a different court)?
- prior to a case that has attracted significant media and public attention?
- as part of a newspaper's series of profiles of local leaders?

2. The participants should be advised that they will be watching a scenario in which a judge (Judge MacKenzie) gives an interview in her chambers to a local newspaper reporter. The participants should be asked to look for statements by the judge that:
 - comment on pending cases,
 - explain for public information the procedures of the court,
 - promote or fail to promote public confidence in the integrity and impartiality of the judiciary, or
 - cast reasonable doubt on the judge's capacity to act impartially as a judge.
3. Prior to showing scenario 1, the leader should emphasize that the videotape is not intended as a model for what judges can say when speaking to the media and only provides a background for discussion of the ethical issues raised.

SMALL GROUP DISCUSSIONS

1. After the chambers interview scenario is shown, the audience should discuss the issues raised in their small groups. The groups should be instructed that they have 15 minutes to discuss the questions relating to the scenario included in this manual and any additional ones developed by the session leader or judicial educator. (Alternatively, these questions could be answered by a panel of experts arranged before the session.) Each group should choose one of its members to report the consensus of the group after the discussion. Depending on the length of the program, the leader may wish to omit some of the questions, assign each group a different set of questions, or have every group answer the same questions.

Each group should have one member who has been sent the study materials for review before the session to facilitate discussion. This individual would not be a teacher but could point the group toward any relevant authority in the study materials and keep the discussion heading in the right direction.

2. After approximately 15 minutes, the larger group should reconvene, and the leader should moderate the reports from each group about its answers to the questions. For example, the leader may ask one group's reporter for its answer to the first question, ask a second group's reporter if that group agreed, and then ask for the second group's answer to the second question, and so on. If an answer or answers seems "wrong" (either unduly restrictive of a judge's speech or inappropriately permissive), the leader may ask for other opinions to ensure that the "right" answer is given. Follow-up questions about the rationale for answers and exceptions to the rules should also be asked.

DISCUSSION QUESTIONS FOR THE CHAMBERS INTERVIEW

1. Did the statement by Judge MacKenzie that her biggest challenge as a judge “has been trying to ensure that justice is served despite the increasing work load that this court faces” promote public confidence in the integrity and impartiality of the judiciary?
2. Were Judge MacKenzie’s statements about Judge Sullivan’s release of an arsonist on bail an appropriate explanation for public information of the procedures of the court or an inappropriate comment on a pending case?
3. Were Judge MacKenzie’s statements about the possibility of the militiamen receiving a fair trial an appropriate explanation for public information of the procedures of the court or an inappropriate comment on a pending case?
4. Did Judge MacKenzie’s explanation of her sentencing philosophy cast reasonable doubt on her capacity to act impartially as a judge?
5. Did Judge MacKenzie fail to promote public confidence in the integrity and impartiality of the judiciary in her response to Judge Anderson’s criticism of her creative sentences as grandstanding?
6. Did Judge Anderson violate the code by telling a reporter Judge MacKenzie’s creative sentences were grandstanding?
7. What is the difference between an appellate panel criticizing a trial judge when overturning his or her opinion and, for example, one trial judge criticizing another?
8. Was Judge MacKenzie’s defense of her creative sentence currently under appeal an inappropriate comment on a pending case or an explanation for public information of the procedures of the court? If the specific sentence had not been pending on appeal, would the judge’s response have been appropriate?
9. Do you think a judge should have a “qualified privilege” to publicly explain his or her side of a public dispute with other judges? Were Judge MacKenzie’s comments about Judge Anderson moderate, unmalicious, respectful, and unabusiv e or did they reveal an attitude that is a discredit to the judiciary?
10. Did Judge MacKenzie fail to promote public confidence in the integrity and impartiality of the judiciary by criticizing other judges’ handling of domestic violence cases? What should a judge do if he or she feels that other judges are not, for example, taking domestic violence or drunk driving cases seriously?

OTHER EXERCISES

1. Another way of ensuring that the judges are given adequate direction is to have a role play of the scenario before the whole group with the participant playing Judge MacKenzie giving “better” responses to some of the reporter’s questions. The participants for the role play can be arranged before the session to provide time for preparation or the leader may ask for volunteers after the small group discussions. To facilitate the role play, following is the script for those portions of the chambers interview that raise the most questions, in other words, Judge MacKenzie’s response to the questions about Judge Anderson’s criticism of her creative sentencing and her criticisms of some judges’ handling of domestic violence cases.

REPORTER:

Judge Anderson has criticized the creative sentences you have handed down as, and I quote, “nothing more than grandstanding.” He was referring specifically to your decision to have a convicted shoplifter wear a t-shirt that says, “I have been convicted three times of shoplifting.”

MACKENZIE:

Really? Well, Judge Anderson is very inexperienced and seems to be siding with the soft on crime bunch. Maybe after he’s been on the bench as long as I have, he’ll understand why in some types of cases shame and humiliation work well as a deterrent to future crimes. In the case you’re referring to, I think the shame of wearing that t-shirt will definitely make the defendant think again before he slips a compact disk into his pocket. The case is on appeal, and I am confident the appellate court will see it my way.

REPORTER:

Isn’t it true that there are significant differences among judges when it comes to the treatment of domestic violence cases?

MACKENZIE:

It’s unfortunate that some local judges, and the justice system in general, seem to feel that domestic violence cases should be in family court, rather than criminal court. I heard of one judge who asked whether the case was “just a Saturday night brawl where he smacks her around and she wants him back in the morning.” Apparently this same judge went on to advise the defendant to “watch your back because women can set you up.” I think that attitude is preposterous. Beating someone up is a crime, regardless whether the victim is one’s wife, one’s neighbor, or a stranger.

2. The leader can conduct a discussion of bar association committees designed to respond to unjust criticism of judges and the justice system. The following questions should facilitate such a discussion.

- Do you agree with the statement that “criticism directed toward a judge in the context of the merits of pending or imminent litigation is more appropriately answered by a bar association or bar officials” than by the judge? (*California Advisory Opinion 24 (1976)*).
- Do you think a committee such as the Delaware Bar Association Committee on Public Comment is a good idea? Why or why not?

- Does your state have a committee such as the Delaware Bar Association Committee on Public Comment? If not, how could one be set up?
 - Name three incidents in the last year or so in which the committee may have had work in your state.
 - Assume a judge in your jurisdiction has been severely criticized by the news media and citizens for his or her decision to release an accused arsonist on bail. Applying the bar association guidelines from your state, decide whether the association should respond and draft a response. (If your state does not have such a committee use the Ohio State Bar Association guidelines, which are included in these materials.)
3. The leader could moderate a discussion of practical advice for judges giving interviews to reporters based on the National Judicial College's judge's checklist for news media interviews, which is included in this manual with the permission of the National Judicial College. Questions to ask the participants include:
- Which of the guidelines did Judge MacKenzie follow?
 - Which did she fail to observe?
 - What other advice would you give a judge who is preparing for an interview?

CONCLUSION

The leader should summarize the discussion in a way that also reflects the standards outlined in the code, case law, and advisory opinions, and gives the participants reliable guidance based on the study materials, citing specific relevant pages. The leader can then ask the judges:

- based on this session, what is one step you will take to educate the public about the courts?
- based on this session, what is one change you may make in the way you handle the media?
- what one ethical standard was clarified for you in this session?

All judges should write their answers down. Some can be asked to report their answers orally.

OHIO STATE BAR ASSOCIATION PROGRAM FOR RESPONDING TO
PUBLIC CRITICISM OF JUDGES OR COURTS - GUIDELINES FOR ACTION

- A. Response by the Association to public criticism would be deemed appropriate only if:**
1. The criticism is clearly unjustified or unfair;
 2. The criticism, although generally accurate, fails to reflect sufficient factual basis or understanding of our judicial system to be supportable; or
 3. The criticism, although directed towards a particular judge reflects substantially, adversely and unfairly upon the judiciary, in general, or upon another element or segment of our judicial system, such as the grand jury, bail, sentencing or granting judgment, probation and the lawyer's role.
- B. Such a response would, generally, be deemed inappropriate if:**
1. The criticism is the result of a personal feud between the critic and a judge;
 2. The criticism is vague or inconsequential;
 3. The basis of the criticism may become the subject of future action by a judicial ethics or conduct committee;
 4. An investigation sufficient to develop the factual basis for the criticism would require such an amount of time as to make any response ineffective;
 5. The criticism involves a proceeding pending before the judge or the court attacked, unless the response would be directed to a matter not at issue in the case;
 6. The criticism represents fair comment or opinion;
 7. A response to the criticism could best be made through another appropriate source;
- C. In order to be effective, a response must:**
1. Serve a public information objective or purpose;
 2. Be factual, without emotional, inflammatory or subjective language;
 3. Be timely, concise and to the point;
 4. Contain corrections of inaccuracies, citing facts and authorities;
 5. Be expressed in laymen's terms suitable for inclusion in media reports;
 6. When applicable, point out the judge's obligation to act or the absence of the judge's power to act;
 7. When applicable, explain the process which gave rise to the criticism;
 8. Refrain from discrediting the critic by attacking his, her or its competence, good faith, motives or associates;
 9. Avoid, through overreaction, any indication that the critic may have struck a sensitive chord;
 10. Avoid defending the indefensible;
 11. Avoid argumentation, condescension and lecturing.

JUDGE'S CHECKLIST FOR NEWS MEDIA INTERVIEWS

- Have a clear understanding in advance of what will be covered in the interview.
- Always assume the interview is "on the record" unless specifically and mutually agreed otherwise.
- Distinguish when you are simply clarifying a point rather than making a comment.
- Treat the reporter professionally and courteously.
- Understand the importance of the question before answering (know why the question is being asked and carefully formulate the response).
- Know the facts before commenting.
- Avoid giving quick, "off-the-cuff," responses. Words, once spoken, cannot be stricken.
- If possible, ask the reporter to fax the questions in advance. By doing so, you will have time to prepare a proper response.
- If you make critical comments, expect them to be answered in subsequent news articles or editorials by the persons or agencies criticized.
- Avoid saying, "no comment." If you cannot comment, say, "I am not able to comment because of the rules of the court, the case is pending, I do not know the specifics of that case, etc."
- Be careful that comments do not reflect on pending litigation.
- Do not attempt to write the article for the reporter.
- Realize that the reporter is working against a deadline, so try to provide the best information in the least amount of time.
- Be conscious of your emotions, especially anger. Comments made in anger are often regretted.

(Used with the permission of the National Judicial College.)

SCENARIO 2 - THE COMMUNITY GROUP

NOTES FOR THE SESSION LEADER

The second scenario is designed to raise questions about:

- what groups are appropriate for a judge to talk to
- what topics are appropriate for a judge to talk about,
- the appropriate response to criticism, and
- bringing to the public's attention problems within the court system.

INTRODUCING THE COMMUNITY GROUP SCENARIO

1. To set the stage for scenario 2, the leader should ask members of the audience to describe their public education efforts - speaking engagements, newspaper articles, appearances on radio and television shows, etc. Another approach, particularly in a longer program, would be to arrange in advance for a panel of judges that would describe their efforts, the mechanics of getting a program started, the public reaction, and any lessons they have learned. For example, a judge who has developed a television program that is shown on public access cable could explain how he or she went about getting the program broadcast, arranging the funding and taping, etc. and could show a videotape of one program.
2. The participants should be advised that they will be watching a scenario in which a judge gives a speech to a community group. The participants should be asked to look for statements by the judge that:
 - comment on a pending case,
 - explain for public information the procedures of the court,
 - promote or fail to promote public confidence in the integrity and impartiality of the judiciary, or
 - cast reasonable doubt on the judge's capacity to act impartially as a judge.
3. Prior to showing scenario 2, the leader should emphasize that the videotape is not intended as a model for what judges can say when speaking to the public. The scenario only provides a background for discussion of the ethical issues raised.

SMALL GROUP DISCUSSIONS

1. After the community group scenario is shown, the audience should discuss the issues raised in their small groups. The groups should be instructed that they have 15 minutes to discuss the questions relating to the scenario included in this manual and any additional ones developed by the session leader or judicial educator. (Alternatively, these questions could be answered by a panel of experts arranged before the session.) Each group should choose one of its members to report the consensus of the group after the discussion. Depending on the length of the program, the leader may wish to omit some of the questions, assign each group a different set of questions, or have every group answer the same questions.

Each group should have one member who has been sent the study materials for review beforehand to facilitate discussion. This individual would not be a teacher but could point the group toward any relevant authority and keep the discussion heading in the right direction.

2. After approximately 15 minutes, the larger group should reconvene, and the leader should moderate the reports from each group of its answers to the questions. For example, the leader may ask the reporter for one group the answer to the first question, ask a second group's reporter if that group agreed, and then ask for the second group's answer to the second question, and so on. If an answer or answers seems "wrong" (either unduly restrictive of a judge's speech or inappropriately permissive), the leader may ask for other opinions to ensure that the "right" answer is given. Follow-up questions about the rationale for answers and exceptions to the rules should also be asked.

DISCUSSION QUESTIONS FOR THE COMMUNITY GROUP

1. Advise Judge MacKenzie on whether she should accept an invitation to speak about jury reform to:
 - a church group
 - a local partisan political organization
 - an advocacy group, such as MADD
 - a block club
 - local police officers
 - a law firm
 - public defenders
 - prosecutors
 - the local chamber of commerce
 - a group of plaintiff or defense lawyers
2. Do you agree with the statement that a judge should avoid an open format that might require the judge to comment or refuse to comment on issues and might prove embarrassing or damaging to the dignity of the judiciary? (New Jersey Informal Opinion 23-89).
3. In general, would you say Judge MacKenzie's appearance before the community group promoted public confidence in the integrity and impartiality of the judiciary? What did she do right? What did she do wrong?
4. Should Judge MacKenzie have commented on the three-strikes-and-you're-out law pending before the state legislature?
5. Could Judge MacKenzie have commented on tort reform?
6. Did Judge MacKenzie's response to the neighbor's criticism of her handling of the dog case (assuming the case is no longer pending) detract from the dignity of the judicial office, promote public confidence in the courts, or cast doubt on the judge's impartiality?
7. Do you agree with the statement that a "judge must expect to be the subject of public scrutiny and, therefore, must accept criticism, however meritless, that might be viewed as opprobrious by the ordinary citizen"? (California Advisory Opinion 24 (1976)).
8. Do any of the following remarks by Judge MacKenzie fail to promote public confidence in the integrity and impartiality of the judiciary, cast reasonable doubt on her capacity to act impartially, or demean the judicial office?
 - "Often times in our adversarial system, the role of the prosecutor and the defense attorney is to obfuscate the truth."
 - "I cringe when I see two-bit psychologists trying to analyze the minds of a prospective juror with the expressed goal to stack the deck in their client's favor."
 - "Some of the criticism of the jury system is justified."
 - "[I am concerned about] attorneys who file their cases where they think juries will award larger sums of money to their clients."

OTHER EXERCISES

1. Have the judges from each locality meet separately and discuss what public education programs they could start in their communities.
2. If any judge in your jurisdiction has a Web site, ask the judge to discuss it, describe the advantages, display it to the audience, explain how to create one, etc. Have the judges from a locality design a Web page for their court.
3. Have the participants draft a checklist for a judge considering an invitation to speak or otherwise participate in education programs on what types of groups and topics they should address. Draft a checklist for a judge to use when speaking in education programs.
4. Another way of ensuring that the judges are given adequate direction is to have a role play before the whole group of the scenario with the participant playing Judge MacKenzie giving "better" responses to the audience's questions. The participants for the role play can be arranged before the session to provide time for preparation or the leader may ask for volunteers after the small group discussions. To facilitate the role play, following is the script for that portion of the community group meeting that raise the most questions, in other words, Judge MacKenzie's response to the questions about her handling of a case dealing with the dog belonging to a neighbor of her questioner.

QUESTIONER 2:

My neighbor recently was in your court because his dog bit a teenage kid who had jumped his fence and was probably trying to break into his house or vandalize his property or something. You ruled that the dog had to be put to sleep when it was the teenage gang member who was trespassing. How can you rule against someone who was doing nothing wrong and stick up for a gang member's right to vandalize?

MACKENZIE:

I believe I know the case you are referring to, that was before my court last August. I can appreciate your concern for your neighbor's safety and the safety of your neighbor's property. However, as I recall the facts of that case, witnesses saw the dog attack the young man on the sidewalk in front of the home, which is considered public property. There is no evidence that he provoked the dog. The dog's owner was in violation of city ordinances requiring the dog to be properly leashed and to have a license.

QUESTIONER 2:

Judge, you don't know what you're talking about. That dog wasn't a threat to anyone - he was just protecting his owner and his owner's home.

MACKENZIE:

You don't know what you're talking about. This was the third incident where this dog had attacked a pedestrian. Simply put, we must enforce ordinances that require dog owners to take care of their animals. We can't afford to have dogs roaming on public property, attacking and biting citizens that walk by. As a dog owner myself, I sympathize with your feelings having to put a dog to sleep, but your neighbor should have controlled his animal in the interest of public safety.

CONCLUSION

The leader should summarize the comments in a way that also reflects the standards outlined in the code, case law, and advisory opinions, and gives the participants reliable guidance based on the study materials, citing specific relevant pages. The leader can then ask the judges:

- Based on this session, what is one step you will take to educate the public about the courts?
- Based on this session, what is one change you may make in the way you handle the media?
- What one ethical standard was clarified for you in this session?

All judges should write their answers down. Some can be asked to report their answers orally.

SCENARIO 3 – INTERVIEW ON THE COURTHOUSE STEPS

NOTES FOR THE SESSION LEADER

The third scenario is designed to raise questions about

- when it is appropriate for a judge to talk to the media about a pending case,
- the distinction between an inappropriate comment on a pending case and an explanation of the procedures of the court,
- appropriate responses to criticism, and
- whether judges should criticize the police and prosecutors.

It may be helpful to point out to the participants that the comments in the scenario are not unrealistic but are based on similar statements discussed in *In re Jimenez*, 841 S.W.2d 572 (Texas Special Court of Review 1992); *Office of Disciplinary Counsel v. Souers*, 611 N.E.2d 305 (Ohio 1993); and *In re Schenck*, 870 P.2d 185 (1994).

The leader should be careful that any discussion does not deteriorate into a recitation of horror stories about the media. Although a few of these may be appropriate to strike a cautionary note, a session spent bashing the media without suggestions for handling them ethically and effectively will not be very constructive.

INTRODUCING THE COURTHOUSE STEPS SCENARIO

1. To set the stage for scenario 3, the participants should be asked for a show of hands in response to the following questions. (The leader may want to emphasize that none of these activities are unethical in themselves depending on what the judge says to the reporter.)

How many of you have been approached by a reporter within the past year? How many have talked with a reporter in the past year? How many refused to speak with the reporter? What types of assistance did you provide?

- Factual information about a case in your court.
- Explanation of legal technicalities, legal language, or the judicial process itself.
- Suggestions steering the reporter to possible judicial stories.
- Help understanding the significance of a case or a decision in your court.
- Help deciding whether a particular case will be worth news media coverage.
- Explanation of something you have done in handling a particular case.
- Help confirming the accuracy of a journalist's story.
- An interview with you for a story on a topic involving the court or court system, but not related to the journalist's coverage of a particular case.

- Access to public court records or to admitted exhibits and evidence.
- Nothing in particular - just a friendly chat.

(These questions are based on those asked in a survey of Wisconsin judges; the results are reported in Drechsel, "Uncertain dancers: Judges and the news media," 70 *Judicature* 264 (February-March 1987)).

2. The participants should be advised that they will be watching a scenario in which a judge is stopped by a reporter on the courthouse steps and asked questions about a supreme court opinion reversing the judge and about criticism of the judge by a police officer. The participants should be asked to look for statements by the judge that:
 - comment on a pending case,
 - explain for public information the procedures of the court,
 - promote or fail to promote public confidence in the integrity and impartiality of the judiciary, or
 - cast reasonable doubt on the judge's capacity to act impartially as a judge.
3. Prior to showing scenario 3, the leader should emphasize that the videotape is not intended as a model for what judges can say when speaking to the public. The scenario only provides a background for discussion of the ethical issues raised.

SMALL GROUP DISCUSSIONS

1. After the courthouse steps scenario is shown, the audience should discuss the issues raised in their small groups. The groups should be instructed that they have 15 minutes to discuss the questions relating to the scenario included in this manual and any additional ones developed by the session leader or judicial educator. (Alternatively, these questions could be answered by a panel of experts arranged before the session.) Each group should choose one of its members to report the consensus of the group after the discussion. Depending on the length of the program, the leader may wish to omit some of the questions, assign each group a different set of questions, or have every group answer the same questions.

Each group should have one member who has been sent the study materials for review before the session to facilitate discussion. This individual would not be a teacher but could point the group toward any relevant authority and keep the discussion heading in the right direction.

2. After approximately 15 minutes, the larger group should reconvene, and the leader should moderate the reports from each small group of its answers to the questions. For example, the leader may ask the reporter for one group for that group's answer to the first question, ask a second group's reporter if that group agreed, and then ask for the second group's answer to the second question, and so on. If an answer or answers seems "wrong" (either unduly restrictive of a judge's speech or inappropriately permissive), the leader may ask for other opinions to ensure that the "right" answer is given. Follow-up questions about the rationale for answers and exceptions to the rules should also be asked.

DISCUSSION QUESTIONS FOR THE COURTHOUSE STEPS INTERVIEW

1. Did Judge Clemens violate the code when questioned by the reporter about the custody case outside the courthouse
 - by stating that "while the supreme court is not always right, they are final. So yes, I will comply"?
 - by correcting the reporter's misstatement about the effect of the supreme court ruling?
2. Do you think a judge should have a policy of never talking to the press about a pending case even if the comments fall within an exception to the rule? Why or why not?
3. Do you think a judge should have a "qualified privilege" to publicly explain his or her side of a public dispute with other public officials?
4. Were Judge Clemens's criticisms of the police in the Tyler case moderate, unmalicious, respectful, and unabusive or did they reveal an attitude that is a discredit to the judiciary?
5. Were Judge Clemens's comments that the district attorney "overcharged Tyler and is overtrying it and will blame me if there is an acquittal. And not for the first time" moderate, unmalicious, respectful, and unabusive or did they cast doubt on the judge's capacity to act impartially as a judge?
6. If a judge disagrees with the police or district attorney's handling of a case or cases, what is his or her responsibility?
 - Do you agree with the statement, "A judge should reveal, not conceal, acts by police officers that may constitute crimes"? (*In re Jimenez*, 841 S.W.2d 572 (Texas Special Court of Review 1992)).
 - Do you agree with the statement that a judge has no duty to make a report on his or her observations and evaluation of a district attorney, particularly to a reporter? (*In re Schenck*, 870 P.2d 185 (Oregon 1994)).

OTHER EXERCISES

1. Draft an explanation of the rationale for the rule prohibiting judges from commenting on pending cases that could be used by a judge answering a reporter's question as a "sound-byte" but does not make the judge look evasive or "wimpy."
2. Arrange for a panel of press representatives and/or persons from the court information office to critique Judge Clemens's performance from the perspective of an effective communication and give tips on handling this kind of situation.
3. Another way of ensuring that the judges are given adequate direction is to have a role play before the whole group of the scenario with the participant playing Judge Clemens giving "better" responses to the reporter's questions. The participants for the role play can be arranged before the session to provide time for preparation or the leader may ask for volunteers after the small group discussions. To facilitate the role play, following is the script for the entire interview on the courthouse steps.

REPORTER:

The Supreme Court just reversed your ruling in the Carrie Roberts custody case. Agreeing with her biological parents, the Hudsons, the court ruled that statements made by the girl to her social worker should have been admitted in court. Do you have any comments?

JUDGE:

No. I make it a policy never to speak to the press about court proceedings.

REPORTER:

Did you have any idea that the supreme court would be announcing this decision today?

JUDGE:

No....but...I'm sorry, I really can't comment on this....

REPORTER:

Well, will you comply with the ruling?

JUDGE:

While the supreme court is not always right, they are final. So yes, I will comply.

REPORTER:

But Judge, the supreme court ruled that the child will be taken away from the only parents she's ever known.

JUDGE:

No, I'm sure the court did no such thing, and you had better make that clear to your viewers. At most, they remanded the case to me for a re-hearing with the social worker testimony admitted. And I'd be surprised if that is the reason for the reversal. As the court records show, we considered those statements carefully, and I'm very comfortable with my ruling that the child's statements were hearsay and not subject to any exception.

REPORTER:

So then is it safe to say that you disagree with the supreme court ruling reversing your decision?

JUDGE:

I really don't want to comment on the decision, particularly before I read it.

REPORTER:

Your honor, Sergeant Tom Hanford was quoted as saying that you're, quote, "chickenshit," unquote, for failing to admit the battery charges filed against Mr. Hudson by his first wife. He cited the Tyler case currently before the court as another example of your failure to admit evidence critical to the outcome of a trial.

JUDGE:

First of all, let me say that the domestic violence allegations against Mr. Hudson were never proven. If I had admitted that evidence the case would surely have been overturned.

Second, in terms of Mr. Tyler's trial, I understand the police concern to solve the crime quickly, but they seemed in too much of a hurry to search Mr. Tyler's residence to bother to obtain a warrant. Some people think that those who live in the 13th district, like Mr. Tyler, are rarely afforded the same Fourth Amendment rights as others in more affluent neighborhoods.

REPORTER:

Are you saying the police targeted minorities in their search for the killer?

JUDGE:

No. Not at all. But District Attorney Davis overcharged Tyler and is overtrying it and will blame me if there is an acquittal. And not for the first time.

REPORTER:

So you feel the prosecution is losing it's case.

JUDGE:

You'll have to excuse me...I'm late for another meeting.

CONCLUSION

The leader should summarize the comments in a way that also reflects the standards outlined in the code, case law, and advisory opinions, and gives the participants reliable guidance based on the study materials, citing specific relevant pages. The leader can then ask the judges:

- based on this session, what is one step you will take to educate the public about the courts?
- based on this session, what is one change you may make in the way you handle the media?
- what one ethical standard was clarified for you in this session?

All judges should write their answers down. Some can be asked to report their answers orally.

SCENARIO 4 - THE TALK SHOW

NOTES FOR THE SESSION LEADER

The fourth scenario is designed to raise questions about

- when it is appropriate for a judge to talk about a pending case,
- the distinction between an inappropriate comment on a pending case and an explanation of the procedures of the court,
- appropriate responses to criticism, and
- bringing to the public's attention problems within the court system.

It may be helpful to point out to judges that it is not unheard of for a judge to appear on a talk show when an appeal from the judge's opinion is pending (*see In the Matter of Hey*, 425 S.E.2d 221 (West Virginia 1992)). Moreover, Judge Stanley is a composite of Judge Broadbelt, a New Jersey judge who acted as a commentator for Court TV on the O.J. Simpson case (*see In re Broadbelt*, 683 A.2d 543 (New Jersey 1996), cert. denied, 117 S. Ct. 1251 (1997)) and Judge Harold J. Rothwax who in 1996 wrote a book titled *Guilty: The Collapse of Criminal Justice*.

INTRODUCING THE TALK SHOW SCENARIO

1. To set the stage for scenario 4, ask the audience to pretend to be a judicial ethics advisory committee that has received a request from a judge who presided over a controversial case, now on appeal, saying he would like to accept an invitation to appear on a television talk show to discuss issues in the case without commenting on the merits. What advice would they give? Why? Would such an appearance violate the code? Assuming such an appearance would be appropriate ethically, would it be prudent? Other questions that may promote discussion are:
 - Do you agree with the statement that the only reason a judge would appear on a television show is in pursuit of personal notoriety and recognition? (*Roush v. Hey*, 475 S.E.2d 299 (West Virginia 1996)).
 - Do you agree with the statement that the commercial and entertainment aspects of a judicial appearance on a television news show might outweigh the legitimate public information aspects? (*Florida Advisory Opinion 96-25*).
2. The participants should be advised that they will be watching a scenario in which two judges will be appearing on a talk show to discuss a case pending on appeal. One of the judges (Judge Clemens) presided in the case; the second judge (Judge Stanley) is from out of state. The participants should be asked to look for statements by the judges that:
 - comment on a pending case,
 - explain for public information the procedures of the court,
 - promote or fail to promote public confidence in the integrity and impartiality of the judiciary, or

cast reasonable doubt on the judge's capacity to act impartially as a judge.

3. Prior to showing scenario 4, the leader should emphasize that the videotape is not intended as a model for what judges can say when speaking to the media. The scenario only provides a background for discussion of the ethical issues raised.

SMALL GROUP DISCUSSIONS

1. After the talk show scenario is shown, the audience should discuss the issues raised in their small groups. The groups should be instructed that they have 15 minutes to discuss the questions relating to the scenario included in this manual and any additional ones developed by the session leader or judicial educator. (Alternatively, these questions could be answered by a panel of experts arranged before the session.) Each group should choose one of its members to report the consensus of the group after the discussion. Depending on the length of the program, the leader may wish to omit some of the questions, assign each group a different set of questions, or have every group answer the same questions.

Each group should have one member who has been sent the study materials for review before the session to facilitate discussion. This individual would not be a teacher but could point the group toward any relevant authority and keep the discussion heading in the right direction.

2. After approximately 15 minutes, the larger group should reconvene, and the leader should moderate the reports from each group of its answers to the questions. For example, the leader may ask the reporter for one group its answer to the first question, ask a second group's reporter if that group agreed, and then ask for the second group's answer to the second question, and so on. If an answer or answers seems "wrong" (either unduly restrictive of a judge's speech or inappropriately permissive), the leader may ask for other opinions to ensure that the "right" answer is given. Follow-up questions about the rationale for answers and exceptions to the rules should also be asked.

DISCUSSION QUESTIONS FOR THE TALK SHOW

1. In general, would you say Judge Clemens's appearance promoted public confidence in the integrity and impartiality of the judiciary? What did he do right? What did he do wrong?
2. Can the comments of Judge Stanley (the out-of-state judge) on the talk show "reasonably be expected to affect the outcome or impair the fairness" of the Brooks case?
3. Do you agree with the statement that public confidence in the judiciary is threatened if a judge from one jurisdiction criticizes the rulings or technique of a judge from a different jurisdiction? (*In re Broadbelt*, 683 A.2d 543 (New Jersey 1996), *cert. denied*, 117 S. Ct. 1251 (1997))
4. Do you think the code of judicial conduct should provide (like the Oregon code) that a "judge shall not, while a proceeding is pending *in any court within the judge's jurisdiction*, make any public comment that might reasonably be expected to affect the outcome or impair the fairness of the proceeding"?
5. Does Judge Stanley's comment that "by sticking to the letter of the law, we end up allowing defense attorneys to blunt the truth in a 'whatever it takes' effort to free their clients" fail to promote public confidence in the integrity and impartiality of the judiciary? If a judge feels this way, what should he or she do?
6. Did the judges' appearance lend the prestige of office to advance the private interest of the television station?

OTHER EXERCISES

1. Arrange before the session for a debate or panel discussion regarding the First Amendment rights of judges. The debaters or panelists should be asked to assume that Judge Clemens has been charged with violating the code of judicial conduct for commenting on the Brooks case on the television talk show in scenario 4. One or more debater or panelist should make an argument that the First Amendment precludes any sanction. One or more should make an argument that the First Amendment does not protect the judge from sanction. Questions for the debaters, panelists, and participants:
 - What governmental interest is advanced by the prohibition on commenting on pending cases?
 - Is the restriction no greater than necessary to advance that interest?
 - Were Judge Clemens's comments protected by the First Amendment?
 - Is your analysis different if the judge charged with improperly commenting on the Brooks case is Judge Stanley, who is from a different jurisdiction? What if Judge Stanley is charged with failing to promote public confidence in the courts by his statement that he is "appalled by the current state of the criminal justice system"?
 - To what extent do you think the First Amendment protects a judge's freedom of speech? To what extent do judges give up their First Amendment rights when they take the bench?
 - Is the 1990 model code version an improvement over the 1972 model code version? Why or why not? Is there a better way of drafting the provision? (*See versions from other states, which are included with this manual.*)
 - Should the canon be changed to allow judges more freedom to respond to criticism on a pending case?
2. Do the exercise on responding to public criticism described for scenario 1.

CONCLUSION

The leader should summarize the discussion in a way that also reflects the standards outlined in the code, case law, and advisory opinions, and gives the participants reliable guidance based on the study materials, citing specific relevant pages. The leader can then ask the judges:

- based on this session, what is one step you will take to educate the public about the courts?
- based on this session, what is one change you may make in the way you handle the media?
- what one ethical standard was clarified for you in this session?

All judges should write their answers. Some can be asked to report their answers orally.

STATE VARIATIONS OF CANON 3B(9) OF THE 1990 ABA MODEL CODE OF JUDICIAL CONDUCT

- ◆ **California** adds: Other than cases in which the judge has personally participated, this Canon does not prohibit judges from discussing in legal education programs and materials, cases and issues pending in appellate courts. This education exemption does not apply to cases over which the judge has presided or to comments or discussions that might interfere with a fair hearing of the case.
- ◆ The **Delaware** and U.S. codes add that the proscription does not extend "to a scholarly presentation made for purposes of legal education." The Delaware and U.S. codes also add in commentary: "If the public comment involves a case from the judge's own court, particular care should be taken that the comment does not denigrate public confidence in the integrity and impartiality of the judiciary in violation of Canon 2A."
- ◆ The **Georgia** code adds a definition for "comment": "Comment" in connection with a case refers to evaluative statements judging the professional wisdom of specific lawyering tactics or the legal correctness of particular court decisions. In contrast, it does not mean the giving of generally informative explanations to describe litigation factors including: the prima facie legal elements of case types pending before the courts, legal concepts such as burden of proof and duty of persuasion or principles such as innocent until proven guilty and knowing waiver of constitutional rights, variable realities illustrated by hypothetical factual patterns of aggravating or mitigating conduct, procedural phases of unfolding lawsuits, the social policy goals behind the law subject to application in various cases, as well as competing theories about what the law should be.
- ◆ The **Louisiana** code states: "A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or bring the judiciary into disrepute. . . ." Louisiana did not adopt the provision permitting comment on a case in which a judge is party.
- ◆ **New York** adds "within the United States or its territories" after "pending in any court."
- ◆ The **North Carolina** code provides: A judge should abstain from public comment about a pending or impending proceeding in any state or federal court dealing with a case or controversy arising in North Carolina or addressing North Carolina law and should encourage similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit a judge from making public statements in the course of official duties or from explaining for public information the proceedings of the Court.
- ◆ The **Oregon** code provides that a "judge shall not, while a proceeding is pending in any court within the judge's jurisdiction, make any public comment that might reasonably be expected to affect the outcome or impair the fairness of the proceeding." The Oregon code adds that the rule does "not prohibit a judge . . . from establishing a defense to a criminal charge or civil claim against the judge or from otherwise responding to allegations concerning the judge's conduct in the proceeding."
- ◆ The **Texas** code provides: "A judge shall abstain from public comment about a pending or impending proceeding which may come before the judge's court in a manner which suggests to a reasonable person the judge's probable decision on any particular case."
- ◆ The **West Virginia** code provides: Except for statements made in the course of official duties or to explain court procedures, a judge shall not make any public or nonpublic comment about any pending or impending proceeding which might reasonably be expected to affect its outcome or impair its fairness.

ADDITIONAL RESOURCES

Abrahamson, "A True Partnership for Justice," 80 *Judicature* 6 (July-August 1996).

Alarcon, "Judicial Speech: Off-the-Bench Criticism of Supreme Court Decisions by Judges Fosters Disrespect for the Rule of Law and Politicizes Our System of Justice," 28 *Loyola of Los Angeles L. Rev.* 795 (1995).

Unjust Criticism of Judges (ABA Subcommittee on Unjust Criticism of the Bench and Courts & Community Committee JAD Lawyers Conference 1986).

"Shall We Dance? The Courts, the Community, and the News Media," 80 *Judicature* 30 (AJS July-August 1996).

Chermerinsky, "Is It the Siren's Call?: Judges and Free Speech While Cases Are Pending," 28 *Loyola of Los Angeles L. Rev.* 831 (1995).

Copple, "From the Cloister to the Street: Judicial Ethics and Public Expression," 64 *Denver University Law Review* 549 (1988).

D'Alemberte, "Searching for the Limits of Judicial Free Speech," 61 *Tulane Law Review* 611 (1987).

Fanning, *A Statewide Program for Improving Media and Judicial Relations* (Minnesota Supreme Court 1989).

Gartner, "An Open Letter to the Judiciary from a Member of the Press," *NJC Alumni*, vol. XII, no. 3, at 15 (Winter 1997).

Gross, "Judicial Speech: Discipline and the First Amendment," 36 *Syracuse Law Review* 1181 (1986).

Kelso, "Time, Place, and Manner Restrictions on Extrajudicial Speech by Judges," 28 *Loyola of Los Angeles L. Rev.* 851 (1995).

Lubet, "Professor Polonius Advises Judge Laertes: Rules, Good Taste and the Scope of Public Comment," 2 *Georgetown Journal of Legal Ethics* 665 (1989).

Milord, *The Development of the ABA Judicial Code* (1992).

A Manual for Managing Notorious Cases (National Center for State Courts 1992).

The National Conference on the Media and the Courts (National Judicial College 1996).

O'Brien, "Speech May be Free, and Talk Cheap, but Judges Can Pay a Heavy Price for Unguarded Expression," 28 *Loyola of Los Angeles L. Rev.* 715 (1995).

Reinhardt, "Judicial Speech and the Open Judiciary," 28 *Loyola of Los Angeles L. Rev.* 805 (1995).

Ross, "Extrajudicial Speech: Charting the Boundaries of Propriety," 2 *Georgetown Journal of Legal Ethics* 589 (1989).

Ross, "Rules for Extrajudicial Speech: Too Broad and Too Narrow," 2 *Georgetown Journal of Legal Ethics* 691 (1989).

Rothman, *California Judicial Conduct Handbook* (1990).

Seigenthaler and Hudson, "Journalism and the Judiciary," *NJC Alumni*, vol. XII, no. 3, at 12 (Winter 1997).

Shaman, Lubet, & Alfini, *Judicial Conduct and Ethics* (1990).

Tate, "The Propriety of Off-Bench Judicial Writing or Speaking on Legal or Quasi-Legal Issues," 3 *Journal of the Legal Profession* 17 (1978).

Tucker, "The Judge's Role in Educating the Public About the Law," 31 *Catholic University Law Review* 201 (1982).