Missed Manners in Courtroom Decorum

Catherine Thérèse Clarke

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Article

MISSED MANNERS IN COURTROOM DECORUM

CATHERINE THÉRÈSE CLARKE*

Table of Contents

INTRODUCTION .............................................. 946
I. A REVIVAL OF LEGAL ETIQUETTE IN AMERICA .......... 951
II. WHAT IS COURTROOM ETIQUETTE, AND IS IT IMPORTANT TO LEGAL REPRESENTATION? .............................. 958
   A. Theoretical Justifications for Courtroom Standards ........ ........ ........ ........ ........ 962
      1. Preservation of Power and Professionalism ........ ........ ........ ........ ........ 962
      2. Efficiency ........................................ 965
         a. Time ........................................ 966
         b. Transaction Costs ................................ 967
         c. Information .................................. 970
      3. Fairness ........................................ 971
         a. Historically Male-Dominated Courtrooms .......... 972
         b. Formalism Safeguards Equality ........ ........ ........ ........ ........ ........ 974
   B. A Practical Justification for Courtroom Etiquette ........ ........ ........ ........ ........ ........ ........ ........ ........ 976
III. ETIQUETTE BREACHES, CONTEMPT OF COURT, AND JUDGES’ DISCRETION TO DECIDE ............................................ 977
IV. ONE STATE’S APPROACH TO COURTROOM DECORUM:
    MARYLAND’S UNWRITTEN CODE OF ETIQUETTE ........ ........ ........ ........ ........ ........ ........ ........ ........ ........ ........ 985
   A. Rise to the Occasion .................................. 987
      1. Standing in Court .................................. 987
      2. Standing Objections ................................ 987

* Assistant Professor, Loyola University School of Law. J.D., Catholic University of America; LL.M., Georgetown University Law Center. The author expresses her appreciation for the assistance of Robert McKnight and Joseph Mandarino.

945
"This is the way my generation was taught," pleaded the judge by way of asking for mercy. In the realm of courtesy, pleading for mercy is known as apologizing. In this instance, a federal judge in Pittsburgh was retreating from having insisted erroneously that a lawyer appearing in his court was legally required to style herself "Mrs." with her husband's surname, rather than following her preference of "Ms." with her birth name. Pennsylvania law, as it turned out, required no such thing.

That the judge's offense was made in an unmannerly way—he not only presumed to tell the lawyer what her own name was but intoned "What if I call you 'sweetie,'" and threatened her with jail—does not shock Miss Manners as much as it should. The emo-
tional vehemence with which people react to etiquette changes is an old story to her.

She is, however, increasingly interested in the use of the generational excuse. When is it valid to plead custom and habit in retaining the etiquette one was brought up on, and when not?

This is not a simple issue. On the one side are people such as this judge who attempt to prevent the evolution of manners by bludgeoning others; but there are also people who simply want to do things the accustomed way without interference. On the other side are those who want to make sweeping reforms and force them on everyone, and those who simply invent their own forms and wonder why others do not understand, let alone employ them.

All over the landscape, there are people who are puzzled and offended by the behavior of others because they are ignorant of old ways, or of new ones, or of who uses which. Somewhere in the middle, desperately trying to get everyone simmered down and make order out of it all, is poor Miss Manners.¹

Miss Manners' concern for etiquette may be found in courtrooms across the state² and the nation.³ In Maryland, a Survey of the state and federal bench reveals a growing belief that courtroom customs may be fading.⁴ One nine-year veteran of the judiciary reports a deterioration of courtroom etiquette particularly among younger attorneys: "Many do not bother to even rise when addressing the court and ... interrupt and argue with [opposing] counsel

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2. The author conducted a survey of the Maryland state and federal benches (222 judges) for opinions on courtroom etiquette [hereinafter Survey]. The Survey was mailed in March of 1989. Sixty-four (or approximately 28%) of the judges responded, including 28 circuit court judges, 30 district court judges, 6 appellate court judges, and 1 federal judge. In Maryland, the district courts are of limited jurisdiction with de novo review by the circuit courts, which are trial courts of general jurisdiction. Above those courts are the Court of Special Appeals and the highest state court, the Maryland Court of Appeals.

The Survey asked judges to consider whether etiquette rules exist; to cite examples of behavior that breaches etiquette rules applicable to attorneys, judges, clerks and the public; and to cite the most common breaches the judge had witnessed in the courtroom.

All Survey responses referred to in this Article are letters, notes, or marginal notes addressed to the author or notes from interviews of Survey respondents and are on file at the Maryland Law Review. Conclusions drawn from the Survey are based either on Survey responses cited individually or on the author's general impressions of the responses taken as a whole.

3. See infra notes 8-14 and accompanying text.

4. See supra note 2. "[T]raditions are fading" among younger attorneys, although older attorneys rarely break the rules, according to one circuit court judge from Prince George's County.
rather than arguing to the court as they should."\(^5\) The decay of etiquette results at least in part from ignorance, which is attributable to the absence of written rules or even orally expressed expectations outlining commonly accepted standards of courtroom behavior. As another judge argues, "judges must bear some of the blame for not being more demanding."\(^6\) To the extent that etiquette standards remain, they vary in degree and form from court to court.\(^7\)

The landmark 1986 report of the American Bar Association (ABA) Commission on Professionalism\(^8\) initiated a national trend toward improving legal professionalism.\(^9\) In recent years, over

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5. Survey response, district court judge, Carroll County. In addition, a Baltimore City circuit court judge responding to the survey commented: "[A]long with society generally, there is a [decline] in both formality and etiquette in the courtroom. Too often, especially in the criminal courts, public defenders and prosecutors alike burn out all too quickly, and with this, comes a sense of 'let's get this over with.'"

6. Survey response, circuit court judge, Baltimore City. One commentator suggests the same:

   After I tried my first cases, when it was still apparent I didn't know what the hell I was doing, the judges would pull me aside at the end of a case and invite me into their chambers, and we'd talk about trial practice, about how I should handle myself in the courtroom. The judges felt that there were standards of practice in that community and the judges helped the young lawyers who came into the community to grow into those standards. Judges are too busy today. D'Alemberte, *On Legal Education*, A.B.A. J., Sept. 1990, at 52-53.

7. The Survey responses show that standards vary according to geographic location, a court's level in the judicial system, the individual judge or courtroom, and socio-economic factors and lifestyles within each jurisdiction. In the smaller counties where the caseload is typically lighter and a smaller group of lawyers make up the local bar, judges' responses indicated an attitude of reduced formalism. Based on the author's experience in the Maryland criminal courts and discussions with a few judges, the smaller, rural courts do not demand strict etiquette, perhaps because a majority of the attorneys are well-known by the clerks and judges; lawyers know what is expected of them; lifestyles are generally less formal; and time pressures are not as significant, although this may be changing in some rural Maryland jurisdictions as the population increases. In these districts, the courthouse is a place of familiarity rather than formality. *See infra* note 189.

   By contrast, in the larger urban courts, judges' responses demanded better etiquette from all lawyers as well as from witnesses and the public. In more crowded urban courtrooms the dockets are significantly larger; there are a greater number of unfamiliar attorneys who practice before the judges; large numbers of the public attend the court proceedings; and overall concerns for judicial economy are greater.


   Since the landmark 1986 report by the ABA's Commission on Professionalism, everyone, it seems, wants to do something about lawyer professionalism. From Oregon to Massachusetts, bar committees, commissions, task forces and panels have issued reports, statements, tenets, creeds and codes. These
twenty-six state and at least thirty-six local bar associations have conducted studies on professionalism or adopted codes of professional conduct. In addition, two sections of the ABA have adopted their own codes of professionalism.

The self-image of their profession clearly troubles lawyers. For example, the preamble to the Los Angeles County Bar Association documents describe in varying detail how lawyers should comport themselves, and how best to educate and encourage them to do so.

10. Id. Most state bar associations have either completed professionalism reports, see infra note 320 and accompanying text, or adopted professionalism codes. Numerous state and local bars have officially adopted written codes of professional conduct. In addition, two sections of the ABA have adopted their own codes of professionalism.

Id. 11. See Section of Torts & Insurance Practice, American Bar Ass'n, A Lawyer's Creed of Professionalism (1988); Young Lawyers Division, American Bar Ass'n, Lawyers' Pledge of Professionalism (1988). In addition to the state and American Bar Association codes, in 1988 the American Board of Trial Attorneys adopted the Attorney's 10-point Pledge on Courtesy.

12. Jill Nicholson, of the ABA, states that professionalism is a "pervasive societal problem" and "partly a self-image" problem of lawyers. Once lawyers improve their own self-image and feel better about themselves and the profession, she says, matters should improve. Nicholson maintains that the national trend of studying declining professionalism is a very healthy process of self-examination; nevertheless, she feels that the end results of improved professionalism will be difficult to gauge. Telephone interview with Jill Nicholson, Professionalism Counsel, of the ABA Special Coordinating Committee on Professionalism (Feb. 5, 1991).

See also McKay, The Road Not Traveled, Charting the Future for Law, Law Schools and Lawyers, A.B.A. J., Nov. 1990, at 76, 77 (suggesting lawyers should stop worrying about "image" and focus instead on providing competent legal services that will take care of the negative public perception).
tion's Litigation Guidelines states that relations between lawyers, particularly litigation attorneys, have deteriorated to the point that "our profession nears a crisis."\textsuperscript{13} This local bar association and others have adopted litigation guidelines to govern attorneys' conduct outside of court as well as in the courtroom.\textsuperscript{14} Indeed, courtroom etiquette is a significant component in the movement to improve the general state of professionalism in the practice of law.

This Article will focus on courtroom etiquette, identifying the theoretical and practical justifications for establishing written etiquette standards for court proceedings. In addition, it will discuss the state of etiquette in Maryland courtrooms as revealed by a survey of Maryland judges.\textsuperscript{15}

In 1990, the Maryland Court of Appeals adopted a requirement that bar applicants attend a one-day course on professionalism as a condition precedent to Maryland Bar admission.\textsuperscript{16} Responsibility for developing the course lies with the Maryland State Bar Association's Standing Committee on Professionalism.\textsuperscript{17} Rule 11 of Maryland's rules governing admission to the bar provides that the professionalism course will be offered for three years and, upon evaluation by the Court of Appeals, may be extended thereafter.\textsuperscript{18} This Article will argue that, although Maryland's new mandatory course on professionalism is a laudable attempt to remedy declining professionalism in the bar, it is targeted at the wrong group of peo-

\textsuperscript{13} Los Angeles County Bar Ass'n, Litigation Guidelines preamble (adopted Apr. 1989) (guidelines focus primarily on pretrial communications between lawyers, including depositions, written memoranda, motions, settlements and trials).

\textsuperscript{14} See id. Two guidelines govern lawyers at trials and hearings: "Counsel should be punctual and prepared for any court appearance [and] ... Counsel should always deal with parties, counsel, witnesses, jurors or prospective jurors, court personnel and the judge with courtesy and civility." \textit{Id.} § 12.

\textsuperscript{15} See supra note 2.

\textsuperscript{16} See Rules Governing Admission to the Bar of Maryland Rule 11(a) (1991). Before admission to the Bar, a person recommended for admission pursuant to Rule 10 shall complete a course on legal professionalism. For good cause shown, the Court of Appeals may admit a person who has not completed the course provided that the person represents to the Court that he or she will complete the next regularly scheduled course. \textit{Id.} The course will be offered twice annually after bar admission and prior to the admission ceremonies. A course fee covering costs may be charged to admittees. \textit{See id.} rule 11(b).

\textsuperscript{17} See id. rule 11(b). Edward F. Shea, Jr., is currently Chair of the Standing Committee on Professionalism. The Committee is charged with creating a course curriculum, which is subject to final approval by the Maryland Court of Appeals. The Daily Record, May 1, 1989, at B1.

\textsuperscript{18} See Rules Governing Admission to the Bar of Maryland Rule 11(c) (1991).
people at an inappropriate time in their professional development.¹⁹

Following the lead of other state bar associations, the Maryland State Bar Association's professionalism committee is also developing professional courtesy guidelines. The Maryland guidelines of professional conduct will supplement the Maryland Rules of Professional Conduct²⁰ and serve as aspirational standards for Maryland lawyers.²¹ While the primary responsibility to teach courtroom etiquette lies with the law schools,²² published guidelines set forth both by the courts and by bar associations will supplement efforts to improve courtroom conduct. The more members of the legal community shedding light on courtroom etiquette, the better. Untaught and unlearned rules serve only to frustrate both the bench and bar.

I. A REVIVAL OF LEGAL ETIQUETTE IN AMERICA

Beginning in the late 1960s and early 1970s, bar journals and law reviews notably increased the number of articles they published on professionalism or legal etiquette.²³ This interest in such issues

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¹⁹. See infra subsection V(A)(3)(b) and accompanying notes.

²⁰. The Maryland Rules of Professional Conduct define responsibilities that are more intrinsically legal than they are responsibilities of etiquette. Toward opponents, the Rules require a general standard of fairness. See MARYLAND RULES OF PROFESSIONAL CONDUCT Rule 3.4 (1991). Maryland lawyers may not obstruct access to evidence by destruction or concealment, falsify evidence, instruct witnesses to lie, or make frivolous discovery requests. Id. rule 3.4 (a), (d).

²¹. Violations will probably not be sanctioned and should not be sanctioned as are violations of the ethical code; rather, the courtesy guidelines will serve as aspirational standards. See The Daily Record, May 1, 1989, at B1.

²². The ABA Committee on Professionalism notes: "We begin our recommendations with law schools, not because they represent the profession's greatest problems, but because they constitute our greatest opportunities." COMMISSION ON PROFESSIONALISM, supra note 8, at 15.

began after tumultuous trials on politically sensitive issues sug-
gested a decline in public respect for the judicial system. Among
the most notorious of these trials was the prosecution of the so-
called "Chicago Seven" for allegedly inciting riots at the 1968
Democratic National Convention.24 The courtroom antics of
the defendants included giving clenched fist salutes to the jury; wearing
judicial robes in court; blowing kisses to the jury; trying to drape
counsel table with flags; parading into court with a birthday cake;
and shouting numerous derogatory and obscene comments at the
judge. The judge ordered some of the defendants bound and
gagged and held all of them in contempt of court.25 In fact, the
defendants amassed 121 contempt citations during their four-month
trial, and two of their attorneys, Leonard I. Weinglass and William
M. Kunstler, also received thirty-eight contempt of court citations.26

More recently, members of the legal profession have renewed
their demands for stricter standards governing conduct.27 Numer-
on Disruption of the Judicial Process of the American College of Trial Lawyers; the
Report of the Advisory Committee on the Judge's function; and their proposed rules);
Karlen, Disorder in the Courtroom, 44 S. CAL. L. REV. 996 (1971) (discussing how a repetition
of what happened in the Chicago trial can be avoided in the future); Wright, Court-
room Decorum and the Trial Process, 51 JUDICATURE 378 (1968) (discussing judicial methods
for controlling the courtroom from the early stages of opening court sessions through
closing arguments); Comment, Controlling Lawyers by Bar Associations and Courts, 6 HARV.
C.R.-C.L. L. REV. 301 (1970); Note, Misconduct of Judges and Attorneys During Trial, 49 IOWA
L. REV. 531 (1964) (examining the in-court misconduct of attorneys and judges and the
various sanctions available to the courts).

24. In re Dellinger, 461 F.2d 389 (7th Cir. 1972). For a full discussion of the "Chi-
cago Seven" trials, see SPECIAL COMM. ON COURTROOM CONDUCT, ASS'N OF THE BAR OF
THE CITY OF NEW YORK, DISORDER IN THE COURT 56-63 (1973); see also Comment, Invok-
ing Summary Criminal Contempt Procedures—Use or Abuse? United States v. Dellinger—The 'Chi-
cago Seven' Contempts, 69 Mich. L. REV. 1549 (1971) (discussing the development of
contempt law and judicial approaches to direct criminal contempt).

25. See United States v. Seale, 461 F.2d 345, 374 (7th Cir. 1972) ("[Seale's] con-
 tinued disruptive conduct made it necessary for the first time within the experience of this
court to physically and forcibly restrain him").

26. Kunstler was cited twenty-four times and received a sentence of four years and
thirteen days. Dellinger, 461 F.2d at 402. Weinglass was cited a total of fourteen times
and received a sentence of one year, eight months and five days. Id. at 403. In 1972, the
Seventh Circuit reversed all 159 contempt citations issued against the defendants and
attorneys on the ground that the judge erred by waiting until the end of the trial to
punish the defendants and lawyers. See id. at 396-97.

27. Compare Alschuler, Courtroom Misconduct by Prosecutors and Trial Judges, 50 TEX.
L. REV. 629 (1972) with articles cited infra notes 28-29. Professor Alschuler examined in
1972 the misconduct of prosecutors and trial judges and concluded that the existing
mechanisms for disciplining such misconduct were largely ineffective. He urged that it
was time to reconsider the system as a whole. See id. at 735. See also Lawyers Object to
Colleagues' Rudeness, Wall St. J., June 24, 1991, at B1, col. 1 ("[L]awyers and judges la-
ment how a profession once characterized by mutual respect and lasting relationships
has become marked by increasingly abrasive confrontations.").
ous attorneys and judges have written articles calling for the development of rules of conduct or lawyers' codes of professional courtesy. Moreover, stern responses from the bench to alleged acts of impropriety show the gravity of concern. For example, a Penn-

28. *Principles of Professional Courtesy*, VA. L. W., July 1, 1989, at 29. Article II of Virginia's professional courtesy code goes so far as to state that lawyers in courtrooms should "make it a practice to shake hands with opposing counsel at the conclusion of a trial." See also Hazard, *Change Rules to 'Civilize' the Profession*, Nat'l L.J., Apr. 17, 1989, at 13, col. 3 (discussing the call for civility emerging in the legal profession); Martin, *Collegiality: You Mean I Have to Act Like a Human Being???,* 20 Ark. L. W. 166 (1986) (discussing suggestions for restoring collegiality among practicing attorneys). In George, *A Plea for Civility: Lawyer's 10-Point Pledge*, TRIAL, May 1988, at 65, the author suggested the following pledge:

(1) I will treat other lawyers with respect;
(2) I will return phone calls;
(3) I will not be tardy for court or for appointments;
(4) I will prepare my case fully in advance;
(5) I will cooperate with my opponent as much as possible;
(6) I will scrupulously observe all mutual understandings;
(7) I will never take cheap shots;
(8) I will stand in court when asking a question, local rules and traditions permitting;
(9) I will not interrupt or raise my voice to a judge;
(10) I will know the rules of court and follow them.

Id. See also Reiter, *Whatever Happened to Professional Courtesy??*, 64 Fla. B.J. 4 (1987), recommending eight standards of professional courtesy:

(1) attorneys should treat each other, the opposing party, the court and the members of the court staff with courtesy and civility and conduct themselves in a professional manner at all times;
(2) attorneys should consult with opposing counsel before scheduling hearings and depositions in a good faith attempt to avoid scheduling conflicts;
(3) notice of cancellation of hearings and depositions should be given to the court and opposing counsel at the earliest possible time;
(4) proposed orders to be submitted to the court should be prepared promptly, and proposed orders on a nonroutine matter should be submitted to opposing counsel before being submitted to the court;
(5) attorneys should cooperate with each other when conflicts and calendar changes are necessary and requested;
(6) except where any material right of the client is involved, counsel should stipulate to matters in order to avoid unnecessary hearings;
(7) when scheduling hearings, counsel should attempt to secure sufficient time to allow full presentation and to allow opposing counsel equal time in response;
(8) reasonable extensions of time should be granted to opposing counsel where such extension will not have a material adverse effect on the rights of the client.


29. *Can Good Lawyers Be Nice People??,* BARRISTER, Summer 1989, at 34 (quoting United States Judge Sidney Allen Fitzwater's advice on how to increase professionalism in American trial advocacy).
Maryland Law Review

A Pennsylvania trial judge cited an attorney for contempt and fined him $2,000 for his derogatory remark about the judge. The remark had been made out-of-court.\(^\text{30}\)

Courts generally are reluctant to impose formal rules of courtroom decorum. Texas presents the exception. In an unprecedented en banc opinion, the United States District Court for the Northern District of Texas denounced “hardball” trial tactics and adopted the Dallas Bar Association’s Guidelines of ProfessionalCourtesy and its Lawyer’s Creed.\(^\text{31}\) Both are rules of courtesy that go beyond the code of professional conduct and “basically define the lowest common denominator acceptable to professional performance.”\(^\text{32}\)

Some prefer to leave the development of these courtesy codes to local bar associations\(^\text{33}\) and the ABA rather than to courts, fearing satellite litigation similar to the wave of rule 11 litigation.\(^\text{34}\) Many of the recently drafted professional courtesy codes address

30. Moffatt v. Buano (In re Garbett), 391 Pa. Super. 1, 569 A.2d 968 (1990). A courtroom administrator overheard the attorney call the judge an “asshole” and reported it to the judge. Upon entering the courtroom, the judge ordered the lawyer to repeat his comment, which he did. The judge then held the lawyer in contempt of court and ordered him committed to the county jail. The lawyer was given an opportunity to apologize. Because the lawyer did not apologize directly to the court, the court continued to sentence him to jail. The court immediately proceeded to hold a contempt hearing. The lawyer was ordered to pay a fine of $2,000. The Pennsylvania Superior Court later revoked both the fine and citation, holding that an attorney who made an offensive reference to a judge in a courtroom hallway could not be held in contempt where there was no evidence that the remark was made with the intent of obstructing justice or that it actually obstructed justice. Id. at 970.

See also Commonwealth v. Restifo, 330 Pa. Super. 225, 229, 488 A.2d 633, 635 (1985) (“Mere affront [or]. . .[r]emarks that are injudicious, or even disrespectful, will not, without more, justify a summary conviction for contempt of court.”).


32. Good Manners Mandated, supra note 31, at 1 (quoting Robert B. Cummings of Chicago, Ill., co-chair of the professional responsibility committee) (emphasis added).

33. In 1986, the Little Rock, Arkansas Bar Association was the nation’s first to draft a courtesy code. See The Daily Record, May 1, 1989, at B1, col. 1. Other state bar associations have since adopted their own versions, as well as sections of the American Bar Association and the Association of Trial Lawyers of America. See, e.g., supra notes 10 and 11 and accompanying text.

34. See FED. R. CIV. P. 11. See also Good Manners Mandated, supra note 31, at 7 (Stephen R. Steinberg, Chair of the ABA Trial Practice Committee, asserts that courts should make decisions about attorney conduct on a case-by-case basis and only when these groups fail to act).
out-of-court etiquette breaches, perhaps the "lesser-included offense" of violating the Code of Professional Responsibility. Nevertheless, as the Texas and Pennsylvania cases show, judges are not likely to remain silent on issues of courtroom etiquette.

The discussion that follows addresses only in-court etiquette standards and omits out-of-court etiquette problems. Indeed, the latter is intertwined with these in-court behavioral standards and both issues constitute an escalating concern to attorneys and judges. The distinction, however, between in-court and out-of-court etiquette breaches is made for the purpose of considering the usefulness of courtroom etiquette expected of litigators. In-court breaches may have a more immediate and direct impact on a client's representation than out-of-court breaches because they occur before the trier of fact. Often attorneys may be unaware that their in-court conduct violates principles of etiquette—particularly when a judge concludes that such behavior is of minor concern and thus

35. For example, Article II of Virginia's recently adopted Principles of Professional Courtesy, which addresses courtesy toward other counsel, is divided into two sections. See Virginia State Bar, Principles of Professional Courtesy art. II (1988). As far as conduct outside of court, the provision states that "[a] lawyer should return telephone calls and respond to written communications in a timely manner." Id. It also sets forth rules governing lawyers' conduct specifically inside the courtroom. E.g., supra note 28.

36. The Supreme Court of Texas was the nation's first state court of last resort to adopt a code of professionalism for all attorneys practicing in the state. It was at an ABA convention, wrote Justice Eugene A. Cook, that he learned that the decrease in professionalism was the largest single problem facing the profession and existed from New York to Seattle to Los Angeles to West Palm Beach. This was the topic that lawyers wanted to talk about and wanted to address. We are addressing the problem and we intend to do something about it.


For other instances of the bench's interest in the lawyers' conduct, see Samborn, Taming the Loose Cannons, Nat'l L.J., Jan. 15, 1990, at 1, col. 3 (discussing the Judicial Conference of the Seventh United States Circuit Court of Appeals' survey). An ad hoc Committee on Civility surveyed over 1500 litigators and judges in three states—Illinois, Indiana, and Wisconsin—after a significant number of complaints from judges and attorneys about professional conduct. The Seventh Circuit survey is litigation-oriented and defines civility as "the professional conduct in litigation proceedings of judicial personnel and attorneys. The term is not limited to good manners or social grace." Id. at 22, col. 1.

37. For example, in Colorado, the El Paso County Bar Association Standards of Professional Courtesy and a call for civility across the state were caused by "[t]he wolverine approach to the practice of law under the guise of aggressive representation . . . . The courts and individual lawyers have decried lawyers' refusal to cooperate in settling matters and in facilitating discovery as well as their making of personal derogatory comment at depositions." Briggs, supra note 28, at 213. There were other specific problems highlighted by the bar association in that lawyers did not return phone calls and were verbally abusive to over-worked court clerks and law office employees. Id.
does not bring it to the attention of the attorneys committing the breach. Recurring breaches of etiquette before a judge potentially harm the litigant in the long run, because they may aggravate the judge to the extent that her judgment on the case’s merits is unconsciously affected. Aristotle wrote:

When people are feeling friendly and placable, they think one sort of thing; when they are feeling angry or hostile, they think either something totally different or the same thing with a different intensity: when they feel friendly to the man who comes before them for judgment, they regard him as having done little wrong, if any; when they feel hostile, they take the opposite view.\(^\text{38}\)

Out-of-court breaches of etiquette include abuses of the discovery process (including misrepresentations to opposing counsel and concealing relevant information, particularly in settlement negotiations), inappropriate motions practice, uncooperativeness in pre-trial preparations for a case,\(^\text{39}\) and \textit{ex parte} communications.\(^\text{40}\) Consistent patterns of misconduct out-of-court could conceivably amount to violations of the Code of Professional Responsibility or Model Rules.\(^\text{41}\) In contrast to in-court breaches, these issues may be handled through discovery sanctions, contempt of court orders, and other systemic means.\(^\text{42}\) All states have court rules or laws providing an avenue for attorney disciplining such as state bar disciplinary boards.\(^\text{43}\) For example, in a case involving one attorney’s out-of-

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38. \textit{ARISTOTELE}, Bk. I, Ch. 15, \textit{Rhetoric} II *1377b 32.
39. One judge responded that etiquette in court is “usually good,” although he distinguished out-of-court etiquette breaches that occur: “errant problems arise at depositions or settlement conferences.” Survey response, circuit court judge, Anne Arundel County.
40. \textit{See, e.g., Los Angeles County Bar Ass’n, Litigation Guidelines} (1989). Also, in Houston: “A lawyer owes opposing counsel courtesy, candor, cooperation in all respects not inconsistent with a client’s interest, and scrupulous observance of all mutual agreements and understandings. Ill feelings between clients should not influence a lawyer’s conduct, attitude, or demeanor toward opposing lawyers.” \textit{Houston Bar Ass’n, Professionalism: A Lawyer’s Mandate} (1989). The mandate then lists seven guidelines for appropriate pre-trial conduct in filing motions, pleadings, discovery, depositions, and business transactions. \textit{See id.}
41. DR 1-102(A)(4) and (5) and DR 7-101(A)(1), 1989 Selected Standards on Professional Responsibility. \textit{See Model Rules} 3.4; Rule 4.1(a) and 8.4(a), (c), (d). \textit{See also infra} notes 42-44. The ABA Commission Report at 42-43 states: “There is widespread recognition that, in appropriate cases, sanctions should be used to penalize baseless filings, dilatory tactics and deter similar misconduct . . . .”
42. A repetitive course of in-court misconduct could likewise arise to contempt of court. \textit{See infra} Part III, discussing misconduct as contempt of court versus a breach of etiquette.
43. \textit{See, e.g., Ala. Rules of Disciplinary Procedure} (1990) (establishing the Ala-
court verbal abuse of an adversary, the District of Columbia Court of Appeals wrote that "[a] potential mechanism available to deal with outrageous conduct by a lawyer . . . may be the policing function of the bar disciplinary committee."44 Lodging a complaint with the bar against counsel who has repeatedly been abusive out-of-court saves the court time and resources, which are ill-spent on the complex and far-reaching problems of attempting to modify an attorney's overall professional behavior and relationships with other attorneys. In terms of judicial economy, therefore, courts are best left to deciding the substantive legal issues presented and maintaining control over the courtroom proceedings. Serious out-of-court

bama Supreme Court's jurisdiction to handle violations of either the attorney's oath of office or the Code of Professional Responsibility, whether or not the act or omission occurred during the course of the attorney-client relationship. The Rules also provide for a state bar disciplinary board, a disciplinary commission and procedures for lodging complaints; Ark. R. Prof. Conduct 8.3 (1988) (stating that lawyers must maintain the integrity of the profession by reporting professional misconduct where there is a substantial question as to a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects); Cal. Bus. & Prof. Code § 6077 (West 1990) (willful breach of the Rules of Professional Conduct must be reported to the board, which has the power to discipline members of the bar by reproof, public or private, or to recommend to the Supreme Court suspension for not more than three years); Conn. Gen. Stat. Ann. § 51-90 (West Supp. 1990) (establishing a state-wide grievance committee of fifteen persons with duties to adopt rules of procedure and rules for grievance panels, to investigate and to present to the proper court "any person deemed in contempt . . . ." (emphasis added)); D.C. Code Ann. § 11-2502 (1989) (vesting the District of Columbia Court of Appeals with the authority to "censure, suspend from practice or expel a member of its bar for crime, misdemeanor, fraud, deceit, malpractice, professional misconduct, or conduct prejudicial to the administration of justice."); Haw. S. Ct. R. Ann. 2.4 (1991) (establishing the Disciplinary Board of the Hawaii Supreme Court with the authority to investigate "any alleged grounds for discipline or alleged incapacity of any attorney called to its attention, or upon its own motion, and to take such action with respect thereto as shall be appropriate to effectuate the purposes of these Disciplinary Rules."); Indiana Rules for Admission to the Bar and the Discipline of Attorneys R.23 (Burns 1991) (establishing disciplinary commission and grounds for discipline or suspension for violation of the Rules of Professional Conduct and stating that attorneys licensed in Indiana are obliged to conduct themselves "at all times in a manner consistent with the trust and confidence reposed on [them] by this court and in a manner consistent with [their] duties and responsibilities as an officer or judge of the courts of this state"); Tex. Govt. Code Ann. § 81.030-.064 (Vernon 1986) (grievance committee established to investigate and discipline attorneys for misconduct); Wis. S. Ct. R. Ann. 21.01 to 21.15 (West 1990) (creating the position of a Professional Responsibility Administrator and requiring that the state bar divide the state into districts with a professional responsibility committee in each district to investigate possible attorney misconduct).
disobedience or misconduct by members of the bar is an issue better left with state bar associations and disciplinary committees in the event that court sanctions or contempt orders are ineffective.

II. WHAT IS COURTROOM ETIQUETTE, AND IS IT IMPORTANT TO LEGAL REPRESENTATION?

The etymological origins of the word “etiquette” are the German variant of the term “stechen,” which means “stick,” with emphasis on the notion “to impale” or “to embroider.” In time, the terminology evolved into the medieval French terms “estiquet or estiquette,” meaning “a label.” In the 1700s, labels implied a certain order, which developed into the modern meaning of “court ceremonial, hence formal good manners.” Modern references to etiquette, however, generally conjure up images of Miss Manners and Emily Post. Thus, some may view etiquette rules as paleolithic rules of formality typically followed by people with a “high sense of occasion” who have nothing better to do than to follow these ritualistic behaviors at the appropriate time and place.

Contemporary Western philosophers have devoted relatively little attention to etiquette, despite its prominence in classical antiquity. Although “Confucianism, Taoism, and Buddhism share the view that etiquette is inseparable from morality,” for purposes of analyzing courtroom etiquette specifically, etiquette will not be con-

46. Id. at 668. The French derivation of this reference to a label later evolved into the current English meaning of the word “etiquette.”
47. Id.
49. “The richness of civilized society depends on the ability to understand the subtleties of context, to manage more than one style of behavior, and to have a high sense of occasion. Knowing how to behave is only part of the struggle. One must also know when and where.” J. Martin, supra note 1, at 11.
50. In the nineteenth century, a relatively small amount of information on legal etiquette rules existed, appearing primarily in English, New Zealand, and Australian publications. See, e.g., W. Boulton, A Guide to Conduct and Etiquette at the Bar of England and Wales (6th ed. 1975) (discussing forms of address, decorum, and general principles of legal etiquette in the four levels of the British court system); Simon of Glaisdale, My Learned Friend, 59 Law Inst. J. 1223 (Nov. 1985) (discussing British legal etiquette codes); Sullivan, Practice Direction—District Courts, 1980 New Zealand L.J. 147 (discussing legal etiquette in the courts of New Zealand). Few contemporary American scholars have devoted their efforts to the topic of etiquette in society. See Martin & Stent, I Think, Therefore I Thank—A Philosophy of Etiquette, 59 Am. Scholar 237 (1990) (discussing the relationship between morality, law, and etiquette).
51. Martin & Stent, supra note 50, at 237.
MISSED MANNERS IN COURTROOM DECORUM

Social etiquette may be defined broadly as standards for outward human behavior based on normative rules for social conduct that are generally accepted among members of society. Courtroom etiquette, however, is more narrowly defined as a code of behavior for attorneys and judges. That code not only incorporates overall concerns for good manners and politeness, but also extends to the human interaction within the confines of a courtroom setting and focuses on professionalism as a positive goal to be achieved when lawyers conform to the etiquette. Courtroom etiquette is a code of professional behavior designed by and for lawyers.

The premise that professionalism is a positive good to be achieved should not be accepted without question. Specifically, is the current quest for professionalism a move toward manipulative role-playing and therefore potentially harmful to society? To some scholars, anti-professionalism is the goal because professionalism is a form of abuse by those members of society who justify their special status based on “cognitive exclusiveness.” In other words, those with the special status have unique access to an area of knowledge that is critical to society’s overall well-being and they block the rest of society from this information to secure their position in society. This form of professional abuse has been said to be “typified by the behavior of lawyers” who are entrusted with the discovery and protection of truth. In reality, the critics of professionalism claim, lawyers deliberately obfuscate the truth by using procedural strata-gems in their craft (such as etiquette). In the process, justice and the general welfare are sacrificed to the special interests of the legal profession.

52. “Well-mannered persons can be outrageous criminals. . . . But while all well-mannered folks are not necessarily moral, all moral folks are usually well-mannered.” Brown, Narcissism, Manners, and Morals: Can Grace and Collegiality Be Salvaged?, LITIGATION, Winter 1987, at 17.
53. Martin & Stent, supra note 50, at 245, 248; see also Kelsen, The Dynamic Aspect of Law, in PHILOSOPHY OF LAW 28 (J. Feinberg & H. Gross, eds. 1975) (discussing law as a normative order).
54. Indeed, the ABA Commission on Professionalism noted in its preface that increased professionalism is the major goal of its effort to improve the public’s perception of lawyers. COMMISSION ON PROFESSIONALISM, supra note 8, at v.
55. “Etiquette of the [legal] profession” is defined as the “code of honor agreed on by mutual understanding and tacitly accepted by members of the legal profession, especially by the bar.” BLACK’S LAW DICTIONARY 497 (5th ed. 1979). The Survey of Maryland judges and the variance among codes of professional conduct demonstrate that there is no consensus, agreement, or tacit acceptance of one uniform code of honor.
57. See id.
58. Id.
profession. The worst casualty of this effort to become a professional is said to be the person who surrenders his or her values for false priorities:

The list of casualties left in the wake of professionalism grows—the client, society, truth, value; but perhaps the casualty most often lamented in anti-professionalist polemics is the self or soul of the professional himself. For it follows that if a profession has given itself over to hypocrisy, secrecy, expansion for expansion’s sake, mindless specialization, and the like, its members have necessarily surrendered their values and ideals to these same false priorities. . . . [I]n the act of becoming a professional one is in danger of losing his very humanity.

The countervailing assessment of the legal profession’s quest for greater professionalism—which necessarily includes etiquette standards to create and guide professionals’ conduct—is that it is not a destructive process that transforms lawyers into vessels of “empty and self-serving careerism.” Enforcement of legal etiquette rules instead may be viewed as constructive beyond securing lawyers’ professional position in society: it also promotes fairness and efficiency in the search for truth.

Most children are taught through literature that good manners and social normative rules of behavior play a role in how we view a society, its members, and the sophistication of society’s governance scheme. For example, in the infamous courtroom scene in Alice in Wonderland, disorder and chaos prevailed over the proceedings. The litigants broke unknown, often-changing rules of decorum and

60. Id. at 216-17.
61. Id. at 217.
62. Etiquette is not a destructive tool of the profession, but rather promotes individual and collective fairness. Moreover, realists assert that etiquette promotes efficiency by limiting the use of judicial resources in the adjudicatory process. See Wilkins, Legal Realism for Lawyers, 104 Harv. L. Rev. 468 (1990).

To predict the operation of legal rules, a lawyer must consider the entire range of factors that might bear on actual outcomes, including the difficulty of detecting breaches in rules, the amount of resources committed to enforcement, and the personal biases of decisionmakers. If a lawyer is entitled to consider all these factors in determining the ‘bounds of the law,’ legal restrictions will be more malleable and expansive. . . . This danger is clear with respect to rules of professional conduct, which tend to be systematically underenforced.

Id. at 492-93.
thereby irritated the king, who ordered them—and sometimes their attorneys—beheaded. Through this scene from literature, real-world questions arise: Does rude behavior detract from justice? Or, to rephrase the question, would more courtesy improve the quality of justice?

Differing views exist with respect to the rationale for courtroom etiquette. Some judges assert that etiquette is essential to the administration of justice; others are more concerned with the substance of courtroom interaction rather than its form. At least three theories justify the existence of rules of courtroom etiquette: (1) preservation of power and professionalism; (2) efficiency; and (3) fairness. These three theoretical justifications provide a foundation for the current national movement toward the formal codification of etiquette and professionalism guidelines. In addition to the theoretical justifications for codification, the practical argument exists that a broad-based knowledge of legal etiquette is necessary in order for lawyers to be more effective advocates.

64. Id. at 142-48.

The first witness was the Hatter. He came in with a teacup in one hand and a piece of bread-and-butter in the other. "I beg pardon, your Majesty," he began, "for bringing these in; but I hadn't quite finished my tea when I was sent for."

"You ought to have finished," said the King. "When did you begin?"

....

"Take off your hat," the King said to the Hatter.

"It isn't mine," said the Hatter.

"Stolen!" the King exclaimed, turning to the jury, who instantly made a memorandum of that fact.

....

"Give your evidence," said the King; "and don't be nervous, or I'll have you executed on the spot. . . ."

....

"Give your evidence," the King repeated angrily, "or I'll have you executed, whether you're nervous or not."

....

"You may go," said the King; and the Hatter hurriedly left the court, without even waiting to put his shoes on.

"—and just take his head off outside," the Queen added to one of the officers; but the Hatter was out of sight before the officer could get to the door.

Id.

65. Some judges answering the Survey maintained that strict adherence to rules of decorum may cause the judicial process to move more slowly and inefficiently.

66. "[D]ecorum is essential to administration of justice even with the heavier workload." Survey response, circuit court judge, St. Mary's County. Another judge counters that "I'm a big believer in substance over form." Survey response, district court judge, Wicomico County. This comment suggests that etiquette may not be viewed by everyone as essential to dispensing justice.
A. Theoretical Justifications for Courtroom Standards

I. Preservation of Power and Professionalism.—A small book entitled *A Guide to Conduct and Etiquette at the Bar of England and Wales* offers a very practice-oriented list of the principles governing practice as a member of the English bar.67 One principle set forth in the *Guide* provides: "It is the duty of every member of the Bar at all times to uphold the dignity and high standing of his profession, and his own high standing as a member of it."68 How this duty applies in practice is unclear; nevertheless, all who read it appreciate the significance of the words. A familiar justification for codification of etiquette standards is that rules preserve professionalism and the power structure.69 In other words, courts are respected if they are respectable. Society allocates decisional authority and its functions to the authorities that it accepts. Etiquette is a bridge to acceptance.

Etiquette rules arguably engender the public respect that allows the court system to work. Images of professionalism, competence, dignity and impartiality fortify the impression of truth. Basic norms are presupposed to be valid, "not because they are effective; but they are valid only as long as this legal order is effective. . . . A legal order is regarded as valid if its norms are by and large effective (that is, actually applied and obeyed)."70 Thus, a judgment is enforceable only if people believe it is true, and not simply because a judge has power.71 In the Survey of Maryland judges, respondents wrote that attorneys, parties, witnesses, and police who talk and laugh while other cases proceed, breach etiquette by undermining the dignity and respect for the proceedings.72 Trial lawyers must act in a respectful manner toward the court because if they show disrespect for judges and for the system, so will the public.73 "Any of these

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67. W. BOULTON, supra note 50, at 6-7.
68. Id. at 7.
69. Wilkins, supra note 62, at 471 (discussing the traditional model of legal ethics that asserts lawyers play a vital role in the preservation of society).
70. Kelsen, supra note 53, at 32-33 (emphasis in original).
71. Civilized individuals are more apt to be "obedient to the unenforceable" and ultimately maintain the power structure. See, e.g., Miller, *The Morals and Manners of Advocates*, N.Y. Sta. B.J., July 1984, at 16, 20 ("'How do we compel submission to the dictates of decency? 'The measure of a civilization is the degree of its obedience to the unenforceable.' . . . [N]o amount of police can make us decent, loyal, or fair," (quoting Whitney North Seymore Sr., and Lord Moulton)).
72. See infra subpart IV(C).
73. See United States v. Meyer, 346 F. Supp. 973, 979 (D.C. Cir. 1972) ("If trial lawyers by their courtroom conduct state their own disrespect for judges in clearly spoken
breaches, when observed by lay persons, diminishes the dignity of the proceedings and makes it rather difficult for a judge to command respect of those persons," one judge remarked in the survey.\textsuperscript{74}

More specifically, judges criticized attorneys and others who neglect to stand at the start of a proceeding or when addressing the court.\textsuperscript{75} Rising is a physical gesture of respect for those proceedings; in some judges' opinions, rising represents respect for the sovereign.\textsuperscript{76} Indeed, courtroom etiquette requires that even the judge should stand at his or her place on the bench until the clerk calls everyone to sit.\textsuperscript{77} In the Survey, judges also commented that proper courtroom attire constitutes another way to control the profession's image and to influence the public perception of the proceedings.\textsuperscript{78} In a published opinion, one Maryland judge rejected the notion of lower etiquette standards for lower courts on grounds of public perception: "It is precisely in the inferior courts, such as the parking court, where the average citizen is most likely to have his first contact with any of the judicial system of the state and to form his or her lasting opinion of it."\textsuperscript{79}

So long as serious, dignified, and respectable judicial proceed-

\textsuperscript{74} Survey response, district court judge, Prince George's County.

\textsuperscript{75} In my view, the single most violated rule of professional courtesy is that which dictates that a lawyer stand when addressing the court, and especially when making objections to evidence. The practice is not merely a proper display of respect for the court, but acts to focus the court's and the jury's attention to the issue which the lawyer wishes to raise.

Survey response, circuit court judge, Baltimore County. \textit{See also infra subpart IV(A)}.

\textsuperscript{76} "When you sit up there you are the judge. . . . [Y]ou represent the State of Maryland. The least a lawyer can do when addressing the State of Maryland, the sovereign, is to stand up." Survey response, district court judge (retired), Montgomery County.

\textsuperscript{77} Discussion with two circuit court judges, Montgomery County.

\textsuperscript{78} \textit{See infra} subpart IV(G).

ings exist, the public itself will preserve the power and professionalism of the courts. The public will support the preservation of the judiciary if it views judicial pronouncements as legitimate governing decisions that are a result of solemn deliberation and a well-established process, instead of arbitrary judgment calls emanating from a chaotic, undignified social institution.

This is not to say that judges and others involved in the judicial process can go too far in preserving their power and professionalism without reproach. The judiciary must be subject to public scrutiny and criticism. Such criticism is a necessary part of the checks and balances, and does not undermine the respect and dignity for the courts—it promotes greater respect. As Justice Hugo L. Black once wrote:

> The assumption that respect for the judiciary can be won by shielding judges from published criticism wrongly appraises the character of American public opinion. For it is a prized American privilege to speak one’s mind, although not always with perfect good taste, on all public institutions. And an enforced silence, however limited, solely in the name of preserving the dignity of the bench, would probably engender resentment, suspicion, and contempt much more than it would enhance respect.

For reasons of courtroom decorum and stability, however, actual court proceedings do not provide the best forum for the criticism of judges. Lawyers must observe standards of courtroom etiquette in order to engender public respect, authority, and dignity.

80. In the Seventh Federal Judicial Circuit, a nine-member Committee on Civility was appointed in 1989. The Committee examined judicial as well as lawyer conduct. The Committee’s interim report was published in April of 1991. See Interim Report of the Committee on Civility of the Seventh Federal Judicial Circuit (1991) [hereinafter Seventh Circuit Report]. The Report is the first federal circuit-wide survey and report in the nation discussing the apparent causes of incivility in litigation practice. The Report indicated that many lawyers in the Seventh Circuit find that “some courts are a source of rude, arrogant behavior, establishing a level of incivility that is mimicked in some lawyers’ relations.” Id. at 13-14. The Committee’s proposed draft of the “Standards for Professional Conduct within the Seventh Federal Judicial Circuit” recommends the following: “A judge’s conduct should be characterized at all times by courtesy and patience toward all participants. As judges, we owe to all participants in a legal proceeding duties of respect, diligence, punctuality and protection against unjust and improper criticism or attack.” Id. at 53. See also id. at 57-58 (proposed duties of the court to lawyers). The standards suggested in the report closely parallel the existing Canons of the Code of Judicial Conduct.

81. Bridges v. California, 314 U.S. 252, 270-71 (1941) (nevertheless, courts have the power to limit speech in the courtroom to protect against disturbances and disorder).

82. See infra notes 284, 287.
as representatives of a learned profession.\textsuperscript{83}

2. \textit{Efficiency}.—Justice moves faster when the parties are cooperative and the surroundings are orderly; accordingly, efficiency is a second theoretical justification for the codification of courtroom etiquette rules.\textsuperscript{84} If we treat others involved in the judicial process with respect, then the overall administration of justice operates more productively.\textsuperscript{85} Even non-lawyer etiquette experts agree that when people abide by rules of etiquette, society theoretically functions more smoothly and efficiently.\textsuperscript{86} Etiquette rules remove unnecessary impediments that hamper the collection of information and discovery of the truth.\textsuperscript{87}

\begin{itemize}
  \item \textsuperscript{83} McKay, supra note 12, at 76.
    
    My first advice is to stop worrying about the image of the profession—that will take care of itself when lawyers are seen as the advocates of a just society. I do not suggest a public-relations gambit, but rather an entirely earnest quest for the soul of the profession, which must encompass delivery of adequate and competent legal services.

  \item Id. at 77.

  \item \textsuperscript{84} Some Maryland judges consider decorum and visual order essential for moving efficiently through a docket. One retired Montgomery County district court judge, who handled a daily average of 50 district court cases, said in his Survey response that the first thing he did in court was to require order so that he could “proceed . . . with some degree of decorum.” He required that clothing, books, and newspapers not be placed in the window wells and that people “not drink sodas or read newspapers, so that a semblance of dignity” could be maintained in the courtroom, and so that “people who have never been in court before might understand what we are trying to accomplish. Also I don’t want a courtroom over which I preside to ever look like these courtrooms you see in the movies . . . [where] the courtroom looks a shamble. It’s bad enough to try to accomplish something in a neat courtroom with people paying attention . . . but if you let the courtroom turn into a trashroom, I don’t think you accomplish anything at all.”

  \item \textsuperscript{85} See McMillan v. State, 258 Md. 147, 152, 265 A.2d 453, 456 (1970) (“the orderly administration of courts of justice requires the maintenance of dignity and decorum” making rules of conduct and behavior essential to the administration of justice).

  \item \textsuperscript{86} See BALDRIDGE, COMPLETE GUIDE TO THE NEW MANNERS FOR THE 90s (1990).

    We are a very informal country, and many people feel that the informality has gone too far in many respects, resulting in inefficiency, a lack of respect for senior authority, and a total misunderstanding of proper deference. I’m with them, so forgive me if I sound a little starchy about this.

  \item Id. at 594 (emphasis added).

  \item \textsuperscript{87} See R.W. EMERSON, Manners, in SELECTED WRITINGS OF RALPH WALDO EMERSON (B. Atkinson ed. 1950).

    Fine manners show themselves formidable to the uncultivated man. They are a subtler science of defence to parry and intimidate; but once matched by the skill of the other party, they drop the point of the sword . . . . Manners aim to facilitate life, to get rid of impediments and bring the man pure to energize. They aid our dealing and conversation as a railway aids travelling, by getting rid of all avoidable obstructions of the road and leaving nothing to be conquered but pure space.

    \textit{Id.} at 385-86 (emphasis added).
\end{itemize}
Three areas of efficiency merit discussion: allocation of court time, reduction of judicial system transaction costs, and maximization of the ratio of material information presented to the decisionmakers to immaterial information presented to them.

a. Time.—A finite number of judges possess a finite amount of time to resolve the disputes assigned to their dockets. Given the dramatic increase in the number of cases filed in the last twenty years and the increasing length of time that cases take to reach resolution, judges disapprove of behavior that delays proceedings or wastes their time. Judges prefer efforts to save valuable in-court time and suggest that etiquette rules can open communication lines before trial. Attorneys who are consistently late to court, who

89. Constitutional and statutory provisions limit the length of time within which a criminal case must come to trial, but have little effect on the criminal appeal process. E.g., U.S. Const. Amend. VI, cl. 1 (speedy trial); National Center for State Courts, On Trial: The Length of Civil and Criminal Trials (1988); T. Church, Justice Delayed (1976).
90. Some judges said that taking time to meet with counsel in chambers prior to trial speeds up the litigation process. The meeting offers the attorneys a chance to inquire about the judge's rules and the judge can express her expectations of how the trial should be conducted. For example, the judge can anticipate issues that might arise requiring a hearing outside the presence of the jury. This allows counsel to place witnesses on standby and also accommodates jurors who may be instructed to report at a later time.

The United States District Court for Maryland has adopted a local federal rule requiring attorneys to attend a pretrial conference so that parties may enter into stipulations, review exhibits, and anticipate problems or difficult issues that may arise at trial. See Fed. Local Ct. Rules (Callaghan) D. Md. Rule 106(6) (1990) (sections relevant to courtroom etiquette). These local rules are meant primarily to speed the trial process, and one rule specifically addresses courtroom etiquette. See id. R. 107(9). One judge uses these pretrial conferences to warn attorneys against unnecessary delays during trial. Interview, June 5, 1989. These "informal" pre-trial meetings with the presiding judge promote judicial efficiency and are gaining popularity. See, e.g., G. Heileman Brewing Co., Inc. v. Joseph Oat Corp., 871 F.2d 648 (7th Cir. 1989) (en banc) (6-5 opinion requiring attendance at pretrial settlement conferences). See also infra note 226 and accompanying text.
91. Inefficiency may damage the attorney's case, either by placing her in a bad light before the judge, or by adversely affecting the jury's view of the attorney. Survey response, circuit court judge, Montgomery County.

Jurors dislike having to wait in a closed jury room under an admonition not to discuss the case among themselves while waiting. They feel left out of the process and wonder what is going on that they do not know about and why they are not included. Too frequently am I called upon to apologize to jurors for the delay in starting trials because of the late arrival of counsel, and have to invent excuses for the delay so that the litigants will not be prejudiced by the actions of their counsel.
seek continuances, who disrupt the court by carrying on loud conversations in the back of the courtroom, or who show up for trial unprepared, commit breaches of etiquette and provoke judges' ire. Their reactions flow from two sources. First, judges consider time-wasting conduct a breach of etiquette because of its effect on others. When conduct wastes time, it delays the adjudication of other cases without significantly progressing the resolution of the current case; judges regard such inefficient conduct as unfair to clients and to other attorneys. Second, a judge may perceive time-wasting conduct as a breach of etiquette because it evidences a lack of respect for the court system in general or for the presiding judge in particular. Thus, a judge's concern over a breach of etiquette may represent an interest in protecting judicial power and efficiency rather than a concern for the detrimental effect such conduct may have on others.

b. Transaction Costs.—The judiciary's concern for etiquette breaches is also related to the transaction costs of court adjudication. The literature of law and economics discusses the problem of transaction costs extensively, defining transaction costs generally as the expenses involved in a purchase or trade other than price. For example, in contractual relationships, the cost of enforcing the contract (which may include adjudication) is a transaction cost. For the purposes of this Article, the transaction at issue is the resolution of a case that has been filed in a court; the good being bargained for is a favorable judicial decision. Reducing transaction costs must be seen in the context of the "good" being negotiated.

Id.; see also infra section IV(B)(1).

92. See infra notes 223-226 and accompanying text.

93. For example, one Survey respondent commented:

[U]nfortunately the largest ... breach of etiquette is wasting the time of others. Usually this is due to failure to prepare or communicate prior to trial, not only on the part of attorneys, but clients and witnesses also. The court, and its personnel, are a public resource which is available to the use of all, and should not be abused by a few. ... While people have a right to their day in court, they do not have a right to take all day just because they are in court. Consideration for the time of others, if it exists elsewhere in society, is left at the Court House door.

Survey response, circuit court judge, Caroline County.

94. See supra notes 67-83 and accompanying text.


96. "Cost of negotiating and completing a transaction ... are examples of transaction costs." R. Lipsey, D. Purvis & P. Steiner, Economics 458 (7th ed. 1984) [hereinafter R. Lipsey & P. Steiner].
As a starting point for analysis, the Coase theorem is useful: where transaction costs are zero, an efficient outcome will always result.\textsuperscript{97} The price of the good under consideration—court adjudication of a dispute—is probably close to zero. Aside from filing fees, courts are costless to any party who requests that a dispute be resolved. Thus, if adjudication of disputes involved no transaction costs, everyone who believed they had a claim would seek relief in court. Where the claim was likely to succeed, the other party would quickly settle. Where the claim was more tenuous, the case would proceed to trial. But judicial transactions costs are not zero; the court system has massive costs. Attorney fees, expert witness fees, discovery costs, and so forth far outweigh the minimal filing costs.

Unfortunately, courts sometimes offer incentives for lawyers to engage in time-consuming conduct. For instance, if an attorney represents a defendant being sued for damages, he may well find it advantageous to extend the litigation even though the defendant has no chance of winning on the merits. This is because the judicial interest rate on amounts awarded to claimants in addition to damages often runs below the commercially available interest rate.\textsuperscript{98} The difference between the two rates over a period of years can be significant.

The existence of transaction costs can preclude efficient outcomes. Therefore, judges may seek to minimize transaction costs whenever possible. For example, judges have criticized attorneys who do not follow the proper steps in introducing evidence, but instead “spring” evidence on the court.\textsuperscript{99} Normally, this wastes court

\textsuperscript{97} See A. Polinsky, supra note 95, at 12.

\textsuperscript{98} For instance, assume the judicial rate of interest is six percent, while the commercially available interest rate is nine percent, a spread of only three percentage points. If a plaintiff won a $100,000.00 verdict five years after filing suit, the interest on this would amount to $33,823.00, whereas the commercially available interest rate would yield $53,862.00, a difference of about $20,000.00. If the case was settled a year after filing, the “savings” would be only $3,000.00. Moreover, if the defendant appealed and delayed the case two more years (for a total of seven years from filing to resolution), the “savings” would be about $32,500.00.

This is a conservative example. If interest begins accruing prior to filing, the difference is larger; and, if judicial interest is not compounded annually, but calculated as a nominal rate, the difference also increases. The formula used in the above example for determining the amount of interest each rate yields is as follows: \[\frac{((1 + i)^n - 1) \times V}{n}\] = amount of interest; where “n” represents the number of years, “i” represents the interest rate per annum expressed in decimal form, and “V” represents the verdict amount.

\textsuperscript{99} It is “really only a question of simple courtesy to let the other side see the exhibits ahead of time which you intend to offer into evidence; but, the lawyers who do this are the exception rather than the rule. The rule is that everybody hides their exhibits... until they’re in the middle of the trial and then everything is delayed while we wait for
time because the attorney must backtrack and follow the formal
rules for introducing evidence, whereas the procedure could have
been accomplished without objection and subsequent time delay.\textsuperscript{100}
If the party who sought to introduce the evidence by breaching the
formal rules of court eventually prevails on the verdict, the oppos-
ing side may appeal on the grounds that the jury was improperly
exposed to evidence that eventually was rejected. Although appel-
late reversals of trial verdicts on evidentiary issues are rare, it is pos-
sible that an attorney's failure to introduce evidence properly, cross-
examine a witness, or deliver a closing argument, can result in a
reversal and remand for a new trial. A judge intent on lowering the
transaction costs of the court system might well consider an attor-
ney's breach of etiquette to violate the principle of efficiency. Fail-
ure to cooperate with opposing counsel (in the discovery process or
in pre-trial conferences) when such cooperation would expedite the
resolution of the case, would also be a breach.\textsuperscript{101}

At the core of this concern for efficiency are issues both of fair-
ness and of judicial power. If an unprepared attorney engages in
conduct that eventually causes a retrial, the costs to the parties of
adjudicating their dispute could easily double. The escalation of
costs may have a chilling effect on future litigation.\textsuperscript{102} A party who
spent years awaiting trial, appealed that result, had a new trial and
then finally succeeded, may not resort to the court system in the
future. When an attorney's mistakes increase costs, they diminish
the victory of the prevailing party and degrade the court experience.
This not only threatens the perceived fairness of the court system,
but also reduces public confidence in the efficiency of the legal sys-
tem.\textsuperscript{103} Indeed, the contempt in which lawyers are held by the pub-
lic may relate to a pervasive belief that lawyers have made the court
system too expensive and time-consuming for ordinary dispute res-

\textsuperscript{100} See generally infra subpart IV(E).
\textsuperscript{101} For example, in a tort case, if the attorneys cooperated in the discovery process
and found that both sides' experts had fairly similar views on the quantum of the plain-
tiff's damages, but disagreed on causation, the parties could stipulate on the damages
issue and limit the trial to the causation issue thus saving time and money. See Lawyers
rudeness, discouraging compromise, derailing potential settlements, prolonging cases
and driving costs up").
\textsuperscript{102} See, e.g., R. Lipsey & P. Steiner, supra note 96, at 66-73 (reviewing the orthodox
toey theory of demand).
\textsuperscript{103} See generally infra section II(A)(3).
olution. Consequently, reduced public faith in the court system threatens judicial authority.

c. Information.—An accepted premise of economics is that rational decisionmaking requires accurate, complete information. The judiciary embraces this view by encouraging conduct that increases the amount of material information available while limiting the amount of immaterial information.

For instance, if an attorney refuses to stipulate in advance that a witness qualifies as an expert, the opposing attorney will then be required to establish the witness's qualifications at trial for the record. A judge may feel that time is being wasted or that the offending attorney is unnecessarily increasing the cost of the case for all parties. Several Maryland judges surveyed criticized etiquette of attorneys who demonstrate no consideration for the court's time and do not take steps to expedite simple procedures. Alterna-

104. See Sansing, First, Kill All the Lawyers, THE WASHINGTONIAN, Nov. 1990, at 132, 134 (discussing the factors causing the "downturn in the reputation of the legal profession" and the tearing down of the "curtain of respectability"—for one, "the law ceased to be a profession; it became big business"). See id. at 136 (discussing partner and associate billable hours, charges for associates per hour, and starting salaries for top law students at major law firms). In an informal telephone survey conducted by The Washingtonian, "[a]lmost three-fifths of those surveyed . . . thought lawyers were generally overpaid." About the same percentage of those surveyed who thought lawyers were overpaid had hired a lawyer in the past and forty-three percent "felt they had gotten only fair-to-poor value." Id. at 136.

105. See supra section II(A)(1).


107. See, e.g., FED. R. EVID. 402.

108. Rules of etiquette regarding communication between attorneys has also been addressed in the local rules for the United States District Court in Baltimore. The rule requires that attorneys meet before trial to set stipulations and view evidence in order to expedite the trial process and open lines of communication for settlement purposes. See FED. LOCAL CT. RULES (Callaghan) D. Md. Rule 106(6) (1990); see also Reiter, supra note 28, at 4 ("[e]xcept where any material right of the client is involved, counsel should stipulate to matters in order to avoid unnecessary hearings").

109. Inefficient use of the courts' time may be attributable to the "[f]ailure of counsel to talk to one another prior to trial to determine stipulations and non-objectible evidence. Many cases are settled when counsel speak to one another." Survey response, circuit court judge, Baltimore County.

110. For example, one Baltimore City circuit court judge commented, "I appreciate the attorney who tries to streamline things. It is irritating to spend time on matters which could easily have been handled by way of stipulation. When attorneys have gotten off on the wrong foot with each other [and] as a result don't cooperate, they waste the court's time as well as their own."

In addition, the Maryland Rules of Professional Conduct require attorneys' "reasonable efforts to expedite litigation consistent with the interests of the client." MARYLAND LAWYERS' RULES OF PROFESSIONAL CONDUCT 3.2 (1991).
tively, the judge may fear that the jury is being inundated with information (such as the responses to the opposing attorney's questions that will establish the witness's qualifications as an expert) that is immaterial to the ultimate resolution of the case.111

Likewise, if an attorney is unprepared for trial, his cross-examination may devolve into an extended discovery session or a "fishing" expedition. A judge may perceive that she and the jury are burdened by such conduct because, although the information gleaned is generally immaterial, it requires processing and poses some risk of distracting a jury from the real issues.112 A third example arises in the area of evidentiary objections. Groundless or poorly defensible objections not only waste time, but interrupt the flow of information and distract the jury. Thus, conduct that either impedes the flow of relevant information or exposes decisionmakers to immaterial matters is a breach of etiquette and detracts from judicial proceedings.

If decisionmakers are more likely to make correct decisions when they are exposed to material information and not distracted by ancillary matters, and if judges consider conduct a breach of court etiquette on these grounds, then judges who act to discourage distracting conduct actually encourage correct verdicts. Fairness, once again, lies at the core of this concern.113 If juries make incorrect decisions, parties are disserved and the judicial system is not operating as it should. Moreover, the judiciary may fear that if the court system is perceived as operating poorly, public respect for the courts, and therefore, judicial power itself, is diminished.114

3. Fairness.—A third dominant theoretical justification for codification of etiquette rules is fairness. If formal legal procedures are entrenched in the legal process then all parties are held to the same standard of conduct and all parties are equalized procedurally. "Procedural formality recognizes inequality and attempts to compensate for it by making both parties conform to the same standards."115 Formalism is thus integral to impartiality.

The fairness theory justifies rules as protectors of two related, but distinct groups: lawyers and clients. Unfair prejudice to the

111. See Fed. R. Evid. 403.
112. Id.
113. See infra notes 115-116 and accompanying text.
114. See supra section II(A)(1).
lawyer as a professional and to the client as a consumer may result from breaches of unknown—and perhaps unknowable—customs. From the client’s perspective, etiquette and formalism are the safeguards of fairness built into the judicial process. By preventing chaos in the courtroom, etiquette assists in the discovery of the truth that lies somewhere between conflicting versions of facts. To achieve the fairest judgment for a client then, lawyers should be sensitized to the expected norms of behavior in court.

Strictly from a lawyer’s perspective, codification of etiquette rules and increased formalism theoretically ensure that all lawyers will be treated as professionals and command equal respect as their peers. The client’s interest and the lawyer’s interests are interrelated because both desire respect and a fair hearing. For example, some judges chastised lawyers for loud, disruptive talking while waiting for their cases to be called. They called this type of courtroom conduct “selfish,” because those same lawyers later demand undivided attention when their cases are tried. By implication, trials will be fairer to the client if such “selfish” conduct is eliminated and all attorneys have an equal chance to command the court’s attention. When attorneys are aware of the expected conduct rules of a courtroom, and adhere to them, then they avoid hostilities with the result that the case is tried with both sides on “equal footing.”

a. Historically Male-Dominated Courtrooms.—Who created the unwritten standards of courtroom etiquette? Customs, traditions, collegiality, and non-disruptive behavioral norms are the most logical origins. Customs are inclined to develop into traditions that “‘are stronger than law and remain unchallenged long after the reason for them has disappeared.’”

Men have traditionally dominated the legal profession, particularly in the courtroom. In the nineteenth century, women were viewed as physically, emotionally, and intellectually incapable of competing in the courtroom. In the early twentieth century one

116. See infra section IV(C)(1).
118. Women’s entry into any profession, especially law and medicine, was until the twentieth century prohibited by law in many countries. See Menkel-Meadow, Feminization of the Legal Profession, The Comparative Sociology of Women Lawyers in Lawyers in Society, Comparative Theories 199 (R. Abel & P. Lewis eds. 1989).
119. See K. MORELLO, THE INVISIBLE BAR: THE WOMAN LAWYER IN AMERICA 1638 TO THE PRESENT 173-74 (1986); see also Menkel-Meadow, supra note 118, at 201 (professions were deemed unsuitable for women because of biological and psychological differences, particularly their reproductive and nurturing capacities).
woman lawyer candidly expressed the opposition she perceived as a woman trial attorney. She wrote:

[I]t is an ordeal for a woman at the outset of her practice to encounter in the person of the opposing counsel a courteous, well-bred gentleman whose antagonism is obvious. She knows that he is thinking that she has no place in the courtroom; if she is a good-looking girl she ought to be married; if she isn’t good-looking she ought to be dead or else justifying her existence by serving in the capacity of overworked stenographer to some dignified member of the nobler sex.  

Women today continue to be under-represented in American courtrooms. They have not “disturbed the male-dominated power structure,” and they face many forms of resistance to their participation in trial work as well as in other areas of the law practice. Women lawyers generally sense that they must fight harder to gain respect, and even as judges, women are “only grudgingly” accepted in the courtroom. Male lawyers often show little tolerance for women making serious decisions that affect them and their clients. Moreover, men within the establishment have traditionally counted on knowing the judge personally and socializing at a private club or on the golf course. It is this historically male-dominated inner circle of attorneys and judges who are responsible for creating and sustaining these unwritten rules of courtroom etiquette and accepted norms of behavior. According to one commentator on gender and the law, “what it means to be and act like a lawyer may be misleadingly based on a male norm.”

120. K. Morello, supra note 119, at 176 (quoting letter to the New York Sun).
121. Menkel-Meadow, supra note 118, at 205.
122. See K. Morello, supra note 119, at 174-75. “The Association of Trial Lawyers of America reported that in 1978 only 8 states had more than 4 percent of their women attorneys actively engaged in litigation practices. And although an exclusively female jury was convened in America as early as 1656, women were not even permitted to serve as jurors in every state of the union well into this century.” Id. Women are seriously under-represented in the judiciary as well. Id. at 218. When Justice O’Connor joined the Supreme Court in 1981, only 5.4% of the federal judges were women. Id.
124. Id. at 49. But see id. at 53 (discussing a southern woman lawyer who states that being a woman works in her favor when the judge calls her a term of endearment: “It shows the jury how highly the judge thinks of me.”).
125. K. Morello, supra note 119, at 218.
126. See id.
127. See id.
b. Formalism Safeguards Equality.—Fortunately, the academic success of women law students in law schools and the sheer numbers of women entering law have "forced cracks in what had been a men's club."\footnote{Blodgett, supra note 123, at 48.} The struggle of women to gain entrance into the legal profession has been more difficult than that of their counterparts in medicine and teaching, and the struggle continues—which may be a reason "why the formal equality model is so strong among contemporary feminist lawyers."\footnote{Menkel-Meadow, supra note 118, at 202 (emphasis added).} In many courts, the "good old boy" network of male lawyers consists of those privileged attorneys who are familiar with the unwritten rules of etiquette for a particular judge. If, however, the rules of behavior are unknown to one side because these standards are unpublished, unclear, or worse, only known to the "haves" and unknown to the "have-nots,"\footnote{See Galanter, Why the "Haves" Come Out Ahead: Speculation on the Limits of Legal Change, 9 Law & Soc'y Rev. 95, 123-24 (1974) (discussing American legal traditions and the notions of uniformity and universality as contrasted with "particularism, compromise, and discretion").} the latter group is disadvantaged before the merits of the case are presented. A woman or minority attorney, as a member of a traditionally disenfranchised group, may be subject to disparate treatment in court when she violates unknown, informal conduct codes created and maintained by the white male-dominated legal establishment. This disparate treatment violates the right to equality for individual attorneys, which is the "right to equal concern and respect in the design and administration of the political institutions" that govern society.\footnote{R. Dworkin, Taking Rights Seriously 180 (1977).} Justice rests on the assumption that all men and women are subject to equal respect as human beings, not based on their birth or special characteristics.\footnote{See id. at 182.} Etiquette rules advance this right to equal treatment.\footnote{See id. at 227 (discussing the two different rights that exist: the right to equal treatment and the right to treatment as an equal. The latter is the right to be treated with the same respect and concern as anyone else).}

The establishment of etiquette standards will raise awareness among all attorneys, rather than just a privileged few. This analysis corresponds to feminist "consciousness raising" theory, which probes into an intrinsically social situation and views the world through a women's consciousness as a collective social being, not as separate individuals.\footnote{See C. MacKinnon, Toward a Feminist Theory of the State 83 (1989) (contrasting the right to equal treatment and the right to be treated as an equal).} As explained by Catherine MacKinnon, "[t]his approach stands inside its own determinations in order to
uncover them, just as it criticizes them in order to value them on its own terms . . . .” Feminist theory, by pursuing accurate analysis of social life and consciousness, "turns an analysis of inequality into a critical embrace of its own determinants." Unless the etiquette rules are validated consciously as societal norms, or better yet, codified, the unknown and unwritten standards will place unempowered, disenfranchised groups on unequal footing in the courtroom. Therefore, uncovering etiquette standards and criticizing them based on the legal profession's own determinants is a useful process. In the process of "consciousness raising" of courtroom etiquette standards, attorneys and judges transform an ordinary social encounter into a forum where justice is supposedly dispensed fairly to all so that the truth will emerge. Efforts to "democratize procedures" and reduce formality "can actually result in an increase in the power of the dominant classes." More formalism allows all those involved to participate zealously in the adversarial process without hidden deceptions that skew the adjudicatory process. In other words:

If the social structure is not seriously threatened and the ruling classes are firmly in control, the procedural fairness and blind, mechanical application of the rules are the best defenses of the subordinate classes [or disenfranchised groups], even if these rules were the instruments by which the dominant classes came to power.

Providing a forum where equal treatment is available to all, therefore, poses a significant justification for codification of etiquette procedures. Informal legal practices undermine the benefits available to under-represented groups and potentially deny them

sciousness raising is the "collective critical reconstitution of the meaning of women's social experience, as women live through it").

136. Id. at 84.
137. Id.
Like others concerned with the failures of abstract, universal principles to resolve problems, we emphasize 'context' in order to expose how apparently neutral and universal rules in effect burden or exclude anyone who does not share the characteristics of privileged, white, Christian, able-bodied, heterosexual, adult men for whom those rules were actually written.

Id. (footnote omitted). The article discusses what is meant by the phrase "in context," and the role context plays in terms of the judgment or decisionmaking process, positing that increased awareness of context could lead to different understandings about human nature and human interactions.

139. See Lazerson, supra note 115, at 122.
140. Id. at 159.
equal treatment under the law. In short, the fairness justification for etiquette rules emerges from the idea that widespread education and conformity with the expected etiquette standards serve as an equalizer among attorneys of all races, classes, and genders.

B. A Practical Justification for Courtroom Etiquette

From a practical, rather than a theoretical perspective, etiquette benefits attorneys because it reinforces their effectiveness as courtroom advocates. While etiquette standards may vary among courtrooms, the “outcome of a case depends on the presentation as much as on its merits.” A pragmatic approach to advocacy is for lawyers to be attuned to judges’ particular expectations or predilections and use that knowledge to their advantage in maneuvering in and around a courtroom.

The advantage of familiarizing oneself with basic courtroom etiquette is actually just the opportunity to avoid a disadvantage—to avoid being offensive and looking unprofessional. For example, several judges surveyed for this Article noted that some lawyers have a rude tendency to cut short a witness’s answer. Even if the answer seems harmful to the attorney’s case, the practice is viewed as counter-productive because it suggests that the attorney is trying to hide information. Other behavior that judges cited as both rude and damaging is repeating the same questions over and over during a cross-examination or cross-examining in different ways in the...
hope of causing a witness to make a slip of the tongue. Badgering a witness may also offend the jury and severely prejudice the client’s case.

Several new professionalism codes reflect this practical concern for effective advocacy. For example, the Arizona Bar’s Creed of Professionalism states: “I will be a vigorous and zealous advocate on behalf of my client, while recognizing, as an officer of the court, that excessive zeal may be detrimental to my client’s interests as well as to the proper functioning of our system of justice.” Similarly, the Rules for Uniform Decorum in the state trial courts of Minnesota include a rule that lawyers must refrain from interrupting one another, assist in making a proper record, and instruct their witnesses “to testify slowly and clearly so that the court and jury will hear their testimony.” Both codes reflect this pragmatic, functional approach to rules of decorum.

In the Maryland circuit courts, where the majority of the State’s jury trials are held, there was widespread agreement among judges that talking and milling around the courtroom distract jurors during a jury trial. Moreover, judges noted that conversations whispered during trial between attorneys and witnesses are impolite and damaging. The ensuing colloquy on the witness stand is usually perceived as rehearsed. To avoid this potentially damaging situation, attorneys should always ask for “the court’s indulgence” before engaging in conversation with witnesses, clients, or co-counsel. Otherwise, the attorney’s poor behavior may detract from the effective representation that the trial process should provide.

III. Etiquette Breaches, Contempt of Court, and Judges’ Discretion to Decide

A breach of etiquette is conduct that does not rise to the level of contempt of court. Only a thin line may separate the two. As one judge asserts, “breaches of courtroom etiquette are too sporadic

145. STATE BAR OF ARIZONA, A LAWYER'S CReED OF PROFESSIONALISM, supra note 10.
146. RULES FOR UNIFORM DECORUM IN THE DISTRICT (TRIAL) COURTS OF MINNESOTA Rule 21.
147. See infra notes 148, 223-234.
148. Survey response, district court judge, Montgomery County (“talking to the prosecutor about your case when he/she is trying another case” is another common breach of etiquette).
149. Survey response, circuit court judge, Baltimore City.

to be of any great concern, especially in this jurisdiction where the preferred punishment for contempt is jail not fines. . . ." 151 Nevertheless, there should be a line. The bench does not license “tyrant[s].” 152 As the Maryland Court of Special Appeals noted, “[w]hile trial judges must be given wide latitude to punish contemptuous conduct, they must ever be on guard against confusing offenses to their sensibilities with obstructions of the administration of justice.” 153

Several considerations help distinguish obstructive from simply offensive conduct. 154 Constitutional issues of free speech and due process may limit judicial discretion in disciplining certain behavior. 155 For attorney transgressors, absolute immunity may similarly restrict judicial discretion, 156 depending on whether the attorney is gratuitously rude or offends in the course of zealous advocacy. 157 For example, courts have held that continuing to object to a line of questioning is not contempt. 158 In Maryland, where attorneys do

151. Survey response, circuit court judge, Worcester County (emphasis added).
153. Muskus v. State, 14 Md. App. 348, 361-62, 286 A.2d 783, 790 (1972) (“It is no less important for this Court to use self-restraint in the exercise of its ultimate power to find that a trial court has gone beyond the area in which it can properly punish for contempt”) (citing Brown v. United States, 356 U.S. 148, 153 (1958)).
154. See, e.g., Evans v. State, 42 Ala. App. 587, 594, 172 So. 2d 796, 803 (1965) (crossfire colloquies and wrangling disputes are left to the discretion of the trial judge unless the expressions used, and not the manner of presentation, are of a prejudicial character).
155. First amendment protections have also applied to citizens who criticized the judicial system. See, e.g., Bridges v. California, 314 U.S. 252 (1941). Bridges, the president of a labor union, published a telegram in which he criticized a judge’s ruling as “outrageous,” and suggested that the union would strike if the ruling was enforced. Id. at 276. He was held in contempt of court, but the Supreme Court reversed on first amendment grounds. See id. at 278. To suppose that the published criticism had the requisite “substantial influence upon the course of justice would be to impute to judges a lack of firmness, wisdom, or honor, which we cannot accept as a major premise.” Id. at 273.

See also the companion case of Times-Mirror Co. v. Superior Court, 314 U.S. 252 (1941). There, the Court reversed a contempt finding against a newspaper publisher who opined that certain defendants were “thugs” and “gorillas,” called for the judge to incarcerate them in San Quentin, and concluded that the judge would “make a serious mistake if he grants probation.” Id. at 272 & n.17.
156. See supra note 81 and accompanying text.
157. “No disciplinary action should be taken when a lawyer chooses to act or acts within the bounds of his or her professional discretion.” Briggs, supra note 28, at 214; see Wilkins, supra note 62, at 515. “General limitations on zealous advocacy purporting to bind all lawyers in all contexts create only the illusion of controlling lawyer discretion because they ignore the extent to which that discretion is inevitably reintroduced in interpretation and application.” Id. (footnote omitted).
158. See, e.g., Scott v. Hughes, 106 A.D.2d 355, 356, 483 N.Y.S.2d 18, 20 (1984) (attorney’s continuing to object was not insolent, defiant of authority, or contemptuous); People v. Bertelle, 164 Ill. App. 3d 831, 518 N.E.2d 332 (1987) (contempt order over-
not (yet) have a code of etiquette or professionalism, courts must distinguish between those breaches and contempt. "Obviously, the dignity surrounding the conduct of a trial has certain minimum standards, but there is considerable play in the wheels of justice, and beyond those minimum standards an area exists within which the rigidity of courtroom decorum is left to the discretion of the presiding judge."160

On the other hand, criticisms of a court's rulings and accusations of racism against the bench have been held as contempt, as has insolent or insulting demeanor. Also, repetition may compound the perceived disrespect and turn it ultimately into contempt. For example, the United States Supreme Court has held that a pattern of discourteous conduct might warrant an attorney's suspension, while first offenses might be overlooked. Assuming

ruled where attorney stated that the court's response to his objection was "unfair"); Commonwealth v. Segal, 401 Mass. 95, 98, 514 N.E.2d 1082, 1085 (1987) (not contempt for attorney to raise objections to introduction of hospital records, nor can contempt be used to chill vigorous advocacy); see also Curran v. Superior Court of California, 72 Cal. App. 258, 236 P. 975 (1925) (overruling finding of contempt for attorney's stating "I take exception to your honor's remarks, and assign them as error"); In re Schwartz, 391 A.2d 278 (D.C. 1978) (attorney not in contempt for persisting in trying to make a proffer for the record).

159. When a judge has reason to believe that an attorney is guilty of professional misconduct or is a subversive person, he or she may order the bar association or State's attorney or both to prosecute. The Maryland State Constitution also sets forth rules for the discipline of judges. See Md. Const. art. IV, §§ 4A, 4B (commission on judicial disabilities consisting of four judges, two attorneys, and one layman who investigate complaints against judges and may recommend removal for misconduct; hearings are held and final decision is by the Court of Appeals); Md. Const. art. III, § 26 (impeachment originated by the House of Delegates, and requires a two-thirds vote of the Senate); Md. Const. art. IV, § 4 (removal of judge by a two-thirds vote of each house of the General Assembly).


161. See Farmer v. Holton, 146 Ga. App. 102, 245 S.E.2d 457 (1978) (attorney found in contempt for insisting that opposing counsel refer to a black client as "Mr.", and not by his first name).


163. See, e.g., United States v. Lumumba, 794 F.2d 806, 812 (2d Cir.), cert. denied, 479 U.S. 855 (1986) (a single isolated remark is not contempt because it is not a threat to the administration of justice; combined with prior courtroom conduct, however, the remark justifies a contempt finding).

164. In re Robert J. Snyder, 472 U.S. 634 (1985). Snyder involved appointed counsel in a criminal case who submitted a fee claim to the Eighth Circuit and later criticized the court for the small amount of money it paid for his services. The fee application was returned for insufficient documentation, and a colloquy between the young lawyer and the Eighth Circuit ensued. The attorney, Snyder, refused to apologize for a letter he
that a defendant had descended to "unlawyerlike rudeness," the Court held that

a single incident of rudeness or lack of professional courtesy—in this context—does not support a finding of contemptuous or contumacious conduct or a finding that a lawyer is "not presently fit to practice in the federal courts." Nor does it rise to the level of "conduct unbecoming a member of the bar" warranting suspension from practice.

In Maryland, contempt may be either direct or constructive. Direct contempt is "contempt committed in the presence of the court, or so near to the court as to interrupt its court proceedings." Constructive contempt is "contempt which was not committed in the presence of the court, or so near to the court as to interrupt its proceedings." Judges have authority to punish both types of contempt. However, before finding summary contempt, a judge should warn the offending party and establish a foundation for a contempt order.

Whether or not the judge finds that the behavior was contemptuous, as opposed to offensive, the judge has broad discretion to implement measures that punish or control. Of course, some op-

had written criticizing the amount of attorneys' fees paid by the federal court and "the gymnastics" required for attorneys to recover "puny amounts." To emphasize his disgust, Snyder instructed the court to remove him from the list of appointed criminal defense attorneys. The circuit court found that Snyder was "totally disrespectful to the federal courts and to the judicial system." Snyder was suspended from practice for six months. The Supreme Court reversed.

165. Id. at 647. "'[U]nlawyer-like rudeness' [is] a virtual oxymoron in today's world." Brown, supra note 52, at 17.

166. In re Snyder, 472 U.S. at 647.

167. See Dorsey v. State, 295 Md. 217, 223, 454 A.2d 353, 356 (1983); see also Coyle, A Question of Contempt, Nat'l LJ., Oct. 30, 1989 at 1, col. 1 ("civil contempt [forces] an individual to do something. By contrast, criminal contempt is punishment for past conduct." Moreover, "civil contempt requires very little due process, only notice to the individual and a hearing.").

168. Md. R. P1(a) (1991). See, e.g., Jones v. State, 61 Md. App. 94, 484 A.2d 1050 (1984) (holding that no direct contempt existed because there was no interruption in the business of the court and no written order was signed); see also Coyle, supra note 167, at 1 (direct contempt "takes place in the judge's presence").


170. See Md. R. P3(a) (1991). "A direct contempt may be punished summarily by the court against which the contempt was committed." Id. "Constructive contempt proceedings may be instituted by the court of its own motion . . . ." Md. R. P4(a).


172. Most judges surveyed agreed that jurors, the public, and witnesses must comport themselves in accord with the atmosphere that a judge sets in the courtroom. Many of
tions are more applicable to parties to litigation, than to attorneys. In *Illinois v. Allen*, the Supreme Court held that when trial judges are confronted with disruptive, contumacious, or stubbornly defiant defendants, there are at least three constitutionally permissible ways for a trial judge to handle an obstreporous defendant . . . (1) bind and gag him, thereby keeping him present; (2) cite him for contempt; (3) take him out of the courtroom until he promises to conduct himself properly.

Maryland trial judges have also imposed the constraints estab-

the judges responded that the level of courtroom etiquette is controlled by the judge. E.g., Survey response, district court judge, Baltimore City ("What I have found is that counsel will respond to each judge's individual requirements. If we demand etiquette, it is better.").

*See Fuld, The Right to Dissent: Protest in the Courtroom, 44 St. John's L. Rev. 591 (1970).*

I am asking [my fellow judges] to join with me in a joint effort to devise solutions to the challenge of calculated disruption of courtroom proceedings with which we have been confronted. Mindful of constitutional obligations, we shall seek to establish guidelines which will assure a fair trial, courtroom decorum and the continued viability of judicial process.


The civil law and quasi-civil law countries provide by statutory enactment that an accused may be expelled for misbehavior, while a comparable rule in the common law countries has been articulated only in a halting fashion in a relatively few cases, with the result that no one can be quite certain that the Anglo-American courts will decide that they have this power independently of legislative sanction.

*Id.* at 185. Comment, *Violent Misconduct in the Courtroom—Physical Restraint and Eviction of the Criminal Defendant*, 28 U. Pitt. L. Rev. 443, 457 (1967) (discussing the unsettled state of the law in regard to physical restraint and eviction of criminal defendants and recommending that specific rules be laid down in order to stop the perceived trend of increasing defendant misconduct); Note, *Special Project: Judicial Response to the Disruptive Defendant*, 60 Geo. L.J. 487, 503 (1971) ("[A]bove all the court must be prepared beforehand [for misconduct by a criminal defendant] with a full range of positive solutions.").


Although *Allen* stated that exclusion [from the courtroom] is preferable to binding and gagging, the better view is to give the defendant who is sincerely, even though erroneously, asserting what he believes to be his constitutional rights the option of either being bound and gagged or being excluded from the courtroom.

*Id.* at 696.
lished in *Illinois v. Allen*. The judge, however, must use proper discretion whenever physically constraining a defendant or removing a defendant from the courtroom. The type of behavior that would generally be considered a breach of etiquette should never merit leg shackles or a mouth gag. But even less severe responses have been overturned as abuses of a judge's discretion. The Maryland Court of Appeals reversed a judge who held a defendant in contempt for refusing to remove headgear worn according to religious practices. The appellate court acknowledged that "the orderly administration of courts of justice requires the maintenance of dignity and decorum and for that reason rules of conduct and behavior to govern participants are essential;" however, the wearing of the hat, without any inquiry by the court into its religious significance, was not disruptive of court decorum and respect.

175. *See*, e.g., *Bowers v. State*, 306 Md. 120, 138-39, 507 A.2d 1072, 1081 (1986) (trial judge properly exercised his discretion in ordering leg irons to remain on the defendant at trial; no prejudice was shown).

176. *See* *Jones v. State*, 11 Md. App. 686, 276 A.2d 666 (1971). In *Jones*, the Maryland Court of Special Appeals held that the trial judge exceeded his discretion when he ordered deputies to shackle and gag the defendant. *See id.* at 693, 276 A.2d at 670. The trial judge decided to restrain the defendant after observing, as he walked past his courtroom, the defendant involved in a pre-trial altercation with deputies in the courtroom. *Id.* at 688, 276 A.2d at 667-68. The appellate court held that the circumstances in *Illinois v. Allen* were far from analogous. *See id.* at 691, 276 A.2d at 669. The jury's view of the defendant in shackles denied him due process, especially since the judge had never warned the defendant to refrain from obstreperous conduct. *Id.* at 693, 276 A.2d at 670.

177. It should be made clear to all judges and attorneys that the professional courtesy guidelines currently being drafted in Maryland (in conjunction with the rule 11 professionalism course) should not be used to hold attorneys and litigants in contempt of court. Violations of these aspirational standards should merely merit a quiet reminder to the person who may violate the guidelines or at most an oral reprimand in chambers. "Violations" of professionalism guidelines are not, and should never be, considered akin to violations of the Model Rules of Professional Responsibility.

178. *See* *McMillan v. State*, 258 Md. 147, 265 A.2d 453 (1970). The defendant was wearing a head cover known as a filaas, which he refused to remove because of his religious practices. *Id.* at 149, 265 A.2d at 454. "Very well, I find him in contempt and confine him until such time as he purges himself. That will be when he comes back in and removes his hat . . . .," retorted the trial judge. *Id.* at 150, 265 A.2d at 455. The Court of Appeals overruled this contempt order. *See id.* at 155, 265 A.2d at 458. The appellate court agreed that in some instances the state may abridge religious practices, but here there was no compelling state interest, including the court's interest in court decorum, to outweigh the defendant's religious tenets. *See id.* at 152, 265 A.2d at 456.

179. *Id.*

180. *See id.* at 152, 155, 265 A.2d at 456, 458. In *Liner v. State*, 62 Md. App. 381, 489 A.2d 553 (1985), the trial judge cited an attorney for three instances of contempt: (1) asking the court when it intended to rule on his motion and not sitting down instantly upon command, (2) asking the court to allow the attorney to make a statement for the record, and (3) requesting to speak to his client. *Id.* at 385-88, 489 A.2d at 555-56. The Court of Special Appeals held that there was "no evidence whatever that [the attorney]
Attorneys should prepare their clients to meet a court's expectations of conduct, but judges bear responsibility for expounding their own standards. After all, not everyone who comes into a courtroom is represented by an attorney. "Every judge must remember that no matter what the provocation, the judicial response must be [a] judicious response and that no one more surely sets the tone and the pattern for courtroom conduct than the presider."\footnote{181} Judges noted a consistently changing assortment of minor breaches of etiquette by the visiting public,\footnote{182} thereby presenting to judges and court clerks a continuing educational task. Bailiffs or courtroom clerks initially deal with the public's questions and outbursts,\footnote{183} but more serious breaches might require the attention of

\footnote{181} The Necessity for Civility, supra note 23, at 215; \textit{see also} supra note 172.

\footnote{182} Breaches by the public most commonly noted by the Maryland judges in the Survey were: (1) failure to stand, either when being addressed by the court or when addressing the court; (2) use of hostile and vulgar language (examples provided by responding judges were "Why don't you come down off of that bench so I can kick your ass?" and a wife's obscene harangue of a judge for jailing her husband on a conviction of battering her. A few judges complained that the popular vocabulary seems confined to vernacular idioms, nicknames, and four-letter words that are either offensive or just plain inscrutable); (3) chewing gum; (4) dressing in shorts, "tank-tops," undershirts, or sexually explicit T-shirts (one judge anonymously responded to the Survey and wrote that "[t]he dress of witnesses and parties and even spectators sometimes makes me think that they are going to a barbecue or some sort of casual entertainment"); (5) continually traveling in and out of the courtroom during a trial; (6) being combative with court personnel; and (7) demonstrating a general lack of respect for the judicial system.

183. In the Survey, responding judges generally said that their clerks and bailiffs do not disrupt proceedings, although some circuit and district court judges remarked about occasional incidents of clerks and bailiffs speaking out or wandering constantly around the courtroom.

However, some court personnel have been called unhelpful and prone to respond "I'm not the right person." \textit{See} Schauble, \textit{Judging the Judges}, BALTIMORE, June 1989, at 94 [hereinafter Schauble]. Clerks sometimes have been known to speak abruptly and with impatience towards attorneys, often for no cause. One district court judge responded that courtroom clerks and judges' clerks sometimes overreach their authority, make
the bench: for example, continuing outbursts might provoke a response from the judge, which could include an order to have the transgressor escorted out of the courtroom. Several of the judges agreed that the public's breaches of etiquette are attributable to ignorance of courtroom practice rather than to a conscious disregard of courtroom etiquette. Some judges, however, noted that they had never experienced problems with the courtroom etiquette of the public; clearly some are more likely to overlook the public's conduct and infractions than others.

judgments that should go before the judge, and that a few bailiffs are discourteous and impatient with both attorneys and the public, especially when the public requests information. Survey response, district court judge, Prince George's County. Other judges noted that some bailiffs overreact to minor rule infractions in the courtroom.

These minor problems are generally resolved after the person is advised of how to conform to proper courtroom behavior. "I find... the etiquette of the courtroom clerks to usually be very fine. One exception to this is that sometimes even the best of them will fall asleep during the proceedings. I realize that this is sometimes not hard to do, but it certainly does present a very bad appearance." Survey response, circuit court judge, Baltimore City; see also Survey response, circuit court judge, Prince George's County ("As far as the Prince George's Circuit Court is concerned, ... the conduct of the courtroom clerks and personnel...[is] helpful and courteous both to the Court, attorneys, and to the public-at-large").

184. See L. CARROLL, supra note 63, at 146-47. "You're a very poor speaker," said the King. Here one of the guinea-pigs cheered, and was immediately suppressed by the officers of the court. (As that is a rather hard word, I will just explain to you how it was done. They had a large canvas bag, which tied up at the mouth with strings: into this they slipped the guinea-pig, head first, and then sat upon it.) "I'm glad I've seen that done," thought Alice. "I've so often read in the newspapers, at the end of trials, 'There was some attempt at applause, which was immediately suppressed by the officers of the court,' and I have never understood what it meant till now."

Id.

185. Women with children especially fall into this category. See MARYLAND SPECIAL JOINT COMM., GENDER BIAS IN THE COURTS (1989) [hereinafter GENDER BIAS IN THE COURTS]. Women litigants face an additional disadvantage in the courtroom: sometimes their circumstances require them to have children with them. This is particularly true in cases involving domestic violence, child support, juvenile proceedings, and landlord/tenant cases. It occurs when the mother is the primary or sole caretaker of the child and cannot afford to pay someone to care for the child during the court appearance, as well as in cases where the child's presence is required by the court.

Id. at 115. The Committee offered very practical solutions to this problem, such as scheduling priorities and day care in or near the courthouse, which is the procedure followed in the District of Columbia. See id. at 115-16. On the other hand, some women may have their children present in court as a ploy to evoke sympathy, not for lack of child care services.
IV. **One State’s Approach to Courtroom Decorum: Maryland’s Unwritten Code of Etiquette**

Whether written or unwritten, every state court has protocols. These behavioral norms reflect the judiciary’s and the bar’s concern for preserving professional demeanor in the practice of law, ensuring fairness in the legal system, and promoting the efficient use of time and money throughout the litigation process. In preparation for this Article, all Maryland judges were surveyed in order to uncover the etiquette standards that are unwritten (and often unknown to attorneys). The judges’ responses revealed several fundamental rules of etiquette in the Maryland state courts.

Consistent with the theoretical justifications discussed above, the Maryland judges’ responses, taken as a whole, reflected the need for adopting etiquette standards to maintain order and to foster the efficient use of time. An underlying theme that was rarely articulated, but nonetheless reflected throughout the Survey, was that law is a profession, not a trade, and that lawyers must abide by etiquette standards to quell the nationally perceived erosion of professionalism and respect for lawyers.

Not all judges surveyed, however, saw a need to educate lawyers on professionalism standards. For example, some Maryland judges responded that the etiquette and the decorum of the large majority of attorneys is intact. Several judges even stated that they had never seen any breaches of etiquette in their court-

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186. See supra note 2.
187. “Bar professionalism activities are a ‘desperate attempt on the part of lawyers to deal with the public’s perception of them as greedy, unscrupulous and arrogant.’” *Consumers Suspicious of “PR Campaign,” Bar Leader, May-June 1989, at 16. See also supra note 104.
188. I am pleased to inform you that for Baltimore County there is little or no problem with regard to proper courtroom etiquette and decorum. Most litigants and attorneys who appear before me are courteous and dignified in their actions and speech. Of course, there are always exceptions to the general rule, but those exceptions are few and far between.

Survey response, district court judge, Baltimore County. Other Maryland judges reported vast improvements in attorneys’ courtroom conduct.

My recollection is that in the 1950’s and 1960’s it was common practice—probably a matter of trial tactics or a sort of one-upmanship—for lawyers engaged in jury trials to argue and quibble with, snarl at, snap at, and insult their opponents. At least, that happened before some judges who tolerated those shenanigans. Some judges, however, insisted on a modicum of decorum in their courtrooms and made it clear that such behavior would invoke severe sanctions from the bench. That sort of thing does not happen that much anymore . . . .

Survey response, appellate judge, Maryland Court of Special Appeals.
rooms. On the whole, however, the Survey suggested that the judicial system is slowly moving away from traditional courtroom formalities.

The judges observed that different standards appear to exist at different levels of the state court system. District court judges frequently complained about lawyers, parties, and witnesses milling around, laughing, and talking in the courtroom while cases are being tried. Most denied that lower court judges should be satisfied with inferior standards.

189. Four circuit court judges responded that, in their experience on the bench, they have observed no breaches of etiquette. Survey responses, circuit court judges, Baltimore County (2 judges), Prince George's County, and St. Mary's County. One circuit court judge responded that “with rare exceptions, the manners and conduct of the people who appear before me [are] very acceptable. . . . Of course, this seems to happen in small rural courthouses as opposed to the city courthouses where there is confusion and what appears to be lack of traditional values.” Survey response, circuit court judge, St. Mary's County.

Eight district court judges responded that they had not seen any significant problems in the area of courtroom etiquette. Survey responses, district court judges, Baltimore City (4), Baltimore County, Frederick County, and Montgomery County. One district court respondent did not identify a county.

I can say without equivocation that in seven years of judicial service, I have never had even a hint of a problem with attorneys or courtroom clerks during the trial of any criminal or traffic case. I suspect that this feeling is shared by my colleagues here in the eleven District Courts of Baltimore County.

Survey response, district court judge, Baltimore County.

190. One judge commented that older attorneys appearing before him never commit breaches of etiquette, while “traditions are fading” among the younger attorneys. Survey response, circuit court judge, Prince George's County.

191. E.g., Survey response, district court judge, Baltimore City; Survey response, district court judge, Prince George's County.

192. One district court judge asserted that different standards of etiquette should not apply to the different court levels in Maryland. He maintains that Maryland's unique de novo system directly affects etiquette of attorneys and the public appearing in the district courts in that many attorneys treat the district court proceedings as a "practice round," not maintaining the same formality of the other Maryland courts. He believes this approach is wholly inappropriate. Survey response, district court judge, Montgomery County.

Another district court judge commented:

In a court of limited jurisdiction, as is Maryland's District Court, there is all too often displayed an attitude by attorneys that makes it clear that they regard the court as something less important than the Federal Courts or the State Courts of General Jurisdiction. This is manifested in several ways: talking in the courtroom during other trials; coming into court late; requesting postponements based on other court commitments, regardless of which trial was the first to be scheduled; coming up to the bench for trial wearing winter outerwear; standing along the sides of the courtroom, instead of being seated, while awaiting their turns; and, being inadequately prepared for trial. . . . Lawyers should understand without being told that rules of courtroom decorum do not vary with the amount claimed or possible sentence to be imposed.
The following discussion focuses on the existing but unwritten rules of etiquette as Maryland judges appreciate them. It identifies basic rules of etiquette and categorizes conduct generally offensive to the Maryland bench. The purpose of the discussion is to increase awareness and provoke thought about these unwritten standards of etiquette. Their usefulness should be evaluated in light of the theoretical and practical justifications thus far identified.

A. Rise to the Occasion

1. Standing in Court.—For a majority of the Maryland judges surveyed, the most prevalent breach of etiquette by attorneys was the failure to stand when addressing the court. Although judges assumed this to be one of the most basic rules of etiquette, one judge suggested otherwise, noting that it was “preferable” if lawyers knew to stand whenever addressing the court. Even if it is considered old-fashioned, judges remarked lawyers have a “woeful inability” to rise to their feet when addressing the court or when questioning witnesses. One judge stated that when attorneys speak while sitting, he acts as if he cannot hear. Only when the attorney finally stands does he respond. This judge’s justification for enforcing decorum is obviously not grounded on the efficiency justification because of wasted court time; rather, it suggests his concern with respect and preserving the prestige of the court.

2. Standing Objections.—More specifically, judges said that the failure to stand when making an objection was the most regularly
The rationale for standing while making an objection is not only to display respect but, more important, to focus the court's and the jury's attention on the issue that the lawyer wishes to raise. This judicial concern is based on the practical justifications for conforming to etiquette. Lawyers who do not rise when making an objection send a visual and potentially damaging message to the court and jury about how they view the importance of their client's case.

When and how often to object is related to trial tactics rather than to etiquette, but even an ill-advised objection can be well-made. One commentator suggests that the attorney should stand immediately, then hesitate a moment before stating a legal basis for the objection. If the basis for the objection is obvious, the court will ordinarily sustain the objection without requiring counsel to state it, thus promoting efficient use of court time. The Federal Rules of Evidence also reflect this efficiency consideration by requiring counsel to state the legal ground only when it is “not apparent from the context.” State evidence rules may also dispense with the statement of grounds, but it is prudent to ask the judge before trial whether she prefers to have counsel state the grounds for all objections—at least one judge surveyed requires such explanations.

198. See Survey response, circuit court judge, Anne Arundel County. (“I find it disturbing to have [attorneys] make objections without standing up and without giving a reason. When this happens I ignore the objection. (I warn counsel of this before trial begins).”)

199. Survey response, circuit court judge, Baltimore County.

200. See id.

201. See McElhaney, When to Object, A.B.A. J., June 1989, at 99 (juries dislike numerous objections and bench conferences because it appears that both judge and counsel are keeping information from them and do not trust their judgment).


203. See id. This also serves the goal of judicial efficiency. See supra notes 84-114 and accompanying text.

204. Fed. R. Evid. 103 (a)(1).

205. Similar to the Federal Rules, in Maryland civil and criminal trials, “[t]he grounds for objection need not be stated unless the court, at the request of a party or its own initiative, so directs.” Md. R. 4-323(a) (criminal); Md. R. 2-517(a) (civil, circuit court); Md. R. 3-517(a) (civil, district court).

206. See supra note 198.
B. Attorneys "Going Walkabout"\textsuperscript{207}

1. Lateness.—The second most common complaint made by Maryland judges concerned attorney tardiness,\textsuperscript{208} though few judges at the district court level cited that problem.\textsuperscript{209} In a rare instance, a late attorney was arrested, hand-cuffed, and placed in lock-up.\textsuperscript{210} Most of the judges who responded to the survey emphasized the importance of punctuality for all court proceedings, though some judges are known to be relatively tolerant of attorney delays.\textsuperscript{211} This concern underscores the efficiency justification for maintaining etiquette rules, because judges noted that lateness slows down the process and costs everyone time and money.

Lack of punctuality as an etiquette breach also relates to the

\textsuperscript{207} "Walkabout" is a term of art that refers to a practice of Australian aborigines. The aborigines, who live primarily in the Outback region of the continent, live in one location for an indeterminate amount of time and then "go walkabout," which means that they commence on a journey with no destination or time limit. The individual sometimes returns to the starting point, and at other times settles down in another geographic location. It is said that the aborigines are very hard workers, but not dependable because of their innate calling to "go walkabout." See RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 2138 (2d ed. 1987) (unabridged).

\textsuperscript{208} See, e.g., Survey response, appellate judge, Maryland Court of Special Appeals.

Court is scheduled to begin at 9:30 a.m. and the practice with respect to jury trials is for the attorneys to meet with the judge sufficiently prior to 9:30 so that the witnesses and jurors will not be forced to wait while the lawyers and judges confer. Unfortunately, some lawyers are unaware of this requirement, and we are required to send a clerk to search them out in the courthouse.

\textsuperscript{209} See Survey response, district court judge, Baltimore City (recalling "about three occasions when lawyers appeared late for trial without calling the court or opposing counsel, and one occasion when counsel misrepresented to me that opposing counsel had agreed to a postponement").

A few district court judges wrote that they consider promptness and preparedness to be a litigator’s most important attributes. E.g., Survey response, district court judge, Howard County.

\textsuperscript{210} See Schauble, supra note 183, at 95. Judge Marvin Steinberg of the Circuit Court for Baltimore City was reported as having jailed defense attorney Michael Middleton and public defender Antonio Gioia for not being present in his courtroom when a jury verdict came back. Id. The case involved handgun and controlled dangerous substance charges. The jury had reached a verdict after deliberating four hours and the case was called so the verdict could be read. Michael Middleton's client had gone across the street to get lunch, and when Mr. Middleton noticed that he had not returned, both he and Mr. Gioia left the courtroom to look for him. Judge Steinberg had ordered the marshals to find the two attorneys when they were not present in the courtroom. When the defense attorneys returned to the courtroom, plainclothes police placed them under arrest, hand-cuffed them, and placed them in lock-up at the direction of Judge Steinberg. They were later walked back to Judge Steinberg's courtroom still hand-cuffed and chained to Middleton's client who had also been placed in lock-up. Id.

\textsuperscript{211} E.g., Survey response, circuit court judge, Baltimore City.
concern for professionalism and preserving favorable public perception of the judicial process. If attorneys themselves are remiss in meeting court appointments, then the public's respect for the legal profession and the judiciary will decline. Some judges also consider frequent walking in and out of the courtroom a breach of courtroom etiquette. This breach can disrupt a litigant's presentation of the issues by distracting the trier of fact and thus implicating the fairness justification for etiquette. Several judges remarked that resulting admonitions are also time-consuming, again reflecting judicial concern for efficiency in enforcing etiquette breaches.

One retired Maryland judge asserted that, in his view, when attorneys are out in the hall when a case is called, it is because they have either neglected to do something earlier, or the client has been uncooperative. This Survey response reflects a judicial perception that trial attorneys have become indifferent to the formality and professionalism demanded in the trial process and are inefficient in the use of their time.

2. Overscheduling.—Surveyed judges also complained about the disruption caused by attorneys who overbook their schedules and walk in and out of courtrooms to handle several cases. Particularly in the criminal courts, overscheduling is sometimes an unavoidable problem for both defense attorneys and prosecutors. Judges

212. See supra notes 67-83 and accompanying text.
213. E.g., Survey response, district court judge, Montgomery County.
214. Survey response, district court judge (retired), Montgomery County.
215. Because of the enormous caseload, public defenders are often scheduled to be in a number of different courtrooms at the same time.

Most judges on the Circuit Court in Montgomery County are well aware of this predicament and are generally accommodating and understanding if they are informed of a scheduling conflict ahead of time. Problems occur, however, when a lawyer is scheduled to appear in the Circuit and District or Juvenile Courts at the same time. While there seems to be a sense of cooperation among the judges on the same bench, that cooperation is not always present between judges on different benches. On one occasion, I called a Juvenile Court judge's chambers the day before a sentencing and asked to be placed first on the 9 a.m. docket so that I could be on time for a 9:30 a.m. commitment in Circuit Court. The next day, the Juvenile Court judge called my case last at 11:30 a.m. even though his clerk assured me that he was aware of my request. Interview with Maureen Essex, Assistant Public Defender, Montgomery County, Maryland (Mar. 26, 1990). See also infra note 225.

216. One judge observed that in Maryland, as in other state courts, "assistant prosecutors, usually housed right in the court facility, too often appear for a court hearing at their own pleasure, rather than at the time assigned." Survey response, circuit court judge, Prince George's County. See also Barris, Is Courtesy Really Contagious?, 59 Mich. B.J., Aug. 1980, at 506 ("I foresee no change in this favored treatment apparently en-
also criticized private attorneys for lack of punctuality and inadequate notice to the court.\textsuperscript{217}

The criminal trial lawyer, however, thrives on carrying a substantial caseload, which inevitably means that the attorney may have several cases scheduled on the same day in several courtrooms, particularly misdemeanor cases. Because it is inefficient, if not impossible, to ask a judge directly for permission to be late, it seems reasonable for an attorney to speak to the judge's secretary a few days before the trial is scheduled, or to leave a note in chambers or with the courtroom clerk and notify opposing counsel of the pending conflict. Waiting until minutes before the call of the docket to call the judge's chambers is unacceptable behavior to most judges and considered a breach of etiquette.\textsuperscript{218}

Some circuit court judges simply do not tolerate scheduling conflicts. One Maryland judge has dispatched sheriffs to escort the absent lawyer from another judge's courtroom to his own.\textsuperscript{219} Scheduling conflicts may present a "no-win" situation to some attorneys, because even though a majority of the judges expressed dissatisfaction with attorneys who are not present when the case is called, some judges criticized attorneys who "mill[] around" the courtroom while waiting for cases to be called in district court.\textsuperscript{220} Judges expressed a need to create an atmosphere of respect for the

joyed by assistant prosecutors until judges hold them to the same high standards to which they should (but do not always) hold defense counsel."\textsuperscript{217}

\textsuperscript{217} See, e.g., Survey response, circuit court judge, Baltimore City.

There are too many instances when lawyers are due in court for the call of the docket at 9:30 A.M. and call or have their secretaries call just a few minutes before that to say they are in another court and will be late. The rules and protocol require that lawyers do not simply leave a message that they will be late but in a timely manner seek permission from the judge himself to be late. This is a serious and bothersome breach.

Survey response, district court judge (retired), Montgomery County ("In the District Court in Montgomery County the proper etiquette is to contact the judge, at least one of the judges, and have that judge tell you how to proceed."). See also Barris, supra note 216, at 506-07. "[A] telephone call to apprise both the court and opposing counsel of an unexpected delay is not that burdensome." \textit{Id.} at 507. Virginia's Principles of Courtesy state: "A lawyer should, on all occasions, and for all appearances, practice punctuality both for the benefit of the court, counsel and client. Where delay, no matter how slight, is inevitable, prompt communication with the court should be made by the most expeditious means." \textsc{Virginia State Bar, Principles of Professional Courtesy} art. I(d) (1988).

\textsuperscript{218} The breach also affects witnesses, one judge wrote, when attorneys fail to notify them of postponements or to give them an estimated time to testify. See Survey response, circuit court judge, Baltimore City.

\textsuperscript{219} See Survey response, anonymous judge.

\textsuperscript{220} See Survey response, district court judge, Baltimore City.
authority they wield from the bench; consequently, their criticism centered upon attorneys who frequently walk around in the courtroom, stand "along the sides of the courtroom, instead of being seated, while awaiting their turns," and talk and laugh "while cases are being tried."  

C. Silence

1. Talking in the Courtroom.—The mandate of respectful silence is apparently more commonly breached than it is observed. Both circuit court and district court judges responded that continuous and sometimes loud conversations with clients and witnesses occur while attorneys wait for their cases to be called. One judge stated that he observes the most consistent breach of courtroom etiquette when the court convenes in the morning and attorneys quickly finish their conversations, turn their back on the court, then take a seat.

The trial judges' responses that they would like more silence in their courtrooms evinces their perception of declining respect for the court (and consequently for their own power), and of the inefficiency that talking allegedly causes. The former concern is more defensible than the latter, because allowing whispered conversations and talking in the back of court may increase efficiency. Judges want their large dockets to run smoothly and quickly, and whispered conversations may help the court when plea offers are extended and accepted. In addition, some problems inevitably arise prior to or

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221. Survey response, district court judge, Baltimore City.
222. Survey response, district court judge, Baltimore City. Another judge explained: (Many lawyers . . . contribute to a constant din . . . while [the court] proceedings are taking place. This becomes almost unbearable at times and, of course, at times it requires the judge to stop everything and ask people to quiet down. Most lawyers don't realize that it's embarrassing for a judge to have to stop everything and ask people to quiet down . . . . This is extremely embarrassing to me and I know to many other people in my same position because I've spoken to them.

Survey response, district court judge (retired), Montgomery County.
223. Survey response, circuit court judge, Baltimore City.
224. Judges mentioned that etiquette is breached when attorneys turn their back on the judge. Often, while engaged in conversations with a judge, lawyers "will turn their back right on the judge and start speaking to someone else." Survey response, district court judge (retired), Montgomery County.

The Virginia Principles of Courtesy provide that: "A lawyer in a courtroom should . . . not stand between the witness and opposing counsel during examination . . . [and should] avoid turning his back to the person being addressed . . . ." Virginia State Bar, Principles of Professional Courtesy art. II(n)(iii), (v) (1988).
225. "Those persons representing indigent clients need to be vigilant in their preparation for court and should be encouraged to ask for a brief recess if they need more time with
during litigation, and judges should tolerate attempts to resolve them; allowing these attempts may lead to more expedient trials, saving the court time and money.  

2. Interrupting and Ignoring the Judge.—Judges complained that counsel often make side remarks to one another in bench or jury trials. Some attorneys even argue with one another, and ignore the judge who ultimately must resolve the issue. Proper etiquette, according to these judges, is that all spoken words “go through the judge,” and it is a breach of etiquette for counsel to address each other directly. This procedure serves to maintain judicial control over every step of the proceedings; to demonstrate professional composure to the public; and to promote fairness by allowing both sides an opportunity to be heard.

One Baltimore attorney, appearing in Prince George’s County Circuit Court, was so engaged in an argument that he turned to the judge and told the judge not to interrupt him. The lack of respect not only exhibited breached etiquette, but also subverted the judge’s control over the proceedings. Other attorneys annoy judges and breach etiquette when they fail to listen. Nevertheless, most attorneys are deferential to the court, although many of them are inappropriately garrulous.

...
Many judges responded that counsel breach etiquette when they argue a point after the court has ruled on the issue.232 "Sometimes [attorneys] even want to continue arguing when they win,"233 one judge reports. A Prince George's County Circuit Court judge retorts to counsel who continue to press a point that the attorney will have a chance to argue the issue—"but it will be in Annapolis,"234 where the Maryland Court of Appeals is located. Arguing after the judge has ruled is not only unprofessional, but demonstrates to the public that the attorney does not take the judge seriously in her capacity as the decisionmaker, which inevitably undermines respect for the adjudicatory process as a whole. It also wastes time and effort. In practical terms, there is nothing to be gained by continuing an argument—but one's professional reputation may be lost.

D. Forms of Address

1. It's "Your Honor" in the Courtroom.—Titles are simply a sign of respect for one's position.235 Although all attorneys should have been taught in law school how to address judges inside and outside of the courtroom, several judges commented that most attorneys do not know when to say "Your Honor" or "Judge."236 The custom is to use "Your Honor" when speaking to a judge in the courtroom, and the less formal "Judge" only outside the courtroom.237

Lawyers who know a judge personally should follow the same
rules, unless the circumstances are inappropriate or the judge indicates otherwise. An assistant public defender in Maryland pointed out that it is inappropriate to call a friend who was made a judge by her first name outside of court in the presence of a client because it would demean the judge's position of authority and be disrespectful in the presence of others.238 Several Maryland judges noted that it is a breach of decorum for lawyers appearing before one judge to refer to another judge by his or her last name only, without using the title "Judge."239

Other judges commented that attorneys no longer introduce their arguments with "May it please the court . . . ."240 This is probably unnecessary in most trial courts, but it remains the more traditional, formal beginning, particularly in the appellate courts. The rules concerning the use of titles are grounded solely in the preservation of power and professionalism justification for etiquette rules. Judges have warned that lawyers should be careful, however, to avoid the other extreme—fawning over a judge.241

2. No First Names.—To further the goals of professionalism and fairness to the opposing side, attorneys should not address adult witnesses by their first names. Attorneys who do so, usually to make the witness feel at ease on the stand, use a tactic that is consid-

DEAR MISS MANNERS:

Do I introduce my son as "Judge Harry" (not his real name) or just "Meet my son, Harry"?

GENTLE READER:

Just Harry. Miss Manners knows this answer will disappoint you, but promises you that it will be all the more satisfying to have people then inquire, as they always do nowadays, what Harry "does."

Id. Cf. Sullivan, Practice Direction, NEW ZEALAND L.J., Apr. 1980, at 147 (legal etiquette in the district courts of New Zealand requires that the judge be addressed as "Your Honor"); Judicial Forms of Address, NEW ZEALAND L.J., May 1984, at 150-51 (chart explains the proper forms of address within the entire New Zealand judicial system).

238. A woman I knew as an opposing counsel and friend was made judge. Although I usually address her by her first name when I run into her outside of the courtroom, I would not do so in the presence of a client for the same reason I would not address her by her given name in court. Respect for her position must be observed in the presence of criminal defendants and other individuals appearing before her so that there is no misunderstanding that the position she holds is one of authority and that her orders must be obeyed.

Interview with Maureen Essex, Assistant Public Defender, Montgomery County, Maryland (Mar. 26, 1990).

239. Survey response, district court judge (retired), Montgomery County.

240. See, e.g., Survey response, circuit court judge, Prince George's County.

241. See Klein, supra note 143, at 6.
ered disrespectful. The use of first names or nicknames is unprofessional conduct and can potentially anger a judge, which in practical terms could harm a client’s position before the court. Likewise, attorneys should not refer to one another by first names during a trial.

Failure to introduce co-counsel or request permission for co-counsel to sit at the trial table is another breach of etiquette that several judges noted. Although this formality may add time to the trial process, the exertion is de minimis. Moreover, this small burden is overcome by the Maryland judges’ valid concern for commanding equal respect for each participant in the adversarial process.

3. Derogatory Remarks about Opposing Counsel.—Derogatory remarks and other personal attacks on opposing counsel offended many judges, who considered it a breach of the most basic standards of professionalism. One judge said he does not tolerate even

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242. See Survey response, district court judge, Prince George’s County; see also Survey response, district court judge, Baltimore City (attorneys addressing witnesses and parties by their first names occurs "with some regularity").

243. See, e.g., Survey response, circuit court judge, Caroline County.

244. On official documents, however, an attorney may sign with less than his or her full name. "A signature which uses the diminutive form of a person’s given name (as compared to an assumed or incorrect name) is not, in and of itself, a false or misleading communication by or about the lawyer." Committee on Ethics, *A Question of Diminutive Form*, Md. B.J., Mar.-Apr. 1989, at 40. An attorney’s letterhead should, however, recite the same name that appears in the Maryland bar registration.

245. Whenever a third person, such as a paralegal or an expert witness, wishes to sit at the trial table, counsel should always ask permission from the presiding judge, and then formally introduce that person to the judge and jury. See Survey response, circuit court judge, Baltimore City.

246. See L. CARROLL, supra note 63, at 83. "‘You should learn not to make personal remarks,’ Alice said [to the Mad Hatter] with some severity; ‘it’s very rude.’" Id. See also J. MARTIN, supra note 1, at 73.

247. A Maryland appellate judge responded to the Survey quoting the following passage, which is taken from a transcript of a hearing on discovery motions: [PLAINTIFF’S COUNSEL]: Initially the plaintiff filed a request for the production of photographs that were taken by [the corporate defendant]. The defendant’s response to that was [that] these photographs were work product, which response was absolutely incorrect and contrary to the law of the State of Maryland, and the plaintiff filed an appropriate response to that.

Thereafter, the plaintiff filed a motion to compel the production of not only those photographs, but some sketches that were taken at the scene. The
harmless, irrelevant personal comments. Observed by lay persons, such conduct "diminishes the dignity of the proceedings and makes it rather difficult for a judge to command respect of those persons." Insults make the attorney who resorts to that tactic look foolish, unprofessional, and unable to engage in sophisticated legal analysis. Oddly, these remarks between attorneys can be privileged communications.

A more egregious breach, some judges said, is to interrupt opposing counsel in the midst of an argument. Such behavior distracts the decisionmaker's collection of information, interrupts the flow of the proceedings, and causes inefficiency in court proceedings. Professional interaction between attorneys rather than personal effrontery is courtroom conduct to be re-learned by practitioners and nurtured in new members of the bar, according to Maryland trial judges.

Defendant filed an opposition again misstating what the law is in the State of Maryland.

[DEFENDANT'S ATTORNEY]: I'm going to object right off the bat. He calls me a liar in pleadings. He puts all of those innuendos in. This little pimple has the audacity to act like a man and he isn't half a man.

THE COURT: Mr. [DEFENSE COUNSEL], let him finish. Go ahead, will you please.

The appellate judge deciding this case said: "I don't know what is worse: the atrocious conduct of counsel or the judge's reaction to it." Survey response, appellate judge, Maryland Court of Special Appeals. See generally Schaefer, supra note 150, at 606-11 (discussing whether an attorney can be disciplined for criticizing another attorney in and outside the courtroom—and the first amendment implications of such speech).

248. See Survey response, district court judge, Prince George's County. But to many trial judges who have heard an abundance of unnecessary commentary, a mere poor choice of words by an attorney regarding another attorney does not amount to a breach of etiquette.

249. Survey response, district court judge, Prince George's County.

250. One court has held that "[a] lawyer's remarks about another are absolutely privileged... where they are spoken in the course of a judicial or administrative proceeding and relate to the matters at issue in the proceeding." Arneja v. Gildar, 541 A.2d 621, 622-23 (D.C. 1988) (attorney commented to opposing attorney, who was a Sikh born in India: "You're unnecessarily pursuing this case. You don't understand the law.... You better learn your English, go to elementary school.")

A New Jersey Court has held that a lawyer's letter to a third party not directly involved in pending litigation, but certainly interested in the lawsuit, was cloaked with absolute immunity. The letter (containing allegedly libelous assertions) satisfied the two-prong test for absolute immunity: it was made in the course of a judicial proceeding and it bore some relation to that proceeding. See DeVivo v. Ascher, 228 N.J. Super. 453, 550 A.2d 163 (1988).

251. "I believe that it is almost a rule that attorneys in contested cases take on the cause of their clients and rather than be an advocate, are adversaries, particularly to one another. The courtesies between lawyers [are] extremely lacking and discouraging to the court." Survey response, circuit court judge, Baltimore County. The same judge also
E. Presentation of Evidence

Etiquette plays a role in guiding attorneys’ maneuvering around a courtroom, especially in the presentation of evidence to witnesses, the clerk of the court, the judge, and the jury. Several judges responding to the Survey observed a lack of formality in handling evidence and attorneys turning their back on the judge when maneuvering with evidence.\textsuperscript{252} It is the obvious (and embarrassing) fault of law schools for this failure of basic legal training.\textsuperscript{253} These formal rules are aimed at achieving courtroom efficiency. By the time every law student graduates, he or she should know the basic steps for introducing evidence in a court of law, just as doctors know rudimentary anatomy. Lawyers unfamiliar with a court or particular judge should follow the basic steps unless instructed otherwise by the presiding judge.\textsuperscript{254}

Several district court judges were disturbed by lawyers’ common failure to show the exhibit to opposing counsel. This concern reflects the fairness considerations justifying adherence to formal etiquette rules. Other breaches noted by judges included failure to ask permission to approach a witness and failure to ask permission

noted that overall, attorneys, clerks, and others are very courteous and show great respect for the court.

Attorneys should not lose sight of their role as advocates and should not become combatants. The American Bar Association provides that: “[t]he basic duty the lawyer for the accused owes to the administration of justice is to serve as the accused's counselor and advocate with courage, devotion, and to the utmost of his learning and ability and according to law.” \textit{2 Standards Relating to the Administration of Criminal Justice} 4-5.1 (2d ed., 1982, Tent. Draft approved 1979).

\textsuperscript{252} See, \textit{e.g.}, Survey response, district court judge (retired), Montgomery County. Many lawyers will merely hand the exhibit right to the judge. All exhibits should be handed to the clerk to maneuver between the lawyer and the judge. Defense attorneys and State’s attorneys fail to pay any attention to the way an exhibit or file is handed up to the judge. I think some State's Attorneys (on purpose) hand the file up so that it's upside down; others love to hand it up so it's sideways. It would be very courteous to hand a file up so that it's in the proper position for the judge to either read it or write on it as soon as he takes it . . . .

\textit{Id.}

\textsuperscript{253} The steps for properly introducing and using evidence are: (1) have the exhibit marked; (2) show the exhibit to opposing counsel; (3) ask the court’s permission to approach the witness (contrary to popular impressions created by television courtroom scenes); (4) show the exhibit to the witness; (5) lay the foundation for the exhibit; (6) move for admission of the exhibit into evidence; (7) have the exhibit marked in evidence; (8) have the witness use or mark the exhibit; (9) obtain permission to show or read the exhibit to the jury; (10) publish the exhibit to the jury. \textit{See T. Mauet, supra} note 202, at 156-60.

\textsuperscript{254} Local attorneys, the court clerk, and intelligent observation may provide the same information.
to approach the bench. These rules are perhaps inefficient because they can be time-consuming. Nonetheless, the formalities of approaching a witness or the bench are justified because they maintain the judge's authority and control over the lawyers. Such conduct may in fact be overly deferential; it is directed specifically at the institutional roles played by judges and witnesses, rather than their roles as individuals. Even if time-consuming, this conduct ultimately preserves the power of the system by requiring outward demonstrations of respect.

On the other hand, the opportunity to maneuver around the courtroom and interact with the witness or judge gives the advocate a chance to control the courtroom and command respect, sympathy, or admiration. Skilled litigators communicate with the jury or witness through body language, facial expressions, gestures, and other subtle means of communication. Thus, the factfinder's perceptions of the individual attorney's character may be a guide to the truth that the judge or jury is seeking. For even in a courtroom, "[a] man's manners are a mirror in which he shows his portrait." A lawyer's unspoken performances often translate into subtle persuasion and a win for his or her client.

F. Composure: The Sign of a Professional

Loudness and gesticulation may constitute breaches of etiquette. "Lawyers whose intonations drip with sarcasm while saying, 'Thank you, Your Honor,' after a ruling against them also do...\]

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255. Survey response, circuit court judge, Baltimore City.
256. Skillful litigators command respect and project credibility in the courtroom arena through displays of their personal style and by conveying to the jury or judge messages of disbelief, indignation, sympathy, righteousness or humor. See E. Goffman, Strategic Interaction 102-13 (1969) (discussing a framework for interpersonal dealings and decisionmaking from a game theory perspective).
257. See id. "In every social situation we can find a sense in which one participant will be an observer with something to gain from assessing expressions, and another will be a subject with something to gain from manipulating this process." Id. at 81.
258. See R.W. Emerson, Character, in The Selected Writings of Ralph Waldo Emerson 368-69 (B. Atkinson ed. 1950).
The reason why we feel one man's presence and do not feel another's is as simple as gravity. Truth is the summit of being; justice is the application of it to affairs. . . . Character is this moral order seen through the medium of an individual nature. An individual is an encloser. Time and space, liberty and necessity, truth and thought are left at large no longer.
Id.
260. People, in general, tend to speak very loudly when trying to communicate with someone who does not speak their own language; similarly, one judge emphasized that
not go unnoticed by judges or jurors. When attorneys grimace or use other body language to show displeasure at a judge's ruling, they breach the norms of courtroom decorum. But few judges said that this behavior occurs regularly before them. Some maintain that discomposure walks the fine line between bad style and a breach of courtroom etiquette. Other judges responded that they have observed what they called breaches of courtroom etiquette when counsel have thrown papers or pencils on the trial table in fits of disgust or anger. In addition, several judges mentioned that attorneys breach etiquette when they leave the courtroom, perhaps as a show of disgust or frustration, before the judge has fully concluded the case. Finally, in the face of verbal attack, it is obviously best for counsel and the client to maintain a straight face and a calm demeanor.

G. Bare Essentials in Dress

DEAR MISS MANNERS:

I find myself quite caught up in litigation these days. What does a lady wear to her first felony trial? This clearly is a significant occasion. I do so want to do the Right Thing; even more, I want the jury to do the Right Thing. Surely, appropriate attire is integral to a speedy acquittal.

the lawyer who speaks the loudest does not necessarily prevail. Survey response, circuit court judge, Anne Arundel County.

261. Klein, supra note 143, at 62.

262. See Survey response, district court judge, Prince George's County (use of tone of voice or gestures communicating disgust or appall at judge's ruling breaches courtroom etiquette). The New Jersey Supreme Court has upheld a $500 fine and rebuke that a trial judge imposed on a lawyer who twice laughed or made mocking displays at two of the judge's rulings; however, it did not uphold a two-day jail sentence the judge also imposed. See In re Daniels, 118 N.J. 51, 58, 570 A.2d 416, 420 (1990). The court expressed a desire that more formal procedures be used in this type of contempt case, including affording the accused party the right to counsel and referring the matter for a hearing before a different judge. See id. at 72-73, 570 A.2d at 427.

263. Related to this lack of composure is the attorney who has personal idiosyncrasies of which he is normally not aware. For example, some attorneys place their hands in their pockets and jiggle their change as a nervous habit while speaking in court. Other lawyers, one judge said, "clean out their ears with one side of [their] eyeglasses and their nose with the other side." Survey response, district court judge (retired), Montgomery County.

264. One judge who responded to the Survey said that attorneys breach etiquette when they "show annoyance, slamming down a pen or pencil on the counsel table, showing disgust." Survey response, circuit court judge, Baltimore County.

265. It is proper etiquette for attorneys to wait until the court has concluded all matters regarding the case, even including marking the file, to ask the court's permission to be excused. See, e.g., Survey response, district court judge, Baltimore City; Survey response, district court judge (retired), Montgomery County.
GENTLE READER:

Naturally, what one wears to trial should have no bearing on the jury's finding. Naturally, what one wears to a trial has an influence on the jury. This is because in the complex process of determining what is just, juries take into consideration the view that the defendant has towards society and its laws . . . 266

Miss Manners' advice highlights dressing appropriately for court, though it may seem a de minimis concern in the larger scheme of the trial process. Of course, it is not. Lawyers know this; but, judging from the Survey responses, many of their clients do not appreciate that clothing sends immediate signals to the judge and jury. Sometimes, a party's attire offends a judge's courtroom standards. Even if the clothing does not sink to that level, the attorney who fails to teach clients what to wear risks perhaps even worse consequences. The decisionmaking process for some, if not all, jurors begins at the initial visual encounter with a party to the litigation. Miss Manners, with a heightened understanding of common-sense reality, articulates some of the important concerns that attire may signal to the fact-finder: "Is she, for example, someone who has been driven by conscience to violate a law or someone who routinely defies society, in big matters and small, out of lack of respect, a feeling of superiority, or simply for amusement?" 267 Especially when a defendant exercises his or her rights to remain silent at trial, appearance is very important. 268 And yet, while common sense may dictate what is appropriate wear for the courtroom, sometimes common sense stops at the door, observed many judges in their Survey responses. Clothing that distracts or offends is, to some judges, a breach of etiquette because it undermines the serious, professional atmosphere of the proceedings. 269

266. J. MARTIN, supra note 1, at 138. Miss Manners then reassured her correspondent:

By your small politeness in the course of your action, you demonstrated that you subscribe to the idea that one follows the conventional gestures of one's society in order to reassure others that one means them no harm. Dressing in conformity with the most conservative standards of the community should not win you a speedy acquittal, but it should signal the jury that you respect society's standards.

Id.

267. Id.

268. Based on the author's experience as a clinical supervisor at the Georgetown University Law Center's Criminal Justice Clinic and in conjunction with two Maryland Public Defender's offices, it is not uncommon for public defenders to find themselves in a clothing store on the eve of trial so that they can provide an incarcerated client with something to wear besides prison garb.

269. Many judges commented that casual clothing such as sweat-suits, shorts or jeans
Judges agreed that shoes, a shirt with sleeves, and long pants for men, and skirts or dresses for women are the bare essentials. Attorneys, clients, and witnesses should not wear hats or headgear in court, unless for religious purposes. When a person is not dressed correctly, what recourse does the court have? Some judges have sent witnesses back home to change. On the other hand, judges cannot enforce a dress code for the public because they risk compromising the personal tastes of the wearers or even an infringement on first amendment rights. As one might expect, the judges indicated that they hold lawyers to a higher standard for proper attire than witnesses, jurors, and spectators.

Sending a witness or attorney home to change clothing clearly is inefficient and a waste of the court's time. The only justification for this is to preserve the dignity of, and respect for, the proceedings. Formal attire is a sign of respect and a visual acknowledgment of the seriousness of an event. Examples are dressing in black while in mourning or wearing formal attire to attend a musical or artistic event.

have become commonplace at the district court level. See, e.g., Survey response, circuit court judge, Baltimore City; Survey response, circuit court judge, Caroline County; Survey response, district court judge, Prince George's County.

270. For example, one circuit court judge said he was quite irritated by attorneys who enter, while court is in session, still wearing an outer coat or a hat. See Survey response, circuit court judge, Montgomery County.

271. See McMillan v. State, 258 Md. 147, 153, 265 A.2d 453, 456 (1970) (error to adjudge defendant in direct contempt for his refusal to remove his headgear in court without first affording him an opportunity to justify his conduct or religious grounds).

272. One retired district court judge replied that in terms of breaches of etiquette by the public, there is little to be done regarding dress since they have no formal training on courtroom behavior and dress. On occasion, the judge would ask an inappropriately dressed person appearing in his courtroom to return home to change, especially in the summer when people tend to wear shorts. See Survey response, district court judge (retired), Montgomery County.

273. See, e.g., Cohen v. California, 403 U.S. 15 (1971) (upholding as protected first amendment speech a person's right to wear a jacket bearing the words "Fuck the Draft" in a Los Angeles courthouse corridor).

274. See, e.g., Survey response, appellate judge, Court of Appeals of Maryland ("I prefer to see lawyers argue cases while wearing suits as opposed to sports jackets and slacks . . . ."); Lind, Boles, Hinkle & Gizzi, A Woman Can Dress to Win in Court, 70 A.B.A. J. 92 (1984) (discussing how clothing influences a jury's evaluation of a female attorney's trustworthiness, professionalism, and credibility). The authors also contend that a woman who is "perceived as trying to look like a man loses rather than gains authority." Id. at 92.

275. But see M. MITCHELL, GONE WITH THE WIND 133 (1936). Proper antebellum etiquette required that widows wear black and refrain from dancing. That is, of course, until Rhett Butler offered one-hundred and fifty dollars in gold to dance with Mrs. Charles Hamilton, who was in mourning for the loss of her beloved husband. See id.

276. Proper dress is an integral part of participating in a special event. Recall in The
H. Client Misconduct

The onus of teaching clients how to behave falls, as does the matter of attire, on attorneys. Litigants commit breaches of etiquette because often they are unfamiliar with the courtroom and judges' expectations. Indeed, Maryland judges commented that pro se litigants regularly breach the most basic rules of etiquette. Judges

survey response, district court judge, Baltimore County. See also Laub, The Problem of the Unrepresented, Misrepresented and Rebellious Defendant in Criminal Court, 2 DUQ. L. REV. 245 (1964) (sympathizing with the trial judge's plight and recommending better understanding on the part of appellate judges who review cases involving pro se litigants); Comment, Defense Pro Se, 23 U. MIAMI L. REV. 551 (1969) (suggesting that the problems of pro se representation might be lessened through the employment of advisory counsel); Note, Right to Defend Pro Se, 48 N.C. L. REV. 678, 684-85 (1970) (noting a "potential interference with orderly trial practice").

Women of Brewster Place the sense of self-respect that overcame Cora Lee's family as she dressed them properly for the special occasion of attending a Shakespeare play in the park:

—there was something in the air. It felt like Christmas or a visit from their grandparents, but neither of these was happening . . . .

Cora sorted feverishly through their clothes—washing, pressing, and mending. . . . She patched and fused, meshed and mated outfits until she was finally satisfied with the neatly buttoned bodies she assembled before her. She lined up the scoured faces, carefully parted hair, and oiled arms and legs on the couch, and forbid them to move.

noted the lack of pre-trial preparation of clients by their attorneys regarding courtroom etiquette. The example was given of litigants blurring out comments or arguing with opposing counsel. One judge maintains that litigants probably "get their ideas of what court is about from [the television shows] 'People's Court' or 'Divorce Court.' " An attorney's role may include instructing clients to stand, to sit up straight, or to remove hands from pockets. Attorneys should alert their clients to the fact that jurors and judges are always watching and are keenly aware of body language or other subtle gestures and facial expressions. When a client misbehaves in court, the attorney should make every reasonable and, if possible, subtle effort at control. The American College of Trial Lawyers stated that the lawyer's professional obligation includes the duty "to advise any client appearing in a courtroom of the kind of behavior expected and required of him there, and to prevent him, so far as lies within the lawyer's power, from creating disorder or disruption in the courtroom." But it is improper for the attorney to make loud or hostile demands on the client to act properly. A lawyer must at all times remain a zealous advocate—which in some courtrooms precludes reprimanding even a disruptive client to preserve the overall fairness of the adjudication.

I. Breaches of Etiquette by Judges

DEAR MISS MANNERS:

What is the proper salutation for a former . . . judge who has been convicted of accepting bribes and is now serving his country in a federal penitentiary? I know that formal public officials are normally addressed as “The

279. See Survey response, circuit court judge, Baltimore City ("Too frequently, a litigant will simply blurt something out or begin arguing with the other lawyer or party."); see also Survey response, district court judge, Baltimore City; Survey response, district court judge, Prince George's County.

280. Survey response, circuit court judge, Baltimore City.


282. See Survey response, district court judge, Prince George's County.

While I have found the decorum of the bar toward the bench exemplary, I have found the conduct of a number of attorneys toward their clients reprehensible. I have seen some attorneys yell at their clients to "shut up" at counsel table during trial. Although some criminal defendants may well be very annoying, I see no need for their attorneys to be discourteous.

Id.
Honorable John Doe," but does the conviction for acts of moral turpitude serve to revoke the "Honorable"? Where I come from, this is not a theoretical question.

GENTLE READER:

At the rate things are going, we may soon need a set of regulations spelling out exactly which of the many interesting forms of moral turpitude that our public servants seem to enjoy indulging in should result in revoking their privilege of being addressed as "Honorable." Miss Manners will be sorry when that happens. The ironic humor in so addressing an inmate of a federal penitentiary fills her with such glee that she is tempted to find out who your former [judges] are for the sheer pleasure of writing out those envelopes.283

Legal etiquette is a two-way street. Judges owe attorneys important obligations,284 of which reasonableness and impartiality appear to be the most important.285 Canon 2(A) of the Code of

283. J. Martin, supra note 1, at 708-09.
284. Canon 3(A)(3) of the Code of Judicial Conduct states that "[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." CODE OF JUDICIAL CONDUCT Canon 3(A)(3). See also Barris, supra note 216, at 506-07 (judges owe a duty of respect and courtesy to attorneys and the office that they hold).

Although it lies beyond the scope of this article to analyze fully breaches of etiquette by judges, this section raises a few of the more important issues as they have appeared in Maryland. For a more complete discussion of judicial obligations and breaches of decorum, see Conner, The Trial Judge, His Facial Expressions, Gestures and General Demeanor—Their Effect on the Administration of Justice, 9 TRIAL LAW. GUIDE 61, 74 (Aug. 1965).

The trial judge has a tremendous influence on the jury, by his conduct, facial expressions and in the inflexion and deflection of his pronouncement of words, either in sustaining or overruling objections, by comment to lawyers or his actions and expressions at the time a witness is testifying—such as a stare at the witness, frown, scorn, shrug of shoulders or waving of arms or hands by the judge.

Id. See also Alschuler, supra note 27, at 677-720 (covering the remedies for judicial misconduct and modern disciplinary procedures); Berger, Impeachment of Judges and "Good Behavior" Tenure, 79 YALE L.J. 1475 (1970) (questioning whether mere breaches of "good behavior" permit impeachment); Middleton, Judges are People Too; Sometimes It Isn't Easy, 68 A.B.A. J. 1200 (1982) (discussing whether judges should speak out on issues); Schwartz, Judges as Tyrants, 7 CRIM. L. BULL. 129 (1971) (discussing dictatorial and biased trial judges).

285. Orderly procedure presumes that a judge is able to be objective, to look dispassionately at the whole case and to disregard local prejudices, knowledge of the family or of the defendant himself.... Socrates said four things belong to a judge: to hear courteously, to answer wisely, to consider soberly and to decide impartially.

Wright, supra note 23, at 382.
Judicial Conduct exhibits the preservation-of-power rationale for etiquette by stating that a judge should conduct herself "in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Because of their position in the legal hierarchy, this power and professionalism rationale for courtroom etiquette rules is critically undermined and practically meaningless when judges breach etiquette. There is a direct and immediate impact on attorneys, parties, and the public when a judge's professional demeanor is questioned in court. A judge's bad behavior detracts from the indispensable perception of fairness and impartiality of the courts, and these derelictions tend to be well reported by the media.

Judges are bound to abide by the Code of Judicial Conduct, violations of which are punishable by an informal censure, formal reprimand, or removal from office. The objectives of judicial disability proceedings, and any sanction imposed therein, are to maintain "the honor and dignity of the judiciary and the proper administration of justice rather than the punishment of the individual." When assessing claims of judicial misconduct, reviewing courts balance the competing interests of the judicial process: impartiality and the prompt issuance of just decisions, against law-


287. See, e.g., Rooney, Judge Censured for Humiliating Student, Chicago Daily L. Bul., Dec. 7, 1989, at 1 (Cook County judge Glynn J. Elliott, Jr. censured for hand-cuffing a visiting student to a chair after allegedly creating a disturbance in the courtroom); Moss, Judge Mrs. the Point, But He Later Apologizes to Woman Lawyer, A.B.A. J., Sept. 1, 1988, at 25 (Federal Judge Hubert Teitelbaum in Pittsburgh apologizes for threatening to send attorney to jail for refusing to be addressed by her husband's last name); Cohen, Racial Slur Draws Complaint, N.J. L.J., Nov. 27, 1986, at 7, at col. 1 (efforts to remove a judge from office after he made racially derogatory remarks about a black woman at a party). See also Prodding the Judiciary to Clean Its Own House, Bus. Week, Dec. 4, 1978, at 105 (report on attempts to create judicial disciplinary bodies); Now, the States Crack Down on Bad Judges, U.S. News & World Rep., Mar. 13, 1978, at 63 (state commissions disciplining misbehaving judges).


290. The American College of Trial Lawyers stated that judges have a duty to recognize the obligation of every lawyer to represent his clients courageously and vigorously, and to treat every lawyer with courtesy and respect due one performing an essential role in the trial process; [and] to avoid becoming personally involved in any case before him, to preside firmly and impartially, and to conduct himself in such a way as to prevent, if possible, disorder or disruption in the courtroom.
yers' interest in representing their clients zealously. Most authors on topics of judicial etiquette agree that to achieve the equitable administration of justice, it is necessary for judges always to maintain a calm, firm, and courteous demeanor.

But judges may affront standards less exalted than the high dictates of justice. Those who consistently start court late commit breaches of etiquette against attorneys, witnesses, and the public. One strict Texas judge, who was known to fine tardy lawyers, fined himself one day when he arrived twelve minutes late. He held a contempt hearing, found himself guilty, and set a $50 fine. The judge then handed the startled clerk a $50 bill. He said he had no excuse other than failure to watch his clock closely enough. More judges should apply etiquette rules to their own behavior in a concerted effort to be fair, which, in turn, enhances the power of the courts. But the fact is that judges may break etiquette rules more often and in more ways than attorneys, and in general they let themselves get away with it. Indeed, appellate judges responding to the Survey said that they see the evidence of bad behavior in trial transcripts. Nonetheless, there have not been many complaints

American College of Trial Lawyers, supra note 281 (Principle IV, judge's obligations).


292. See Alschuler, supra note 27, at 678; Conner, supra note 284, at 74-81; Schwartz, supra note 284, at 136-37; Note, supra note 23, at 544-51.

293. See Schauble, supra note 183, at 98 (discussing judges who are chronically late in Baltimore city courts and then complain when attorneys do the same).


295. Id.

296. Anyone who has tried cases is well familiar with the different levels of courtesy, or lack thereof, extended by some judges to counsel in the courtroom. I often wonder if judges are aware of the high respect among lawyers for judges whose demeanor is marked with courtesy—or the disdain for those whose demeanor is otherwise.


297. One Maryland judge responded that the main weakness of most judges is to speak angrily, make sharp remarks, or to reprimand a lawyer in court. See Survey response, district court judge, Prince George's County. See also Liner v. State, 62 Md. App. 381, 489 A.2d 553 (1985); Whitehurst, supra note 296, at 345.

Usually, this is the result of misconduct on the part of the attorney. See Survey response, district court judge, Prince George's County. The judge further commented that in general, judges commit the following breaches of etiquette: (1) arriving late for court; (2) impatience on the bench; (3) failing to allow persons to speak to the court; and (4) acting rudely to attorneys and members working in the court system. Id. To the contrary, one judge responded that in 28 years on the bench, he observed judges' courtroom etiquette "without exception to be impeccable." Survey response, circuit court judge, Baltimore City.

298. See, e.g., supra note 247.
filed by attorneys, as opposed to the public, with the Maryland Judicial Disabilities Commission,\textsuperscript{299} possibly because potential complainants fear reprisals.\textsuperscript{300}

When it comes to judges' breaches of etiquette and professional misconduct, the public has an elephantine memory, and whether justified or not, one judge's conduct can leave a lasting negative public impression of the judiciary.\textsuperscript{301} For example, there is a "growing awareness among judges themselves that gender bias compromises the public's overall confidence in the judicial system."\textsuperscript{302} Incivility, rudeness, interruptions, and failures to listen to the parties can only hurt the legal profession. As the preamble to the Virginia Principles of Professional Courtesy states, "[t]houghtful, courteous conduct, manners and attitudes, constantly practiced by the bench and bar in a symbiotic relationship will improve both the reality, and the public perception, of the legal system."\textsuperscript{303} Judges' etiquette and perceived decorum is therefore a crucial factor in preserving the courts' power and promoting legal professionalism.

\textsuperscript{299} One judge noted that "[p]erhaps the existence of the Judicial Disabilities Commission and the fact that nowadays people who perceive themselves to be the victims of abuse are quick to complain have had a salutary effect on judicial behavior." Survey response, appellate judge, Maryland Court of Special Appeals.

\textsuperscript{300} One appellate judge wrote:

In Maryland counties that had only one circuit court judge, i.e., in every jurisdiction except Baltimore City, Baltimore County, Montgomery County, and Prince George's County, the judge was king, tsar, emperor, feudal overlord. He ran the county, and ran it his way. Some of those judges were courtly gentleman, or benevolent despots. Lawyers who practiced in some counties, however, were lucky if they experienced nothing worse than bad manners and bursts of temper. Sometimes the abuse approached outright tyranny. That too seems to be a thing of the past.

Survey response, appellate judge, Maryland Court of Special Appeals. Some Maryland trial attorneys, as well as attorneys in other states, would not necessarily agree with the latter statement. See, e.g., Schauble, \textit{supra} note 183, at 95 (discussing the jailing of two Baltimore attorneys who appeared late after a luncheon recess); \textit{see also} Liner, 62 Md. App. 381, 489 A.2d 553; Moss, \textit{supra} note 287, at 25 (judge apologizes for threatening to send female attorney to jail for refusing to be addressed by her husband's last name).

\textsuperscript{301} See, e.g., \textit{supra} note 1 and accompanying textual quotation. The same event is also reported in Moss, \textit{supra} note 287.

\textsuperscript{302} Blodgett, \textit{supra} note 123, at 53.

\textsuperscript{303} \textit{VIRGINIA STATE BAR, PRINCIPLES OF PROFESSIONAL COURTESY} preamble (1988) (emphasis added). \textit{See also} the Seventh Circuit's proposed Preamble, Seventh Circuit Report, \textit{supra} note 80, at 53 ("The following standards are designed to encourage us, lawyers and judges, to meet our obligations to each other, to litigants and to the system of justice, and thereby achieve the twin goals of civility and professionalism, which are hallmarks of a learned profession dedicated to public service.").
Another dimension of courtroom behavior related to etiquette is gender bias, a topic that has attracted considerable attention recently. Gender discrimination is, at a minimum, a serious breach of courtroom etiquette. Gender bias is perpetuated against women appearing in courts as attorneys, jurors, witnesses, and parties; it works to their disadvantage, and it undermines the impartiality and overall fairness expected of the legal process.

A national movement is underway to study and to correct this problem. The Maryland Special Joint Committee on Gender Bias reported:

A widespread perception that gender bias affects the process or outcome of particular cases is important because such bias undermines the image of impartiality which is crucial to the system. Where that perception has a basis in fact, it is imperative that the judicial system eliminate it in order to protect the reputation of the judiciary for impartiality. In many instances, as this Report documents, the reports of respondents about gender bias have a basis in fact: it is true that women suffer a disadvantage in many arenas of the legal system, in terms of both credibility and case outcome, and it is also true that men suffer a disadvantage in some custody disputes.

Id. at 109.

304. See infra note 306.

305. See GENDER BIAS IN THE COURTS, supra note 185, at 107-28. The Committee reported:

A widespread perception that gender bias affects the process or outcome of particular cases is important because such bias undermines the image of impartiality which is crucial to the system. Where that perception has a basis in fact, it is imperative that the judicial system eliminate it in order to protect the reputation of the judiciary for impartiality. In many instances, as this Report documents, the reports of respondents about gender bias have a basis in fact: it is true that women suffer a disadvantage in many arenas of the legal system, in terms of both credibility and case outcome, and it is also true that men suffer a disadvantage in some custody disputes.

Id. at 109.

306. The New Jersey Supreme Court created the first Task Force on Women in the Courts. This task force was set up to study the influence of sexist attitudes on the judicial system. A majority of the states have created similar task forces to study bias against women attorneys. Such task forces are funded by courts, bar associations, and state legislatures. A.B.A. J., Sept. 1988, at 24. The New Jersey task force released reports in 1984 and 1986 finding that gender bias influenced judges. In 1988, Judge Marilyn Loftus, president of the National Association of Women Judges, stated that the New Jersey task force reports indicate that “courtroom treatment has changed . . . [and that] women are being treated fairly.” Id.

The National Center for State Courts, the National Association of Women Judges, and the William Bingham Foundation held a National Conference on Gender Bias in the Courts from May 18, 1989 through May 21, 1989. The National Task Force on Gender Bias in the Courts, chaired by Judge Betty Ellerin, was represented along with 27 state task forces.

Although members of the New Jersey bar and bench report that there has been a decline of disparate treatment of women, other states, including Maryland, are just beginning to address the problem of gender bias in the courts. For example, “[i]nterviews with more than 25 lawyers [in Boston] working in virtually every segment of the profession found that women are encountering significant discrimination that is prompting many to rethink their career goals.” The Morning Call, Jan. 1, 1989, at E8, col. 3. Moreover, a study of the New York state court system shows discrimination against women both as attorneys and as litigants. The New York task force completed a 22-month study that found that women encounter a “verbal and psychological obstacle course” upon entering a courtroom. Women were found to be criticized for aggressive behavior that would have been acceptable in men. See New York Task Force on Women in the Courts, Report, reprinted in Report, 15 FORDHAM URB. L.J. 8 (1986). See also Czapanskiy,
in the Courts completed a two-year investigation culminating in a comprehensive report.\textsuperscript{307} The Committee concluded that gender bias exists in Maryland courts, and "it affects decision-making as well as participants."\textsuperscript{308}

Although judges may not openly categorize gender bias as a breach of etiquette, one Maryland judge commented that he has seen breaches of etiquette where male attorneys "speak down" to female attorneys.\textsuperscript{309} One female circuit court judge also responded that in her experience as a practicing attorney, she heard some judges demean women lawyers by addressing them as "little lady" or "dear."\textsuperscript{310} Some judges apparently act in this manner frequently,\textsuperscript{311} especially if the woman attorney is relatively young, and even more so if she happens to be a law clinic student practicing under the supervision of a licensed attorney.\textsuperscript{312} One Maryland judge is known to address all female attorneys with the prefix "Mrs." even when he knows or has been advised that the attorney is unmarried.

In addition, breaches of etiquette occur that are far more serious than mere inappropriate tones of voice or forms of address. "Attorneys reported to the Committee that some judges and lawyers do not stop with sexist remarks, jokes, or general comments about the appearance of women lawyers; they make verbal or physical sexual advances in the course of the professional interaction."\textsuperscript{313} It is a breach of courtroom decorum and professionalism for a judge to mention an attorney's or witness's gender when it is not relevant to the proceedings. Clearly, if a male attorney remarked about a female judge's gender he would commit a serious breach of eti-


It is important to note the difference between gender bias task forces, which focus on the courts and decision-making processes, and state-established special committees that investigate problems confronting women in the legal profession, that is, law firms, legal education, and the bar.

307. See \textit{Gender Bias in the Courts}, supra note 185.
308. \textit{id.} at i (footnote omitted).
309. Survey response, circuit court judge, Anne Arundel County.
310. Survey response, circuit court judge, Baltimore City.
311. Male attorneys surveyed by the Special Committee on Gender Bias responded that judges have referred to female attorneys as "honey" or "babe." See \textit{Gender Bias in the Courts}, supra note 185, at 121; \textit{see also id.} at 123 (discussing how judges informally address women, and not their male counterparts, as "hon," "dear," "baby doll," "honey," and "sweetheart").
312. See Md. Rules 18 (1991) (allowing law students, certified by the dean of their law schools, to practice law in Maryland courts).
313. \textit{Gender Bias in the Courts}, supra note 185, at 125.
quette and would probably merit a reprimand or sanction. \[314\]

Some judges hold women lawyers to a higher standard of etiquette than their male counterparts. One female attorney responding to the survey on gender bias in the courts said that "[t]he judges also tend to reprimand women attorneys for the slightest . . . breach of decorum while failing to comment on the most blatant breaches by male attorneys." \[315\] This double standard exists not only in Maryland but in a majority of state courts. \[316\] References to another's sexuality are also obvious breaches of etiquette to be avoided by all attorneys, judges, and court personnel in order to maintain impartiality.

Gender-neutral interactions between lawyers and judges are supported by the theoretical justifications underlying etiquette standards. For example, a judge's comments about a woman's appearance, even if complimentary, undermine a woman's credibility and deny her equal treatment if no similar comment is made to male attorneys. \[317\] Etiquette rules that restrict conduct and unnecessary commentary from both the bench and bar, further the goal of gender-neutrality in courtrooms by fairly placing all parties on equal ground. This in turn will promote respect for the courts' judgments in the eyes of all participants and will legitimize the power of the judicial process in society. \[318\]

V. Teaching Courtroom Etiquette

A. Legal Institutions Called to Educate Lawyers

Enhanced professionalism, including courtroom etiquette, has become the modern quest of the late 1980s and early 1990s. \[319\]

\[314\] The Special Committee on Gender Bias was also informed "about a male lawyer who refers to female judges as well as attorneys as 'babes' and 'broads.' " \(\text{Gender Bias in the Courts, supra note 185, at 123 n.46.}\)

\[315\] \(\text{Gender Bias in the Courts, supra note 185, at 121 (footnote omitted); see also Blodgett, supra note 123, at 48, 49 (stating that women have to fight harder for respect and that they are presumed incompetent until proven competent).}\)

\[316\] \(\text{See generally supra note 306 (for discussion of The National Task Force on Gender Bias in the Courts).}\)

\[317\] \(\text{See Blodgett, supra note 123, at 52 (judge's compliments on attire or appearance "undercuts the woman's attempt to gain an equal measure of respect").}\)

\[318\] \(\text{See Gender Bias in the Courts, supra note 185, at 111-16 (giving examples of improper remarks by judges and male attorneys, which promote perceptions of unfairness by parties and witnesses).}\)

\[319\] This professionalism movement is broader in scope than courtroom etiquette methodologies, but these are often a subpart of the professionalism reports. For example, the professionalism report of the Vermont Bar Association recommended courtesy guidelines similar to those a Texas federal district court imposed, which were written by
Since 1987, over a dozen states have written professionalism reports.\textsuperscript{320} Numerous state and local bar associations have written codes, creeds, tenets, and guidelines of legal etiquette.\textsuperscript{321} The American Bar Association’s Commission on Professionalism supports the current efforts by state and local bar associations to improve professional conduct among attorneys.\textsuperscript{322} Education is a major component of these undertakings.

As in any educational process, the theoretical and practical justifications in support of etiquette codes of conduct should be discerned; otherwise, the call for greater professionalism will ring hollow and the procedures appear meaningless to practitioners. The initial training and later reinforcement of these skills requires an ongoing and concerted effort afforded by judges, law firms, bar associations, and law schools. “Lessons of professionalism should be taught to law students, then reinforced with new lawyers and revisited with experienced advocates . . . .”\textsuperscript{323} Only then will professional behavior become second nature.

1. Judges as Educators.—Judges have an ongoing responsibility for setting the standards of etiquette in courtrooms and for inform-
ing attorneys of what conduct is appropriate. According to one commentator, "[j]udges [used to help] the young lawyers who came into the community to grow into those standards. Judges are too busy today."324 Although lawyers encounter judges late in their legal training, judges hold an influential position that they can use to improve professionalism by advising attorneys on trial practice methods and on the way attorneys handle themselves in the courtroom. For example, the failure to stand when addressing the court is a consistent breach of courtroom etiquette noted by several Maryland judges.325 One judge assigned primary responsibility for this prevalent breach to state court judges "who allow this sort of thing on a wholesale basis."326

A few state and federal courts have taken measures to educate lawyers by formally adopting court rules on etiquette procedures.327 In 1987, the Supreme Court of Kansas adopted rule 161, which focuses on courtroom decorum, and is among the broadest rules in existence.328 The first sentence of this rule reflects the theoretical justification of preserving the respect and professionalism of courtroom proceedings: "[t]he conduct and demeanor . . . shall reflect respect for the dignity and authority of the court."329 The second clause of the court rule reflects the fairness justification: "the proceedings shall be maintained as an objective search for the applicable facts and the correct principles of law."330 The United States District Court for the Northern District of Texas took a unique approach to professional conduct education, publishing an opinion formally adopting the Dallas Bar Association's Guidelines of Professional Courtesy.331 The court made clear its intent to curb future abuses in trial tactics and lawyers' unprofessional behavior.332

There are examples of more detailed, practice-oriented courtroom etiquette rules formally adopted by courts in their efforts to educate lawyers on professional conduct.333 Although the three

324. D'Alemberte, supra note 6, at 52-53.
325. See supra subpart IV (A).
326. Survey response, circuit court judge, Montgomery County.
329. Id.
330. Id.
331. See Dondi Properties Corp. v. Commerce Sav. & Loan Ass'n, 121 F.R.D. 284, 287-89 (N.D. Texas 1988); see supra note 31 and accompanying text.
332. See Dondi, 121 F.R.D. at 288.
333. See, e.g., Rules for Uniform Decorum in the District (Trial) Courts of Min-
theoretical justifications are apparent throughout the rules of most jurisdictions,334 each set of court rules exhibits at least one overriding theoretical justification.335 For example, the major emphasis of the Minnesota rules for uniform decorum is on professionalism in the courtroom.336

The Minnesota rules detail the professional conduct required of all court participants including the jury, the bailiff, the clerk, the lawyers, and the judge.337 The Minnesota rules address even purely visual concerns, such as displaying a flag in each courtroom338 and removing hats or overcoats before entering the courtroom.339 The rules also include the exact wording to be used by the bailiff in calling the courtroom to order at the beginning of the day and when reconvening during the day.340 Moreover, the rules limit the proper form of address for a judge to “Your Honor” or “The Court.”341 The Minnesota court rules state that the “lawyer should never lean upon the bench nor appear to engage the court in a familiar manner,”342 which emphasizes the concern with formality and, by inference, the preservation of the respect and power of the court. These rules go so far as to demand that the manner of administering an oath to jurors or witnesses should be “dignified” and “should be an impressive ceremony and not a mere formality.”343

By comparison, the local rules for the United States District Court for the District of Maryland reflect an overriding emphasis on promoting efficiency.344 The federal court rules mandate a pretrial conference where trial attorneys must be “familiar with all aspects of the case” and “be prepared to discuss proposals for the orderly pres-

334. See, e.g., Rules for Uniform Decorum in the District (Trial) Courts of Minnesota Rules 1, 4, 10, 11, 13-14 (preserving power and professionalism), 20, 27 (fairness), 21, 25 (efficiency).
335. See id.
336. See id.
337. See id. rules 7 (jury), 8 (bailiff), 10 (clerk), 11-22 (lawyer), 23-33.
338. See id. rule 1.
339. See id. rule 2.
340. See id. rules 4 & 5.
341. See id. rule 13.
342. See id. rule 14; see also id. rule 16 (stating that “[l]awyers, during trial, shall not exhibit undue familiarity with witnesses, jurors, or opposing counsel, and the use of first names shall be avoided”).
343. Id. rule 10 (emphasis added).
entation of the exhibits at trial." These Maryland federal court rules require pretrial numbering of exhibits, advance court filing of an exhibit list, and opposing counsel's review of exhibits to prevent unnecessary delay at trial. Rule 107 outlines courtroom procedures at trial with particular emphasis on furthering efficiency in the actual trial process. Under subsection 107.5.b, if exhibits are circulated to the jury, counsel "shall be expected to continue with questioning of the witness while the exhibit is being circulated." This rule also establishes one-hour time limits for opening and closing statements and allows the judge, after consultation with the attorneys, to impose reasonable time limits on the presentation of evidence. The relation between courtroom etiquette and the theory of efficiency is further illuminated in subsection 107.9, which specifically addresses courtroom etiquette. The rule requires counsel to stand when addressing the court but also contains an exception in the interests of efficiency: counsel need not stand for "stating brief evidentiary objections." Subsection 107.9 differs from other, more formalism-oriented etiquette codes, in that "counsel may approach a witness to show an exhibit without prior approval of the Court." Once again, Maryland's federal district court rules are designed to expedite the trial process where time-saving conduct can be accommodated without degradation of the trial process and professionalism.

By formally adopting rules of courtroom etiquette, the judiciary accepts responsibility for educating lawyers, clerks, witnesses, juries, and the general public on proper courtroom conduct. Publication and open discussion of the rationales underlying rules of courtroom conduct allow judges to become educators and active participants in cultivating improved professionalism.

345. Id. rule 106.6. (emphasis added).
346. See id. rule 106.7.a, b.
347. See id. rule 107.5, 8.
348. Id. rule 107.5.b.
349. See id. rule 107.8.a, b.
350. See id. rule 107.9.
351. Id. rule 107.9.a.
352. Id. rule 107.9.b.ii (emphasis added). Section 107.10 also exposes the goals of order and efficiency that justify these rules of courtroom etiquette: only one attorney can examine a witness and only one attorney can object to questions by opposing counsel. See id. rule 107.10. Rule 107.11 establishes the order of examining witnesses and presenting arguments where co-parties are represented by different counsel—they must follow the order in which they are named in the complaint. See id. rule 107.11.
2. Law Firms as Educators.—Because a majority of law school graduates enter private practice, private law firms share the obligation to educate attorneys on courtroom conduct and broader concepts of professionalism. One of the most compelling reasons for law firms to participate in this educational process is that firms often have available resources to educate young attorneys. Many law firms have either formal or informal mentoring programs, which provide young lawyers with experienced attorneys to serve as advisors and professional role models. Professionalism education can occur in the offices and hallways of law firms just as easily as it can in the courtroom or at local bar association meetings—perhaps even more effectively because of the added pressure to gain professional approbation of colleagues. Trial preparation also presents an opportunity to teach courtroom etiquette. The newest trial tools for the larger private law firms of the 1990s are sleek mock courtrooms built inside firms. 353 Mock courtrooms in some firms have been described as elaborate, formal courtrooms complete with an American flag, a judge’s bench, video control rooms, and walls made of burnished wood and polished black granite 354—a superior environment to familiarize attorneys with the unfamiliar formal rules of courtroom etiquette and professional conduct. The courtrooms cost anywhere between $10,000 to $150,000, and are used to conduct mock trials so that lawyers can examine witnesses, give opening and closing statements to colleagues, and make objections while others on the trial team watch, videotape, and critique their peers’ performances. 355

Another education option also available to smaller law firms is sponsoring lawyers’ attendance at professional trial practice training seminars. For example, the National Institute for Trial Advocacy (NITA) conducts trial advocacy training programs, which adopt the “learning by doing approach” where lawyers refine their advocacy skills under close supervision of experienced attorneys. 356 Although NITA programs address the “nuts and bolts” of trial ad-

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353. Torry, Mock Courtrooms are the Latest Tool in the Quest to Impress, Wash. Post, Jan. 21, 1991, at F5, col. 1. “[T]he courtroom has multiple uses—conference room and lecture hall; training for associates; and a great recruiting tool. And in the lucrative world of law, the cost is relatively small . . . between $60,000 and $150,000.” Id.

354. See id.

355. See id.

356. The NITA brochure states that the purpose of NITA is “to contribute to the development of an adequately trained, professionally responsible trial bar, sufficient to serve the needs of justice in the United States.” See, e.g., NATIONAL INSTITUTE FOR TRIAL ADVOCACY, INTENSIVE SKILLS PROGRAM IN TRIAL ADVOCACY.
vocacy skills, some decorum and stylistic skills have been included as a part of the instruction at the discretion of the program directors. Law firms should actively participate in the etiquette revival and in educational efforts to prevent incivility and declining public opinion of the legal profession.  

3. State and Local Bar Associations as Educators.—

a. Three General Approaches of State and Local Bar Associations.— Bar associations constitute the core of the movement to educate lawyers in issues of etiquette and professionalism. Etiquette rules or professional courtesy codes adopted by state bar associations vary widely in length, detail, and focus. There are basically three approaches taken by state and local bar associations to educate attorneys. The first approach focuses on the early introduction of law students to professionalism concerns of the bar. The approach is a preventative measure designed to have future long-term impact rather than more direct impact on current practitioners. This is the approach adopted by Maryland.

A second approach is the institutionalization of professionalism oversight either by permanent committees or by permanent employees of a commission on professionalism. For example, after a two-year study, the Indiana State Bar Association concluded that professionalism is not manageable by one temporary committee and therefore established a permanent committee to conduct ongoing studies “as the practice of law adapts to change.”

357. See Sansing, supra note 104, at 132. A magazine survey conducted of area residents “indicated that they consider lawyers much less trustworthy than physicians, police, dentists, and teachers. Respondents also felt that there are too many lawyers, and that lawyers are primarily interested in making money.” Id. at 133, 137.

358. The Vermont Bar Association’s report calls for curriculum in the Vermont Law School to be devoted to issues of professionalism in law practice. Peter Hall, Chair of the Commission on the Vermont Lawyer stated: “In the law schools we hope to get at the issue before it becomes a problem. . . . We’re trying to deal with ethics and courtesy so that the concepts become second nature.” Bowser, supra note 9, at 13. The Florida Bar Association reports that they offer a course to recent bar admittees called “Bridge the Gap.” The curriculum touches on some professionalism issues and the Florida Standards of Professional Courtesy.

359. See Bowser, supra note 9, at 13.


361. Indiana State Bar Ass’n, Report of the Special Comm. on Professionalism (1988). Bar associations are not alone in this effort to institutionalize legal professionalism. The Supreme Court of Georgia has also institutionalized professionalism oversight by hiring a paid staff member to head the Georgia Supreme Court Chief Justice’s Commission on Professionalism and also by mandating that all lawyers take one continuing legal education credit hour on professionalism. See Bowser, supra note 9, at 12, 14.
The third approach is to focus the professionalism education on "rank and file lawyers" who are current practitioners.\textsuperscript{362} To achieve this, a widely accepted approach has been for state and local bar associations (and sometimes courts) to supplement the Code of Professional Responsibility with written voluntary codes of courtesy and professionalism that are printed and distributed to all members of the bar.\textsuperscript{363} Each of these codes uniquely reflects some or all of the theoretical justifications for the adoption of decorum standards. For example, part one of the creed drafted by the Dallas Bar Association reflects the preservation-of-power theory: "I revere the law, the System, and the Profession, and I pledge that in my private and professional life, and in my dealings with fellow members of the Bar, I will uphold the dignity and respect of each in my behavior toward others."\textsuperscript{364} Part two reflects the fairness justification: "In all dealings with fellow members of the Bar, I will be guided by a fundamental sense of integrity and fair play; I know that effective advocacy does not mean hitting below the belt."\textsuperscript{365} Moreover, the efficiency justification appears throughout the creed. For example, part six states: "I will readily stipulate to undisputed facts in order to avoid needless costs or inconvenience for any party."\textsuperscript{366}

Some state codes include generalized language and address courtroom decorum only briefly. For example, the Los Angeles County Bar Association Litigation Guidelines contain only two guidelines for courtroom conduct. The first rule reflects the efficiency theory: "[c]ounsel should be punctual and prepared for any court appearance,"\textsuperscript{367} and the second sets forth the very generalized professionalism concern that "[c]ounsel should always deal with parties, counsel, witnesses, jurors or prospective jurors, court personnel and the judge with courtesy and civility."\textsuperscript{368} Other codes reflect this more sweeping, aspirational tone as well.\textsuperscript{369}

\textsuperscript{362} See Bowser, supra note 9, at 13.

\textsuperscript{363} See supra note 10. The Dallas Bar Association Lawyer's Creed states: "I recognize that my conduct is not governed solely by the Code of Professional Responsibility, but also by standards of fundamental decency and courtesy." DALLAS BAR ASS'N, LAWYER'S CREED (Oct. 15, 1987), reprint in Dondi Properties Corp. v. Commerce Sav. & Loan Ass'n, 121 F.R.D. 284 (N.D. Texas 1988).

\textsuperscript{364} Dondi Properties, 121 F.R.D. at 294.

\textsuperscript{365} Id.

\textsuperscript{366} Id.

\textsuperscript{367} LOS ANGELES COUNTY BAR ASS'N, LITIGATION GUIDELINES 12 (Apr. 1989).

\textsuperscript{368} Id.

\textsuperscript{369} See, e.g., HOUSTON BAR ASS'N, PROFESSIONALISM: A LAWYER'S MANDATE (1989). The mandate contains a general statement of purpose: "The conduct of a lawyer should be characterized at all times by honesty, candor, and fairness. In fulfilling his or her
The Virginia Principles of Professional Courtesy are the most narrowly drawn. The principles address courtesy toward the court, courtesy toward other counsel, courtesy toward the court clerk and staff, and courtesy toward the press. The Virginia code goes to the greatest length to restrict courtroom conduct; for example, there is even a principle that states "lawyers should make it a practice to shake hands with opposing counsel at the conclusion of the trial." Surprisingly, it also calls for lawyers who know of a potentially embarrassing situation that may arise in court to give timely "advice" to the court and to be tolerant of "inept" opposing counsel.

Virginia's Principles of ProfessionalCourtesy, although complete, may be both too extensive and too limited in their approach to professionalism guidelines. Standards vary from one court to another despite the goal of establishing general guidelines. In addition, they present a danger of being too restrictive because of possible infringements on attorneys' trial tactics and personal style.

b. Maryland State Bar Approach to Education.—Failure to abide by unwritten codes of etiquette generally reflects ignorance of the rules, rather than a conscious disregard of courtroom etiquette. The new requirement in Maryland that all new bar admittees take a course on professionalism demonstrates one state's attempt to combat such ignorances.
Maryland's course on professionalism is not the first of its kind offered by a state bar association. One of the most recently developed courses is the state of Virginia's mandatory course on professionalism, offered as a collaborative effort by the Virginia State Bar and the Supreme Court of Virginia. The Virginia program, however, is really a course on professional responsibility, rather than a course on professional conduct and courtroom etiquette standards. The latter part of the Virginia course focuses on the lawyer's professional obligation to the court, relationships with other attorneys, and the lawyer's obligation to the profession and community. It is unclear whether the Maryland course will focus on the Model Rules of Professional Responsibility as does the Virginia course, or whether it will focus primarily on etiquette and professionalism guidelines in and out of the courtroom.

While the Maryland course on professionalism represents a laudable effort to improve professionalism in Maryland, it is misplaced. First, the course is not directed toward the most appropriate audience. The real "offenders" (who served as the basis for judges' observations discussed throughout this Article) are not the recently successful candidates for the Maryland bar, but are the current practitioners. Conceivably, it is those who have been practicing for several years that should attend a professionalism course to refresh and heighten their awareness of current professionalism standards. Second, the timing is not advantageous. Having spent three years (or more) in law school, attended a costly bar review course, and successfully completed the bar examination, the new admittees will only reluctantly return to the classroom to learn how to become a "professional." More likely than not, a majority of the admittees will consider the course an insignificant and inconvenient hurdle before the swearing-in ceremony—particularly when there is no grade attached. Finally, the classroom is not the best environment for teaching these skills, nor is it an efficient use of resources.

378. For example, the Virginia Course on Professionalism is closely based on the Disciplinary Rules of the Code of Professional Responsibility. The course materials address issues of professional responsibility. See Virginia State Bar Course on Professionalism (1989-90) (course materials). The Virginia course addresses, among other topics: business development; fee arrangements; handling clients' funds; conflicts of interest; competence; maintaining clients; terminating employment; and confidences. It is only the latter part of the course that focuses on the lawyer's obligation as a professional to the court and the lawyer's obligation to the profession and community. See generally id. at topics 4, 6, 7 and 8.

379. At the very least, if Maryland does adopt professionalism guidelines, copies of the guidelines should be sent to all members of the bar.
The Maryland professionalism course reflects the Maryland courts' concern with the preservation of power and professionalism in the practice of law rather than the efficiency or fairness justifications for courtroom etiquette. It demonstrates the Maryland courts' desire to inculcate a new set of legal minds who will breath new life into the ideas of the legal "profession"—implying that those who have become lawyers in the past few years have forgotten, or never learned, the basic components of professionalism. If efficiency was the major concern, then the course would be directed at all bar members throughout Maryland—not only recent admittees—because it is the current practitioners who are now committing breaches of etiquette. If the Maryland courts' goal was to improve at once existing professional conduct so that proceedings would be more orderly and less obstreperous, then education would be necessary for all lawyers, not only the new members, many of whom will not litigate cases in court for several years. Moreover, new bar admittees have not (yet) developed bad habits. Their lack of experience means they lack practical reference points with which to assimilate the information provided in this professionalism course.

A better approach is a dual approach: first, to support improved education in the law schools, as discussed below; and, second, to re-educate or reinforce professionalism concepts among current Maryland practitioners. This latter group should be targeted in the same manner recently used by the District of Columbia Bar in the new Rules of Professional Conduct that became effective in January of 1991. Although these new rules are more comprehensive than many professionalism codes, the District of Columbia is engaged in a broader movement, as compared to the Maryland professionalism course, to educate all lawyers in the District of Columbia. The president of the District of Columbia Bar has stated that copies of the rules have been sent to all members, explanatory materials can be purchased at a minimal cost, and there will be twelve to fifteen no-cost seminars offered locally, in addition to speakers for interested groups of lawyers.\textsuperscript{380} Compared to the Maryland approach, this broad-based approach to professionalism education reaches more attorneys who are faced with professionalism issues on a daily basis, as well as new admittees to the bar.

By raising consciousness levels among all attorneys, the goals of efficiency and fairness are at once furthered because efforts target

the current actors, who are the alleged "culprits." An inevitable result to flow from this broad-based approach adopted by the District of Columbia is the preservation of professionalism and power. If there is a positive public perception of the individual components: the law, lawyers, judges, witnesses, jurors, and all others involved, the legal system as a whole will be perceived as a trustworthy, orderly, and equitable process, resulting in a greater number of individuals who will turn to the courts for dispute resolution and protection of legal rights.

B. A Better Teaching Methodology: The Law School-Centered Approach

State and local bar associations have been the leaders in educating lawyers on issues of professionalism and courtroom etiquette. This suggests that law schools are not educating lawyers on these issues. "Far too many lawyers seem to believe that once they donned the 'attorney-at-law' mantle, they doffed what remnants of common decency had not been stripped from them by three years of law school." Although education and reinforcement of these skills should exist at all levels, the primary burden of informing lawyers of these issues should be placed on the law schools.

The responsibility should lie in the hands of legal educators because many students enter law school misinformed by television and movie images of lawyers. Their misconceptions must first be corrected in law school.

Law professors have the first and best chance to teach young students that "order in the court" is basic to the mechanisms of justice. "Someone must teach that good manners, disciplined behavior and civility—by whatever name—are the lubricants that prevent lawsuits from turning into combat. More than that it is really the very glue that keeps an organized society from flying apart."

There is merit to the claim that courtroom etiquette relies on basic manners and skills that should have been learned in childhood and are not properly part of a law school's curriculum. Neverthe-

381. See generally Sansing, supra note 104.
383. See Martin, supra note 28, at 166.
385. Id.
386. Ralph Waldo Emerson might agree that these are skills that cannot be taught. I have seen an individual whose manners, though wholly within the conventions of elegant society, were never learned there, but were original and commanding . . . ; one who did not need the aid of a court-suit, but carried the holiday in his eye; who exhilarated the fancy by flinging wide the doors of new
less, a number of judges voiced a concern over the lack of training in courtroom behavior. Although experienced lawyers ignore etiquette rules in the name of efficiency, there is dissatisfaction with young attorneys' poor law-school instruction on the basics of courtroom conduct and legal professionalism. Assuming it is possible to engage in "consciousness raising" in the law school curriculum, then what is the best teaching methodology?

Several etiquette consciousness raising methods are available to legal educators. For example, one state report on professionalism proposes that law professors serve as role models for students. At a minimum, an awareness of expected standards of professionalism should exist at every level of law school training. Undoubtedly, the traditional socratic method would be ineffective in teaching the practical, professional skills of courtroom decorum. Likewise, simulation courses, a viable alternative for schools lacking a clinic, would present the information in too sterile an environment and have a diluted impact on the law students. Unlike rules of evidence or civil procedure, problems of courtroom etiquette are difficult to simulate because they deal with nebulous behavioral relationships with judges, juries, witnesses, clients, and opposing counsel.

Clinical legal education is the most appropriate way to sensitize students to etiquette skills and raise future lawyers' awareness of these codes of courtroom conduct. By adding more substantive training, practice, observation, and critique of etiquette skills in the clinical curriculum, law schools can force consciousness raising in an environment meant to do just that. Practicing these skills in a clinical setting, with the assistance of trained supervisors, will radically increase law students' etiquette awareness. In time, this training will move them to internalize standards of courtroom behavior.

modes of existence; who shook off the captivity of etiquette, with happy spirited bearing, good natured and free as Robin Hood; yet with the port of an emper, if need be—calm, serious and fit to stand the gaze of millions.

R.W. EMERSON, supra note 87, at 398.

387. See generally C. MACKINNON, supra note 135, at 83-105 (feminist belief that women's conscience is best raised in an environment free from male influence).

388. See MISSOURI BAR ASS'N, REPORT OF SPECIAL COMM. ON PROFESSIONALISM A-3 (1988).

389. See generally Feinman & Feldman, Pedagogy and Politics, 73 GEO. L.J. 875, 890-91 (1985) (lawyers require a wide variety of qualities to be effective). It is especially important for any student who wishes to become a litigator to have observed the decorum of a real trial and to have learned the proper modes of conduct in the courtroom. Law students should learn and refine their courtroom advocacy skills by appearing in court with a supervising attorney in a clinic setting, or at a minimum, be required to observe a variety of trials.
that will improve the efficiency, fairness, and public image of the legal profession.

Little or no attention . . . is given to teaching the ambitious law student how to balance the use of his advocacy skills with those fundamental notions of fair play and politeness that make life and the practice of law so much more pleasant. When one has finished law school and is immersed in the high stakes practice of law, the righteously indignant demeanor becomes more easily affected than simple common decency.  

The University of Maryland School of Law has already instituted a unique curriculum requirement to educate its law students in this area. All University of Maryland day-division law students must complete a Legal Theory and Practice course, including a substantial clinical experience, prior to graduation. The clinic requirement, which addresses poverty law issues and the allocation of legal resources in society, provides the opportunity for law students to work with real clients. This curriculum requirement offers an exemplary opportunity to educate Maryland law students on courtroom etiquette skills.

If clinical legal education is unavailable in a law school curriculum, an alternative approach is to require law students to observe the day-to-day workings of a real courtroom. The courtroom is the proper forum for future lawyers to learn the art of effective advocacy and courtroom etiquette. Law schools are obliged to their students and future clients to raise would-be lawyers' awareness that courtroom etiquette rules exist and that failure to observe them may harm a client's representation.

The etiquette rules discussed above affect very practical professional skills, which ought to be internalized in time with practice and familiarity. The goal should be to increase awareness among attorn-
neys that certain types of conduct are expected and that others are simply unprofessional. More important, recent law graduates and experienced lawyers alike should understand that, in the long term, professional conduct furnishes benefits to both them and the bar by advancing fairness in judicial proceedings; preserving the integrity and power of the judicial system; and fostering efficiency and order. In more practical terms, their clients will be afforded a better chance of receiving a fair hearing and lawyers and the legal system will regain some of the public respect that has disintegrated in recent years.

VI. Conclusion

Legal etiquette including promptness, forms of address, knowing when to stand or sit, when to be quiet, and the formalities for introducing evidence, are basic skills essential to practicing trial attorneys. Unfortunately, these standards of etiquette are unclear, often unwritten and merely assumed, and change from one courtroom to the next. From a practical standpoint, a lawyer who fails to maintain decorum with opposing counsel and the bench is not serving his or her client's interests. Moreover, the recent outcry for standards of legal professionalism throughout the United States and the growing number of attorneys who practice in several courts evidences the need for all state and federal courts to establish written rules of courtroom etiquette and procedure to maintain professionalism, fairness, and efficiency in the proceedings. These rules or codes, however, should be viewed as only aspirational standards, separate and distinct from the more important Model Rules of Professional Responsibility.

Perhaps after the current outcry for renewed professionalism has settled, respect among members of the bar will spread beyond the courtroom to other corners of our legal system—or perhaps it has already begun:

DEAR MISS MANNERS:

I was recently a suspect in the arson of my home. The accusation was unfounded, but while being questioned by the local authorities, I kept my wits about me enough to notice that the policemen invariably addressed me by my first name after introducing themselves as "Detective Bubblehead" or "Detective Slow." I found this familiarity offensive, but I was, understandably, a trifle timid about making my displeasure known at the time. Is it correct for the police to address adult suspects by their first names? Should I have asked their first names and used them? Or should I have told them I pre-
ferred the use of my surname to the informality of "Where were you at four-thirty, Jan?"

GENTLE READER:

As a matter of etiquette, the police were quite wrong to address you by your first name. As a practical matter, you were quite right to assume that it would not be a good idea for a suspected arsonist to correct the manners of the arresting officers. However, now that you are cleared, Miss Manners hopes you will take the trouble to lodge a complaint, for the good it may do to future suspects who feel the restraint that you did. The suspicion that you burned your house down does not entitle police to belittle your dignity.\textsuperscript{394}

\footnote{\textsuperscript{394} J. Martin, \textit{supra} note 1, at 45.}