

**STANDARDS OF JUDICIAL CONDUCT—
THE FIRST ANNUAL
CHIEF JUSTICE JOSEPH WEINTRAUB LECTURE**

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It is fitting that Rutgers Law School has inaugurated this lecture series honoring Chief Justice Joseph Weintraub. The school represents the state's commitment to maintain the excellence of the bar, which is perhaps the most effective means for maintaining the excellence of the bench, the twin goals which the late Chief Justice valued above all. As a holder of the office to which he brought national recognition, I have been asked to give the first of these lectures. I am honored to do so.

There have been many great judges in New Jersey's judicial system. Chief Justice Weintraub, however, was one of the giants of that system, and all of us who now serve have been affected by him. He contributed substantially to much that is good in our system, and perhaps more than anything, to our standards of judicial conduct. Today, by examining that subject, I think we honor him in a way he would have wanted. I think he would appreciate the fact that since his departure as Chief Justice in 1973, the record of the Judiciary has been superb, substantially because of his efforts, continued, of course, by his successors. What he would appreciate most, though, is that despite our undiminished confidence in the independence and integrity of our Judiciary, we recognize today that the time has come for a rededication to those standards, a renewed commitment to *his* standards, and above all, the time has come for a reexamination of the basis for our unparalleled record of good behavior, to make sure its foundations remain secure. Though the record would allow it, we will not take judicial conduct for granted. It is much too

important.

I will first discuss some of the factors which appear to have promoted New Jersey's high standards in this field, the role of past Chief Justices, along with a brief recitation of the standards themselves and New Jersey's enforcement procedures. That will be followed by reference to the record of integrity which New Jersey's judges have compiled and the implication of recent trends and events both within and without the Judiciary.

The only story which most people in New Jersey ever hear about judicial conduct is the recitation of the rare instance of misconduct. The much more important story is the thirty-five years of consistent effort, unyielding, unbending, to achieve the goal of a Judiciary with highest possible standards.

Chief Justice Weintraub insisted that high standards of judicial conduct were essential if the Judiciary was to be respected. His emphasis on this point was absolutely correct. The effectiveness of the Judiciary depends almost completely on its acceptance by the public and the other branches of the government. That public acceptance depends, in turn, not on judges' scholarship or intellect, but on their integrity and impartiality.

High standards of judicial conduct are almost taken for granted in New Jersey. Anything less is regarded as a shocking deviation. This is probably the greatest tribute that we could pay to Chief Justice Weintraub, and a tribute as well to the hard-working judges of this state: their absolute integrity is assumed to be the behavioral norm. The extreme rarity of the unfit judge shows how successful New Jersey has been over the years in establishing and enforcing its code of judicial conduct, a code stricter and more comprehensive than the model prescribed as the national standard for judges by the American Bar Association.

The standards of judicial ethics now firmly entrenched in this state have grown from an expectation of excellence in judicial performance. This expectation had its genesis in the strongest movement for judicial reform that ever occurred in this country, certainly the strongest in this century, namely the reform that led to our 1947 Constitution. That expectation of judicial excellence and its realization have unfolded over the last thirty-five years. During that time, New Jersey's Judiciary has been among the nation's leaders in its commitment to the

highest ideals and standards of public service.

Traditions of this kind do not grow overnight nor in a vacuum. They require wide support and cooperation from other branches of government, from the bar, and especially from the public. New Jersey has been fortunate in these matters. Since the adoption of that constitution in 1947 each governor, by and large, has done his part to seek out and appoint judges of integrity; legislators generally have provided adequate compensation for them, and the bar has lent its strong voice to judicial reform and improvement. Public support is harder to measure, but I believe that over the past years it has been substantial. It is possible, however, that the courts, along with all other governmental institutions, have diminished in public esteem in recent years. This would be more than unfortunate, and if so, is a trend which must be reversed. As much as anything else, it provides strong reinforcement of their desire to achieve excellence. A judge's self-image has more impact on how he behaves than the day-to-day working conditions which superficially seem more important in determining the character and quality of his performance. And the self-image of judges obviously depends very substantially on the view that others, outside the court system, take of them and their performance. Those others include, most importantly, the legislature and the governor. To most judges, the best proof of the legislature's view of their performance and its importance is the statutorily set level of judicial compensation; and to most judges the best proof of the governor's view of the importance of judicial performance is found in the caliber of the people whom the governor appoints to the bench. It is this self-esteem, dependent in large measure on favorable recognition by the executive, the legislature, the bar, and the public, that allows our tradition of judicial excellence and integrity to survive and remain strong, much more so than any rules of court or canons of judicial conduct.

Obviously our Chief Justices have had a substantial role in establishing the ethical tone of the Judiciary. Each has stamped it with his own special character while building on the work of predecessors.

Chief Justice Vanderbilt's unification of the Judiciary under his leadership created the model, thereafter copied nationwide, for a strong chief executive within the Judiciary. This was a

role that had not existed before in any other court system. He fashioned a corps of judges, each functioning independently as to judicial decision-making, but responsive individually, and as a body, to central authority and discipline with respect to all other matters. The concept and fact of a corps of judges, a unified group, subject to strong central leadership, is undoubtedly one of the most important factors that has shaped our standards of judicial integrity. The structure, of course, is ethically neutral, but the personalities who dominated it were anything but neutral. It was through that structure, through that unification, and through the power of the office of chief justice given under our Constitution, that Chief Justice Vanderbilt was able to so strongly influence the entire judiciary with his own imprint. He hammered out the basic ethical character of the new court system, insisting that there be no compromise in any fashion with judicial integrity. He impressed on the system his work ethic, unquestionably an essential complement to high standards of judicial conduct. And it was a work ethic which demanded a full day's work each day. In order to assure that his strictures were being followed, he required judges to account for their time and for their judicial production and he did not regard it demeaning to require such accounting on weekly reports filed with the Administrative Director. He understood that a system that does not carefully account to itself can never know if it is doing well or poorly, if it is moving forward or backward, or even *where* it is at any given moment; and worst of all, a system that does not account to itself cannot possibly account to the public. For present purposes it is perhaps more important to observe that judges who know they have to account for their work to a strong central authority also realize they will have to account to that same authority for their behavior. No other judicial establishment in the nation has so complete a system of accountability.

Chief Justice Vanderbilt gave meaning to the concept of the Judiciary as a separate branch of government with responsibility in the Supreme Court for direct enforcement of the Judiciary's own ethical code which he did so much to shape.

Chief Justice Weintraub had a sure and penetrating ethical sense, combined with a deep knowledge of the world of affairs. He was able to anticipate for the Judiciary, and thereby avoid, many ethical dilemmas that lurked behind seemingly innocent,

yet potentially compromising, acts. With the instinct of a great teacher he sought first to illuminate moral problems so every judge could find his own way. The establishment of the Advisory Committee on Professional Ethics, the committee that provides attorneys with authoritative advance guidance on ethical issues, is a landmark to his methods. He believed in the same principle for judges. When the orientation program for new judges was established, he personally provided instruction in judicial ethics.

It is impossible to measure the achievement of Chief Justice Weintraub in this field—impossible because perhaps his most significant impact was on individual judges. He had the remarkable capacity of being able to increase the ethical sensibilities of every judge who came in contact with him. He achieved a profound and lasting influence on judicial behavior in this state. To this day, his comments on judicial ethics continue to serve as a guide and reference manual for new judges and others. As a matter of fact, his comments in this area are regarded by many not as guides, but as gospel.

As Chief Justice Vanderbilt was the great organizer, and Chief Justice Weintraub the profound interpreter of judicial responsibilities, to Chief Justice Richard Hughes belongs the credit for establishing the mechanism to enforce the code of judicial conduct which itself was adopted by rule during his tenure. It was not long after Chief Justice Hughes assumed that position that the Advisory Committee on Judicial Conduct was established. The rules governing that committee wisely provided for procedures and degrees of discipline of sufficient flexibility to deal not only with the rare case of flagrant misconduct, but with those instances where something more was needed than a lecture from the Chief Justice. I will refer in somewhat greater detail to the Advisory Committee and its rules later on, but it should be noted immediately that it stands today as by far the most important mechanism for assuring that the conduct of our judges measures up to the high standards set by our predecessors.

What are these standards? As I implied above, they are probably little known to the public and perhaps even to law school students. To those who know them, all I can say is that they are well worth repeating, especially for those of us who are judges. Probably the most important factor in assuring

judicial integrity is no standard at all, but rather a prohibition found not in the Code of Judicial Conduct or in our rules, but in our Constitution. It prohibits judges, while in office, from engaging in the practice of law or other gainful pursuit. Without expressing an opinion on its ultimate scope—and I must not—it is clear that the judges in this state are to have but one master, one employer, and only one interest to serve. It is the public to whom the judge owes his complete loyalty and the prohibition assures that there will be neither a conflicting financial interest nor even a conflicting claim on the judge's time. Besides its practical impact of requiring the judge to devote all of his energies to the judiciary and of minimizing financial conflicts, the prohibition does something just as important: it calls for exclusive attention to the bench; the consequence is devotion, devotion not only of time, but of spirit. It is this devotion that I believe is the foundation on which our tradition of judicial integrity has been built. You may not teach for money; you may not participate in your spare time—whatever that is—in the operation of a business for money (and probably not at all regardless of money); you may not act as a consultant for money; you may not receive a fee of any kind, a teaching salary, an honorarium for a speech, or accept any outside compensation of any kind whatsoever, including some kinds allowed in practically every other jurisdiction. And this prohibition against financial gain from other pursuits has more and more carried with it the prohibition against any activity whatsoever, regardless of gain, that not only might involve a potential conflicting interest, but that might just simply distract the judge from total devotion to his judicial duties.

The combination of this prohibition along with other standards has a tendency to isolate the Judiciary from the rest of society. Obviously such isolation has its risks, for a judge who has lost touch with the world around him may render decisions that are out of touch with reality. It is my belief, however, that some degree of isolation is an inevitable consequence of the kind of total devotion, both in time and spirit, to the Judiciary that is the bedrock of judicial integrity.

Canon 1 requires the judge to uphold high standards of conduct and its clear implication is that it relates not only to his judicial functions but to his personal life. The reason is

clear: whatever a judge is doing, he is, to the public, still a judge; the public expects him to maintain the highest standards and to set the best example; and when, in his personal life, he deviates from those standards, it is not just he, but the entire Judiciary that suffers, for the public thinks less of all of us. Since the theme repeats itself, namely the theme of maintaining public confidence, perhaps I should say more about it. One might ask, why are you so concerned about what the public thinks, why not simply decide whether the judge did something wrong, whether in his judicial life or in his private life, and deal with it accordingly? If what he did was in his private life, and really did not have any impact whatsoever on his function as a judge, and if he remains perfectly capable of being a good judge, why should he be punished, why should he be censured, why should he be suspended or removed just because the public "mistakenly" thinks less of the rest of the Judiciary, perhaps even mistakenly thinks less of him, because of this act? Why in short, should we cater to public opinion? There are several answers. I will offer two. First, one of the obligations of the judge *is* to set standards, to provide an example. By virtue of his office he is looked up to by a large portion of the public, he sets the tone, he provides a role model. He has it within his power, by his behavior both on and off the bench, to improve society by his example. He violates the trust that society has reposed in him when the example he sets is a poor one.

The second reason is very simply that the Judiciary cannot function effectively without a very high degree of public confidence. There are selfish aspects to this, to the extent that anyone who is associated with any institution wants to have public confidence, wants to function effectively, and so forth. This reason goes well beyond selfishness, however. Our government in this country is based on the assumption that when there is a dispute, of almost any kind, even a dispute of nationwide importance, it will be determined by judges, and their decisions will be followed by everyone; their orders will be obeyed. With but few exceptions—and they are exceptions that I find terribly disturbing—the rule of law is not simply a theory in this country; it is a fact. The day that the public loses confidence in our judges will be the day that this small band of people, with nothing but their judicial appointment certificate

in hand, will no longer be able to act as the peaceful arbiters of our individual disputes, our group disputes, and our nation's disputes. They will be disregarded. Just what we will substitute for the rule of law, I don't know, but the alternatives are not pleasant. Respect for the judiciary, therefore, is an essential ingredient in any system of government that relies on the rule of law to resolve its disputes. One cannot predict with confidence just what course of events is necessary to break down the public's acceptance of judicial decisions; or, put differently, one cannot predict just how much judicial misbehavior will be tolerated before judges are first disrespected, then ultimately disobeyed. Destruction of confidence may result as well from an almost imperceptible, but steady, deterioration in judicial behavior as from some dramatic incident. It is from this perspective that I view, and in New Jersey the Judiciary has unwaveringly viewed, every and any act that does not conform to these standards as a threat to the entire judiciary.

Canon 2 prohibits not simply impropriety but anything that might create the appearance of impropriety in *any* activity of the judge. It is the prohibition against the appearance of impropriety that causes difficulty for some judges. For instance, just being in the company of certain people at certain times may make some members of the public wonder if the judge is doing something improper. It may seem unfair, and the suspicion may be without any foundation whatsoever, but if it is a doubt, even if unreasonable, shared by enough people, the judge must avoid that appearance. Many judges will not attend a dinner party unless they know who will be there, will not go to civic affairs unless they know with whom they will be seated, and the friendship of judges with lawyers who used to be very close to them is inevitably slowly diminished as contacts become more and more limited to avoid any appearance of impropriety.

Canon 2 has a prohibition which the American Bar Association standards do not. Our code does not permit a judge to testify as a character witness under any circumstances whatsoever—under the ABA code he may do so if subpoenaed. I read the canon as covering, in that respect, not the appearance of impropriety, but impropriety itself. It is the use of the prestige of the judge's office to advance the interests of others that is condemned, and it is not simply an appearance, but the fact.

Canon 3 deals with the actual performance of a judge's duties. Among other things, it mandates that a judge be patient, dignified and courteous to all who appear before him. A judge may be brilliant and learned in the law, but if he is arbitrary and intolerant, that judge is a terrible judge. But a judge who has common sense and, in addition, invariably shows patience and courtesy to all who appear before him and treats them with dignity—that judge is a great judge. In the courts of this state, the poor, the ignorant, the illiterate, the uneducated and the disadvantaged will not get one bit less dignity, patience and courtesy than those who may be rich, important and powerful. The mistreatment, the humiliation of the powerless, the defenseless party, witness or attorney is, as far as I am concerned, absolutely intolerable.

Canon 4, permitting a judge to engage in certain quasi-judicial activities, such as speaking and lecturing concerning the law and the legal system—as I am today—teaching, testifying at public hearings concerning the law and the legal system and the administration of justice or serving as a member of different organizations devoted to those purposes, has a tradition in New Jersey quite different, I believe, from that in other states. It is a tradition of what Canon 4 has been implicitly interpreted as prohibiting. Our tradition is very strong in keeping judges out of social, political or legislative issues. The temptation to vary this stricture arises when it is clear that the judge has some special knowledge that might be of value to those charged with responsibility for deciding those issues. Obviously he may give the facts to committees at public hearings, but he may not give his opinions. To do so would involve him in controversy with the likely consequence either of disqualifying him in future cases, or painting him as a partisan or as a spokesman of a particular political point of view, any one of which might diminish the public's, and in particular the litigants', confidence in his ability to render decisions with a totally open mind, and without any predisposition either to a party to the litigation or to a particular social philosophy that might be somehow involved. Judges should not, for example, give their views on the wisdom or lack of wisdom of a death penalty or of a mandatory prison term for certain offenses where guns are used or possessed. It can become a severe limitation, but if you support or oppose the death penalty, how

do you convince the public that your constitutional adjudication of the issue is disinterested, and if political parties align themselves on different sides of that or any issue, how do you convince the public that your judicial function is free of political considerations, or if your position on the issue is, or appears to be, based on a social or political philosophy, how do you thereafter persuade litigants that it was the law, rather than your political philosophy, that determined the outcome? How do you persuade yourself that it was the law, rather than your recent ringing public statement, that determined the outcome? That we enter the bench often with well-known opinions and philosophies is beside the point: we are not only supposed to discard them and decide in accordance with the law to the extent that that is humanly possible, but we are to refrain from giving the public any cause to believe otherwise.

Canon 5 is concerned with a judge's extra-judicial activities. It requires a judge to regulate them so as to minimize the risk of conflict with his judicial duties. Tracking the Constitution, it specifically prohibits a judge from being compensated for avocational activities; it permits teaching non-legal subjects only with the approval of the Supreme Court. The extent to which judges may participate in civic and charitable activities is limited, and some think severely limited. If there is the slightest possibility that such participation might thereafter adversely reflect on the judge's impartiality, the activity is prohibited. If the extent of the activity might interfere with the performance of his duties, it is prohibited. And if there is even a hint that the judge's participation may help, or give the appearance of helping, the fund-raising efforts of the organization, the activity is prohibited.

Chief Justice Weintraub explained the reason for this:

Solicitation on behalf of a charity is, of course, forbidden. The reason is clear: any activity on the part of a judge which might put pressure on a lawyer or on a citizen to contribute something he would prefer not to contribute to, or to contribute an amount in excess of what he would otherwise contribute, simply because a judge has requested a contribution or a judge is present so that there may be embarrassment if the contribution is not made, is a misuse of judicial office.

As in all such matters, Chief Justice Weintraub was not satisfied with the formalities of compliance. It was not enough simply to refrain from direct solicitation, or from allowing your name to be used on a letterhead of an organization that is soliciting. Your mere presence at a function where fund-raising was conducted realistically could influence others and was therefore a use of the prestige of your office for something other than the benefit of the judiciary and, therefore, a *misuse* of your office.

Canon 6 prohibits judges from accepting compensation for any outside activity, and Canon 7 prohibits judges from involvement in political activity. Rule 1:17 also proscribes a judge's involvement in politics. Quite simply, a judge may not hold any elective public office, nor be a candidate nor engage in political activity of any kind. The prohibition is total, zealously monitored and strictly enforced. It extends to the point, in my opinion, that even at relatively small social gatherings, it is unwise for a judge to express a political opinion.

I think it might be helpful, in order to give you some idea of the strictness of our traditions in this state, to quote again from Chief Justice Weintraub on a matter that might seem to some so picayune as not even worthy of comment, to say nothing of regulation (the comment was made in response to a judge's question):

[As to] the problems of being entertained by lawyers: my own rule is that no lawyer can out-entertain me. By that I mean that if he has me at his home, then he will be at my home. If he at any point picks up a tab, I'll pick up a tab. Now these are lawyers I know very well. These are friends. But nonetheless, I will not permit them to have an edge on me in entertaining.

I think it is bad. Now that doesn't mean that at a bar meeting if someone wants to buy you a drink that you have to decline. That would be a little silly. But I wouldn't let a lawyer pick up a tab for dinner. I don't think you should. It's petty, sure, but it's better that way.

The specific prohibitions contained in the code do not exhaust the obligations of New Jersey judges. There are numerous directives and policy statements that serve to fill in many gaps not addressed by the code. For instance, judges have been

warned against making any appointments to positions that could be interpreted as having political motivations. Nepotism in the judicial branch is expressly forbidden. Without Supreme Court approval, no one related to a judge or to any court support personnel may be hired, either by the judge or by anyone else in the system. Judges are cautioned to be alert for matters which may require disqualification due to an appearance of impropriety. In their relationships with attorneys, judges must beware of favoritism. Even the subject of writing letters of recommendation is of sufficient importance to warrant regulation. In short, the conduct of a judge is measured by much more than the code.

Those are some of the standards that govern our conduct. They are enforced, where necessary, by an efficient, highly respected judicial disciplinary system. Prior to the introduction of that system, and prior to the 1947 Constitution, impeachment was the only remedy for judicial misconduct. At the 1947 Constitutional Convention, the delegates attempted to remedy this situation by granting the Supreme Court authority to administer the court system and to discipline judges. The new Constitution retained the provision for the impeachment of the Supreme Court Justices and Superior and County Court judges, but added a new paragraph which provided that Superior and County Court judges are subject to removal from office by the Supreme Court "for such causes and in such manner as shall be provided by law."

The removal statute, not enacted until 1970, provides that the Supreme Court may remove a judge for "misconduct in office, willful neglect of duty, or other conduct evidencing unfitness for judicial office, or for incompetence." The proceeding may be instituted by either House of the Legislature, the Governor or the Supreme Court on its own motion. The statute also provides that when a complaint is based upon an independent civil, criminal or administrative proceeding, the judicial disciplinary hearing is to be deferred until the matter is decided.

In April 1974, shortly after the adoption of the Code of Judicial Conduct, the Supreme Court announced the creation of the Advisory Committee on Judicial Conduct. In an open letter to retired Associate Justice John J. Francis, who was appointed chairman of the committee, and who has continued to serve in

that role, Chief Justice Hughes set forth these reasons for the committee's creation:

In a free society, the court's influence, acceptance and power alike rest, not only on Constitution and statutory law, but upon public confidence in its probity, objectivity and freedom from outside pressure of whatever kind. This applies to all courts, including the hundreds of municipal judges who, as Chief Justice Vanderbilt used to say, were those nearest to the people.

It is to guard this reputation and to strengthen this public confidence, not only in the courts but in our profession in general, that the Supreme Court is establishing its Advisory Committee on Judicial Conduct. This committee will investigate and consider complaints as to judicial misconduct of whatever kind and report its findings to the Supreme Court for appropriate remedial action.

The committee, which officially began operations in July, 1974, consists of nine members, two of whom are retired justices, four of whom are attorneys, one of whom is a former law school dean, and three of whom are public members who do not hold any public office. It was one of the first Supreme Court committees to have public members.

As to the committee's basic procedures, it conducts preliminary investigations of all complaints filed with it that are not patently frivolous. Upon the completion of a preliminary investigation, if the committee determines the charges are without merit, the complaint is dismissed and the parties are notified of the disposition. However, if the investigation reveals some departures by the judge from standards of judicial propriety, such as discourtesy and rudeness to parties or their attorneys, the committee will request that the judge appear at an informal conference. If after this conference the committee is satisfied that the objectionable conduct in question was temporary in nature and not likely to recur, it may dismiss the matter with a letter of guidance to the judge and inform the complaining party of the action taken.

When the result of the preliminary investigation discloses a need for further proceedings, the committee drafts a formal complaint and schedules this matter for a full hearing. At the conclusion of this hearing the committee then determines whether it should recommend that formal proceedings calling

either for public censure, suspension or removal of the judge be instituted. If it concludes that formal action is required, the committee files a Recommendation for Formal Proceedings with the Supreme Court, giving the accused judge notice of its decision. The case then goes to the Supreme Court, which hears the matter and makes its ultimate determination.

The figures compiled by the Advisory Committee on Judicial Conduct in its latest yearly report speak well for New Jersey's overall high standard of judicial integrity and performance.

Since the formation of this committee through its first seven years of service to August 31, 1981, excluding charges so patently frivolous as not to warrant even an inquiry, there were a total of 302 complaints filed against the members of our regular trial courts. There are different ways to evaluate the number. Obviously, I would have preferred if it had been zero. In every case before those trial judges, someone loses, someone is disappointed, and often more than one person. Even the party who wins is sometimes dissatisfied. The losers are not always convinced, to put it mildly, that their cause was unjust, and suspicions about the judge are sometimes aroused even in otherwise quite normal people when they lose a lawsuit. Those judges disposed of more than 4,650,000 lawsuits during that same period. I find it remarkable that only 302 complaints were made. Of those complaints, after full investigation, there were only two that were serious enough to require the attention of the Supreme Court, both of them resulting in a public reprimand. The record is similar for our municipal court judges, whose volume of litigation far exceeds all other courts. There, for the same seven years, 219 complaints were filed and fourteen were deemed sufficiently serious to reach the Supreme Court. Five of those judges were reprimanded, seven resigned, and two were removed by the Supreme Court. Of the total of 521 complaints filed during those seven years against all judges in the State of New Jersey, there were only fifty-three instances, including those that were serious enough to reach the Supreme Court, where there was evidence that the judge's behavior fell short of the mark.

The code of conduct, then, and its enforcement by the Supreme Court through the Advisory Committee on Judicial Conduct, provides a vehicle for establishing both judicial accountability to the public and public confidence in the judicia-

ry. Over the years of its operation, as we have seen, this system has encountered very few serious instances of misconduct.

As I have suggested, the good record of our judges in New Jersey is a product of many things, tradition and self-esteem being among the most important. While the Code of Judicial Conduct itself and some of the rules of court undoubtedly result in maintaining and enforcing high standards, I think it is more realistic to suggest that it is tradition and self-esteem that have resulted in the judicial behavior set forth in the code. The code can be viewed, from that point of view, not so much as a command but as a description.

The record of these past thirty-five years is so good that there would seem little need for the reexamination that I mentioned at the outset of this lecture. I believe, however, that long-term trends, imperceptible perhaps during any year, but quite clear nevertheless if a longer period is examined, may be significantly changing some of the factors that have resulted in this record. The tradition, the self-esteem, the standards, are all operating in a different environment, and the question that concerns me is how much are they being affected, and in what way?

I sense that judges today may experience less fulfillment and enjoy less prestige than the Judiciary of the 1950s and 1960s. Assuming I am correct, this may be the product of many factors; or perhaps something basic may be affecting the career of judging, making it less attractive as a professional choice than it once was. One immediate, obvious implication of such a development is our ability to attract the best attorneys, and "best" here means not simply the most competent, but those of the highest integrity, for that is obviously the surest way to maintain our high standards of judicial conduct.

Some factors are evident. In the 1950s and 1960s, we had a smaller Judiciary, affording more meaningful opportunities for collegiality and camaraderie. The pace of work seems to have been less pressured than it is today. I suspect that because of these factors, judges felt, more than they do today, that they belonged to a small, highly cohesive group, with shared values and traditions and with its own sharply defined esprit de corps. Becoming a judge in past years seemed a fitting capstone to a successful legal career and an opportunity for highly regarded public service. Today, the rigors of life on the bench

are such that it may have become less attractive to serve, especially as one gets older. The work is different; it is physically more demanding and more stressful. Present caseloads are massive. There seems to be less time for personal interaction with attorneys in each case. Routine processing work, motions, hearings and pleas, cut severely into the time available for the intellectually demanding and stimulating assignments, thereby blunting professional satisfaction.

Statistics tend to confirm this, for the median age of judges has dropped, if not significantly then measurably, over the last decade. We rely more and more on younger judges. The structure of judicial compensation, however, was developed for different circumstances and favored judges arriving in judicial service at an older age by combining modest present income with fairly generous retirement benefits. Today, with attorney salaries skyrocketing, more experienced attorneys of proven competence and at the peak of their skills may be less inclined to a judicial career. The younger judges, many of whom still have children to educate, find that their fixed current incomes do not keep pace with galloping inflation.

I believe inflation has had a particularly severe effect on the morale of judges. For a decade or more, the Judiciary has been regularly brought to the brink of crisis only to be saved at the last minute by legislative salary reprieve. The toll exacted on judicial morale and performance by these cyclical perils is hard to calculate. At the least, these constant crises, stretching over periods of years, with their palpable tensions and pressures, destroy the sense of security and calm which are not only essential to detached judicial deliberation, but to a high level of morale. The recent substantial increases granted to the Judiciary show the distance that had to be made up to restore judicial earning power to an earlier level. It was critical; its importance cannot be overstated, but it still leaves us searching for a long-term solution to this basic problem.

Accompanying these internal pressures is what I perceive to be an increase in public criticism. We share that increase with all governmental institutions; it is part of a pervasive change in public attitudes. Judges, for instance, are still sometimes blamed for softness on crime, regardless of the harshness of sentences regularly meted out, the increased speed of criminal dispositions and the prisons bulging with inmates sent there

for longer and longer terms by judges. There has always been a lack of public knowledge of the courts, but today that seems to translate into unrealistic expectations and perhaps to less respect. We share, undoubtedly, some responsibility for this image of the courts, for our judicial tradition in New Jersey has been a strong one of isolation from the press and public relations.

I suggest that it is possible that all of these factors combined may be having an effect on the self-image of the Judiciary. I know that one of the reasons people aspire to the bench is because they properly expect, and hopefully deserve, the status and prestige traditionally associated with that position. If that status and prestige in fact diminish, if the judge's own self-image deteriorates, I believe there may be a corresponding lowering in the standards of judicial conduct. As I see things, that has not yet occurred. Nor do I deem it even likely. The trends exist, however, and I believe there is a need to confront the possible consequences. Implicit in my remarks is my instinct that while we must keep our written standards, our written Code of Judicial Conduct at the highest level, and keep the procedures used to enforce them strict and swift, actions of that kind do not constitute a meaningful response to these trends. The problem lies deeper, and relates to the status of judges in society today, and in particular, in New Jersey. It relates to the quality of lawyers whom we are able to attract to the bench, the treatment accorded them by society when they become judges, the respect in which judges are held, and the role that judges play today in our court system. The problem is certainly worthy of careful examination by serious scholars of judicial administration and of the Judiciary in New Jersey; it requires serious discussion, which I shall initiate, between and among many judges, both present and former, and especially within the Supreme Court itself. Depending upon the evaluations that result from these discussions and studies, it may ultimately require the formal structure of a commission charged with the awesome responsibility of determining the impact, if any, of these trends on the quality of the judiciary and of judicial conduct and the further responsibility of recommending appropriate responses.

Judicial conduct has a meaning beyond the good conduct of judges. For citizens, rightly or wrongly doubtful of the integrity

of government to the point of cynicism, the Judiciary still remains their hope, that one place in government which they still seem to trust, or at least I hope they do. We must, as never before, justify this faith. For the good of all branches of our government, we have to try to make that faith—and the behavior that justifies it—more contagious than criticism.