MTL: Did you do anything in law school geared toward sports law or did you have an idea that you wanted to practice sports law while in law school?

DC: No, not at all. For a lot of people I know, that’s all they wanted to do and that’s all they’ve ever dreamed of. I was more or less the accidental sports lawyer. I was never really interested in a career in sports. My interests were in trial work, and I really enjoyed criminal prosecutions. I’m a former prosecutor. So that’s what I thought I was going to do.

MTL: So tell me how you landed at the NFL.

DC: I came to the NFL largely because I had a very close friend who was working for the NFL, who I met while in the FBI. We were both FBI agents and had parallel careers in many respects. He left the FBI around the same time that I did. He worked for the U.S. Attorney’s Office in Connecticut, and I went back to Alabama to be a prosecutor on the state level. He stayed at the U.S. Attorney’s Office for a short period of time, and later got an opportunity to work for the NFL. He did very well with the NFL, and, as a result, he got an opportunity to work for one of our clubs. At the time, I was working for the NCAA (National

MTL: Tell me a little bit about your educational background.

DC: I received my undergraduate and law degrees from the University of Alabama in Tuscaloosa.

MTL: Sports law has undeniably become one of the most popular areas of law for young attorneys and law students. The Minority Trial Lawyer (MTL) editor recently spoke with a young attorney who has earned a coveted position with the National Football League (NFL). As Counsel for Policy and Litigation for the National Football League (NFL), Derrick Crawford has spent the last six years of his career applying litigation skills he attained in various litigation and litigation-based positions to the business of the NFL.

The conversation with Crawford ranged from his duties with the NFL to tips and advice for young lawyers and law students who are interested in a career in sports law. The most interesting exchange, however, came on the subject of the NFL’s commitment to diversity. The NFL and its legal department, in particular, have undertaken a concerted effort to create opportunities in an area of law where women and minorities have traditionally had a difficult time cultivating the relationships necessary for success.

Judges Gone Wild: Directing Racially Insensitive Comments toward Minority Attorneys and Litigants

BY JENNIFER BORUM

What would you do if you found yourself in one of the following situations?

• While in one judge’s chambers, an African American deputy district attorney informed the judge that his wife had had a miscarriage. Another judge who was present in chambers responded: “Oh good. One less minority.” For this comment, as well as other misconduct, the judge was removed from office.

• During a civil settlement conference, a Hispanic attorney changed his position on settlement. The judge characterized the attorney as “acting like a Mexican jumping bean.” On another occasion, the judge privately described his court clerk as being “lazier than a coon.” For these comments as well as other misconduct, the judge was publicly censured.

• The courtroom deputy of a federal district judge in Washington State passed a note to the judge that read “It smells like oil in here—too many Greasers”—an apparent ref-
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CHAIRS’ COLUMN

The Minority Trial Lawyer and Politics

BRETT J. HART AND BURNADETTE NORRIS-WEEKS

CO-CHAIRS OF THE MINORITY TRIAL LAWYER COMMITTEE

Minority lawyers have not been aggressive in consistently addressing issues of importance to trial lawyers. Over the last ten years, it somehow seemed easy for minority lawyers to avoid discussions of race and politics in the workplace. That changed after September 11, and suddenly, minority attorneys are expected to weigh in on everything from whether we support the war to whether we support gay rights. In the aftermath of the terrorist attacks, and the concomitant political response, it is once again an essential responsibility for all minority lawyers to become active participants in the political process, to defend not only the rights guaranteed by the Constitution but also our ability to earn a decent living. We must rise to the challenge and become more politically involved.

The post-September 11 era has introduced new political debate about basic human rights, civil rights, and economics. Minority lawyers traditionally have taken active roles in shaping the discussion of each of these subjects. In this period of corporate downsizing, right-sizing, outsourcing, and reorganization—plus proposed fee caps involving personal injury and malpractice claims—some lawyers may argue that there has also been a steady chipping away at the fundamental ability of lawyers to earn the incomes the profession once enjoyed. All of these debates should be a clarion call for minority lawyers to become more involved in producing solutions.

It is difficult, if not impossible, to get away from the constant reminders that 2004 is an election year. Calling local elected officials or staff to discuss campaign positions would be a good start for a lawyer who has avoided taking the political plunge. Each year, the ABA publishes its position on several topics that are widely discussed by political pundits and written about in newspapers. Additionally, the Section of Litigation has taken positions on numerous issues critical to the minority trial lawyer. We can no longer afford to retreat to safety when asked to register an opinion on a political issue, particularly if it might affect the quality of practice and livelihood within the profession.

There are still more reasons to get involved. It is no secret that law firm rainmakers are in these positions largely due to their political participation. Not only do rainmakers generally have the time and budgets to produce rain; they also have the political clout necessary to close the deal for clients. Given that the federal government is either preoccupied with war or tied up in partisan stalemate, real progress can be made at the local level. Minority trial lawyers must study the “hot button” issues and propose strategies to effectuate positive change.

Balancing trial schedules and family responsibilities while maintaining community involvement at times can be daunting. But remember that legislators in some states, faced with substantial governmental budget shortfalls, are attempting to control budgets of state bar associations as additional sources of revenue or to institute caps on the amount of fees trial lawyers can receive in certain cases. Minority lawyers must not sit on the sidelines. Complacency could lead to a downward spiral for the profession as a whole.

The next time you are asked how you feel about the war in Iraq, or requested to make a campaign contribution for a candidate sensitive to the issues of trial lawyers, take a deep breath—and then take the political plunge.
Dedicated to Dignity
An Interview with U.S. District Court Judge Bernice B. Donald

J udge Bernice Bouie Donald has earned noteworthy achievements that many young lawyers are just beginning to pursue. Some would consider her numerous judicial accomplishments as a worthy model to follow. Other young lawyers may find Judge Donald’s success with balancing her legal work and bar association activities as a major accomplishment to pursue. (See her “Career Highlights” in the sidebar to the right.)

Yet, Judge Donald’s most admirable achievement—the one most meaningful and warranting imitation—may well be her ability to have earned these highest accolades while maintaining a down-to-earth, amiable, principled personality. She certainly personifies her professional status, but, at the same time, she reflects the “down home” training she received as the sixth of ten children raised on a sharecropper’s farm in 1950s Mississippi. She credits her mother and father, Willie and Perry Bouie, as the primary influences in her life.

Our editorial staff sat down with Judge Donald recently to glean from her experiences sage advice that practitioners in general—and young lawyers in particular—will find of value.

Q: There are many of our readers who aspire to be a member of the judiciary. How did you come to be a judge?
A: Obviously, you need to hone your craft. Make sure you abide by the rules and regulations. In an ever-changing world, there is bound to be a lot of new challenges. As a judge, you must be able to adapt to these changes and be able to make informed decisions under pressure. It’s important to always stay updated with the latest developments in the field.

Q: Why did you choose to become a judge?
A: I have always been interested in helping others. Being a judge allows me to do that on a daily basis. It’s a rewarding profession and I enjoy being able to make a difference in people’s lives.

Q: What advice do you have for practitioners, especially young minority lawyers, who aspire to become judges?
A: It’s important to never give up and always strive to improve yourself. You must be willing to work hard and be persistent in your pursuit of becoming a judge. It’s not an easy path, but it’s worth it in the end.

J U D G E  B E R N I C E  B O U I E  D O N A L D
C A R E E R  &  P R O F E S S I O N A L
HIGHLIGHTS

❐ First African American female United States District Court Judge in Tennessee (1996)
❐ First elected African American female judge in Tennessee (1982)

Q: What is your favorite memory from your time as a judge?
A: It’s difficult to pick just one memory, but one of my favorite moments was when I was able to help a young person who was going through a tough time. It’s rewarding to know that you can make a positive impact on someone’s life.

Q: What challenges have you faced as a judge?
A: There are many challenges that come with the job, but one of the biggest is the need to stay impartial and fair. It’s important to always remember that you are there to serve the public, not just one side of the case.

Q: How do you stay current on legal developments?
A: I try to stay up to date on the latest developments by reading legal journals and attending continuing education courses. It’s important to always stay informed in order to be a knowledgeable and effective judge.

Q: What is something you wish you could change about the legal system?
A: I wish there was more access to legal resources for those who cannot afford them. It’s important to ensure that everyone has access to justice, regardless of their financial status.

Q: What advice do you have for aspiring judges?
A: I would say to always stay true to yourself and your values. It’s important to always remember why you pursued a career in law and to never lose sight of that.

Q: How do you balance your legal work and personal life?
A: It’s not always easy, but it’s important to make time for both. I try to take breaks when I can and make sure to spend quality time with my family and loved ones.
Judge Donald’s Tips for Lawyers Who Appear in Her Court (or any court)

1. You only get one opportunity to make a first impression; make it a good one. Be honest, punctual, and produce a good-quality work product. You will stick out as a minority, and judges will tend to remember you because you are a minority; you want to make a good reputation for yourself.

2. Relatedly, be familiar with the rules: the Federal Rules of Civil Procedure and the local rules. Read them often so that you are very aware of the requirements set forth in the rules. In federal court, judges are becoming more like case managers, needing to push cases along in a timely manner. Except in complicated cases, we are attempting to get cases to trial within 18 months. Federal judges, therefore, are enforcing rules more strictly.

3. Follow the rules of civility—it is critically important. Most judges do not want Rambo-like attorneys. Being civil will contribute towards making that good, first impression.

4. When conducting a deposition, focus. When I read through deposition transcripts, it is sometimes apparent that lawyers, especially young lawyers, could benefit by focusing on relevant areas of inquiry and questions.

5. With respect to voir dire, focus. I let lawyers do voir dire in my courtroom; I feel they know the case best. I often see attorneys taking more time than necessary to conduct voir dire.

6. Keep your oral arguments to the point. Sometimes, I see a young lawyer with very good arguments, but a tendency towards being too verbose.

7. Sharpen your cross-examination skills. Listen to Irwin Younger’s tapes regarding the lost art of effective cross-examination. Many people do not understand effective cross-examination anymore.

8. Be honest in your dealings with the court and with your adversaries. If you are not, you lose all credibility, and that ratchets up costs in any litigation. When you have a reputation for honesty, you might be able to just call an opposing counsel to confirm or inquire about something. If you lose credibility, everything has to be documented.

9. If you want to get trial experience, volunteer for a pro bono case. Many individuals are litigating pro se in federal court (in civil rights, employment cases), and if you take even one case a year, the courts really appreciate that.

10. Learn to prioritize; learn to collaborate; practice discipline. As a minority attorney, you will be pulled in many different directions, by many different groups. You’ll need to learn to say no, because you do not want to develop a reputation of not following through on assignments.

Top Three DON’Ts (especially to young lawyers)

1. Don’t be late to court.
2. Don’t lie to the court or to your adversary.
3. Don’t lapse into informal oral or written communication with the court. Keep things formal. Use last names, no first names. I am concerned with racial and ethnic bias in the courts, and keeping things formal helps to eliminate or reduce undesirable behaviors in the courtroom.

the laws. And make sure you develop a good reputation among Bench and Bar members. Unfortunately, though, it takes more than just merit. Inevitably, whether you are appointed or elected, it is a political process. You need to understand the political system, and develop a champion who is going to get your name before the appropriate decision-making bodies. Also, get involved in the community, in bar associations, in the ABA.

Q: How is involvement in the ABA helpful?
A: It broadens your horizons. You get to know and befriend many more people, powerful people, from around the country, people you may not otherwise be acquainted with. When I applied to sit as a United States Bankruptcy Court Judge, people from around the country testified on my behalf. In addition, you can learn how to be a judge from other judges in the ABA. I did. You can talk with judges from around the country about issues that you might not feel comfortable talking about with your local colleagues.

I have been a member of the ABA since law school, but I did not go to a meeting until later in my career. I always thought the ABA was too big, too white, and there would be no place for me. In the Spring of 1983, I was appointed by the Chief Justice of the Tennessee Supreme Court to be the delegate to the National Court of Special Court Judges of the ABA, and I attended my first ABA meeting. Based on what some others had told me, I headed into that meeting thinking, “Don’t expect too much; wait three or four years, and then get a committee assign-
**“By the Book”**

**Tips & Tactics for Your Practice from Section of Litigation Books**

**The Fundamentals of Cross-Examination**

Without exception, the legendary trial lawyers have been skilled cross-examiners. Yet no one is born The Complete Angler or The Master Cross- Examiner. Instincts must be honed—and then trusted. But to hone those instincts you must first learn the fundamental rules, and there is no better place to start than in your local courthouse. There are courtroom stars in every jurisdiction in this country—perhaps one or two in your firm. Invest some time to watch them cross. If you can’t afford the time (a false economy if there ever were one), wait for a good trial on Court TV, tape it, and watch it at night.

Grab any chance that you get to question a witness under oath. Take as many depositions as you can. Don’t be hesitant about getting into the courtroom. Work your way into any evidentiary hearings your firm conducts. Get appointed to some indigent cases. Trust me: You’ll do at least as well as the lawyers who regularly represent indigents, and you’ll gain invaluable experience in front of a jury.

Read classic works like *The Art of Cross-Examination*, Herbert Wellman’s account of exciting cross in early twentieth-century cases. Study famous transcripts, such as the prosecutor’s grilling of Oscar Wilde during his trial for sodomy. Do all this, and the path from journeyman to skilled cross-examiner will be shorter and smoother.

The rules of cross-examination are universal, applying to every kind of case and witness. None, however, is written in stone. Once you are comfortable with them, once they become instinctive, infuse your cross with your self. If you are funny, be funny. If you are smart, be smart. (If you are neither, consider the judiciary.)

**The Gateway to Successful Cross**

The most common mistake trial lawyers make on cross is failing to listen to the witness’s answers. That is why the rules in this article are so critical. They teach you to respond to what the witness actually says, not what you expected or wanted her to say. If you learn no other rules, learn these. They are the gateway to every successful cross-examination.

**Keep a calm mind.** Psychologists did a study of some of baseball’s greatest hitters. DiMaggio, Mays, Mantle—all of them kept a “calm mind,” reading the seams on the ball, waiting to swing until it was on top of them. A more contemporary example is the golfer Tiger Woods, who maintains a Zen-like calm as he buries the competition. So, too, should trial lawyers keep a calm mind, reading the seams on the testimony, never panicking regardless of what a witness says. Of course, that is easier said than done. Every trial lawyer you have ever known, including this one, has at some time lost his concentration, his mind sent reeling, by a witness’s unexpected answer. Keep a calm mind and that is unlikely to happen. You will be able to think clearly, ask questions that matter, and show emotion only when you decide the time is right.

**Listen to every answer.** One afternoon in the early 1980s, I sat down after cross-examining a government witness in a RICO case. Although I had done all right, I was dissatisfied. Richard “Racehorse” Haynes, who represented one of the codefendants, cross-examined the same witness right after me. His questions and the witness’s answers quickly assumed a rhythm most often associated with great music. He slaughtered the man. That night, I asked Haynes what I had done wrong. Generous as usual, he said that I had done fine. But I was insistent. Finally, he drew on his pipe and said, “You weren’t listening to the answers.” (Of course, what I heard was, “What a loser. Get into pipefitting while there’s still time.”) He told me that the witness had admitted under my questioning that he, himself, disregarded certain Coast Guard rules—the case involved shipbuilders—yet he criticized our clients’ failure to follow some of the same regulations. I could have followed up, but I had no idea he had made that admission. As I thought about it that sleepless night, I realized that the deeper I got into cross, the less I listened, sometimes afraid of the answer, sometimes intent on asking a preplanned question. The next time I cross-examined; I actually focused on what the witness said, not on what I wanted to ask next. It was liberating. Each answer was a springboard to another question. I will never forget how powerful that felt.

**Know your case cold.** In cross-examination, the old maxim is proven absolutely true: Knowledge is power. There is no greater confidence-builder than knowing more than the witness. That knowledge allows you to respond effectively to any answer he gives. This advice applies to the basic facts of your case as well as to the most arcane corners of an expert’s report. It takes commitment—whether your case involves the simplest tort or a complex commercial case. But you will be amazed at how much solid-state physics you can learn with a tutor and a textbook. No matter how skilled an adverse witness, you can always learn enough to even the score.

**Formulate follow-up.** I cannot urge you strongly enough to think through the cross-
examination of every important witness you are about to face. It forces you to focus on what you need to prove with the witness, what you can prove, and how to use any documents or exhibits that can help to make your cross successful. If nothing else, you will reduce the anxiety that so often undermines lawyers during cross-examination.

Start by sitting at your computer and typing up the questions that you are most likely to ask. Then, with each one, type out how you will follow up if the response is “yes,” “no,” “I don’t know,” or any other logical answer. Do this a few times and you will seldom be surprised by what the witness says—or at a loss for what to ask next. Do it enough times and you will be able to anticipate even absurd and self-serving responses. As you will see, there is only a limited universe of unresponsive answers—although you need to be ready for all of them.

Never laminate your cross. Some areas of your cross will be dictated by the witness’s deposition testimony and documents—matters that you will ask him about whether he brought them up on direct or not. However, those preplanned questions are not to be confused with real cross-examination—which emanates from what the witness actually says on the stand. Always, the witness’s testimony will be different in some degree from what you anticipated. Despite that fact, many trial lawyers read one scripted question after another, regardless of the witness’s answers. Instead of mixing it up, the witness and lawyer carry on two separate conversations that never quite make contact.

If you want to be effective, never laminate your cross. Once the witness takes the stand, set those typed-up questions to one side. Mold your cross-examination from what the witness says on the stand, both on direct and in answer to your questions. If you are prepared, your best questions will be inside of you. The witness’s answers—not those typed-up questions—bring them out.

Instead of a script, create a flow sheet. Draw a line down the middle of the page of your legal pad. Take precise notes of the witness’s most important testimony on the left-hand side, and make bullet-point reminders of questions to ask and documents to use on the right. The flow sheet will keep you on point and organized and will force you to respond head-on to the testimony the jury just heard. As you near the end of your cross, quickly scan those typed-up questions. Use them only as a reminder of any area of questioning you may have skipped.

Review evidence through trial eyes. Reread the evidence in your case prior to trial or, if possible, on a break or overnight after you’ve heard the witness’s direct testimony in court. You will be amazed at what you missed and what suddenly becomes significant. Trial pressure focuses you as never before. A witness who

Nothing inflames jurors faster than a witness who has trouble telling the truth.

denied knowing a particular company policy may have been copied on a document laying it out. Or, you may decide that you should be friendly toward an adverse witness whom you questioned harshly during his deposition.

If you don’t need to cross, don’t cross. The hardest thing for a trial lawyer to do is nothing at all. Yet, when a witness hasn’t hurt you, and you have no reason to believe that he will help you, you’ll only make matters worse if you cross-examine him. I still remember my associate telling me not to cross one of the witnesses in the Sakowitz case. He hadn’t said a critical word about our client, despite a nasty disagreement they’d had. Undaunted, I waded in and managed to develop their feud with no effort at all. Since we won, it was no big deal, but I shouldn’t have asked a single question. Ten years later, I’m down to thinking about it only once or twice a week.

Don’t Forget the Jury

The following rules suggest ways to get and keep the jurors’ attention, and ultimately, to enlist them psychologically on your side of the battle. They help even emotionally remote lawyers connect with the jury. All they require is courtesy and common sense.

Never bury your lead. As the witness testifies, begin organizing your cross by subject matter. If you end up with ten areas you want to cover, put your most powerful impeachment first, the questions you are certain will draw blood. Never bury your lead: Nothing inflames jurors faster than a witness who has trouble telling the truth. The sooner you expose his dishonesty, the sooner the jury will turn against him.

If you decisively impeach the witness at the start, it won’t be necessary to go over all ten areas of cross. Begin and end with your most forceful cross, eliminate the rest, and sit down. If, instead, you delay your most effective impeachment and conduct a needlessly long cross, the impact of your questioning will be lost.

Don’t get ahead of jurors emotionally. Starting out with your best impeachment doesn’t mean hyperventilating. Cicero’s warning against the impassioned onset during argument applies equally to cross-examination. It is off-putting, even silly, to jurors when the lawyer’s emotions are out in front of theirs. Don’t get emotional or aggressive before the jurors understand the reason for such a display, and even then, never become melodramatic.

Stay under the witness emotionally. This rule is of a single piece with the previous one. Staying under a witness emotionally sends all the right messages to jurors, including that you are in control of the cross—and of yourself. Some of the most effective cross-examination I have seen has come when the examiner remained calm and polite as the witness came undone. Cross-examination where the lawyer gets overly aggressive is effective only for the other side.

Let jurors know where you’re headed next. As you change subjects, tell jurors what you are going to cover next so that they can follow you. All you have to do is inform the witness, and thus the jury, of where you are headed. It can be as simple as this: “You said in your report that you found evidence that the tire had been punctured by a nail. Let me ask you a few questions about that.”

Include jurors in your anger and indignation. For this suggestion to work, your timing must be impeccable. If the witness has given a truly incredible answer,
or is unmistakably on the run, look directly at the jury and ask the witness, skeptically, “Do you really mean to tell us . . . ?” Or, “Are you really telling these twelve people . . . ?” Metaphorically, the thirteen of you are teaming up to get at the truth—a powerful way to create a bond with jurors.

Of course, if you overdo it, a clever witness can make you look foolish. One of my closest friends since childhood, a radiologist and a very funny guy, did just that to a plaintiff’s lawyer in a medical malpractice case, testifying as the defense expert. The plaintiff’s lawyer, known in equal measure for his skill and arrogance, began his cross-examination with his hands on the jury rail, his back to my friend. “Dr. Gerson,” he asked contemptuously, “you got ten thousand dollars for your testimony, didn’t you?” The good doctor said nothing. “Doctor,” the lawyer demanded, “did you get ten thousand dollars for your testimony or not?” Still no answer. He repeated the question even louder. “Excuse me,” my friend finally replied, sounding like Robert De Niro in Taxi Driver, “Were you talking to me? You must be talking to me—but I’m over here.”

The jury thought that was pretty funny. The lawyer, who didn’t have the sense to laugh, turned toward him and fairly shouted the question again. With the lawyer firmly under his control, Dr. Gerson acknowledged that he had received ten thousand dollars, adding that he had endorsed the check over to a camp he founded for kids with cancer. The lawyer exclaimed, “But you got ten thousand dollars, over your breath and acoustics in a cavernous courtroom. I retrieved the notebooks, put them to one side, and started over. This time, I questioned the witness about the substance of a document, not the document itself. Instead of tying my questions to the documents (“Didn’t you write on August 19th that you were opposed to the merger?”), I stuck to the subject matter in it. If the witness’s answer was truthful, I moved on. If he said he didn’t remember, I would pull out the document to refresh his memory. If he contradicted what he said in a document, I would use it to impeach him.

Equally important, I limited my questions to the contents of the very few documents that mattered—out of the ocean of documents that had been produced. Incidentally, in almost every case, there are rarely more than a few important documents, no matter the thousands of pages of evidence you’ve gathered.

The product of that difficult day is my personal guideline for cross-examination and documents: Cross about the document, and then out of it—but only if it becomes necessary for impeachment or some other purpose. That eliminates the potential for momentum-killing delays while the jurors flip through their “hot-doc” notebooks, or you fish around in a banker’s box for a document that has disappeared.

Keep cross brief; or at least, keep it interesting. You can bury powerful points under the weight of unnecessary cross. When you get everything that you need from a witness, quit. I don’t care if it took just 15 minutes: Don’t ask another question. On the other hand, if you legitimately need more time to do a thorough cross, take it. Just don’t drone on for no reason. And don’t undermine the drama you’ve created by asking for “a moment to check with co-counsel” or “two minutes to check my notes” before wrapping up. Quickly scan those questions you typed up before trial. As soon as you are confident that you have finished, announce that you’ve got no further questions, and walk away from the lectern. The witness’s admissions will linger like applause as you sit down.

For more information and to order The Trial Lawyer: What It Takes to Win, by David Berg, visit the Section’s online bookstore at www.abanet.org/litigation/pubs/home.html; browse and order ABA books by going to www.ababooks.net; or call the ABA Service Center at 1.800.285.2221 and order PC 5310330, $95 for Section of Litigation members, $110 for non-members.
Litigation Skills Sets

MTL: What kind of matters do you find yourself dealing with most often as a litigation attorney for the NFL?

DC: It really runs the gamut. That’s one of the most interesting things about working here; the breadth of work is so varied. You often hear the phrase that in-house counsel are often jacks-of-all trades and master of none, and in my experience, it tends to be true because there are so many areas of law that you have to manage from an in-house counsel perspective. Some of the areas that I find myself most often dealing with, at least lately, are employment matters. We also have a number of personal injury issues that come up from time to time; issues at stadiums, at the Super Bowl, those types of things. One of the more interesting things I deal with frequently is arbitration proceedings.

I manage the NFL’s private binding arbitration process. The NFL has its own system of private binding arbitration, where club employees, head coaches, and front office personnel have a forum to seek relief when employment matters arise. This is a field oftentimes where there’s not a lot of job security, and so we have a fair degree of turnover. Just this past season we had seven head coach openings, and when coaching changes are made, former head coaches, former club employees, sometimes file grievances. And so we have to arbitrate those disputes. Those are always interesting. They are private hearings where the Commissioner of the NFL designates an arbitrator to serve as the hearing officer. In some rare cases the Commissioner will serve as the arbitrator, but for most cases he designates an arbitrator to serve. The process is a legal one in that we have discovery, opening statements, closing arguments, etc. Our arbitration process is similar to that of the AAA’s; however, there are some differences due to the uniqueness of our business.

How to Break into Sports Law

MTL: What advice would you have for a young attorney or a law student who is interested in a career in sports law?

DC: I created what I call a “tip sheet” about two years ago (see sidebar on page 9). I created this tip sheet because I was being inundated with calls from young lawyers and law students inquiring about getting into sports law. In this business you meet a lot of people who know other people. Oftentimes they will forward your name and contact information to their friends, who will in turn call you regarding how to “break into the sports industry.” I was simply being bombarded and spending a disproportionate amount of my time responding to these inquiries. So I created this little tip sheet to send to people to give them a rundown on some key points and things to keep in mind.

First and foremost you have to understand that this is an extremely competitive field. And that’s true in a lot of areas, but particularly in the sports world. If you’re trying to enter into an extremely competitive field, you need to give yourself every advantage possible. You can do that by being extremely professional in everything you do. When I receive cover letters addressed “to whom it may concern”—I generally don’t give the application a whole lot of weight, because it suggests a lack of resourcefulness. I say this because if you really want to work for the NFL, then you’re

...Continued from page 1

Collegiate Athletic Association), which was my first entry into the sports law world. He called and told me that he was leaving the NFL and wanted to recommend me for his position.
Tip Sheet

HOW to BECOME a SPORTS LAWYER

You must understand that you are entering into a highly competitive field, and job opportunities in this arena are hard to obtain.

1) Learn how to be a good lawyer first. If you are a recent law school graduate, it is unlikely that you are qualified to work as an attorney in the sports industry. You need experience as a practicing attorney first. No matter what area of law you are practicing in, learn it well! Three to five years of solid legal experience is essential to obtaining a legal position in the sports industry.

2) Develop expertise in practice areas that are important to sports organizations. Those areas include:
   - Litigation
   - Labor Law
   - Intellectual Property
   - Transactional Law

Experience in the sports industry is helpful but not essential. Also be familiar with contemporary issues in the sports industry.

3) Get to know people in the sports industry. Without good contacts in the industry, getting hired is next to impossible.

Join legal sports organizations such as the Sports Lawyers Association (www.sportslaw.org/).

Send a letter via first-class mail to the general counsel of the sports league for which you would like to work. Do not assume that it is appropriate to make the contact by e-mail, unless you have permission. Some professionals consider unsolicited e-mails intrusive and unprofessional.

Request a meeting with the GC, even if that organization does not currently have an opening. Do not, however, request a meeting during that organization’s playing season. This type of informational meeting allows the GC to put a face with your name. Ask for a brief meeting (GCs are very busy) of approximately 15 to 20 minutes. If the meeting is going well, the GC will usually extend the meeting. If the GC is not available, ask if a meeting with the GC’s subordinates is possible. Do not rely on the GC or his or her subordinates to stay in touch with you. Ask for permission to follow up from time to time.

Attend legal seminars, conferences, and conventions of sports lawyer organizations.

Subscribe to legal publications that sports lawyers read. Two of the leading publications are the Sports Business Journal and the Sports Business Daily.

Work for a law firm that has one of the sports leagues as a client. Also consider an internship with the sports league you are interested in working for or with one of its member clubs/teams.

4) When drafting your cover letter/letter of introduction, never address your letter “to whom it may concern.” A salutation of this kind suggests inattention to detail and lack of effort. Find out the GC’s name, title/position and spell it correctly. Make sure that your resume and cover letter/letter of introduction contain no errors, typos, or misspelled words. Be precise and exact when listing your qualifications. Include dates, positions and duties/responsibilities. Do not have gaps in your employment history and do not embellish your credentials. Due diligence and pre-employment investigations will be conducted, so if your resume isn’t accurate and truthful, it will be discovered.

5) Don’t give up. Perseverance is essential to getting hired. Never forget that you are one of many lawyers who want to work in the sports legal profession. The competition is fierce, and if you give up easily, you will not get hired.

You have to have basic knowledge so that you can come in and hit the ground running and be productive and efficient without a lot of hands-on supervision. When there are big issues you go to your bosses and talk to them about it, but as a general rule we’re fairly independent. That’s they way my boss manages his department because he is so busy. Therefore, he doesn’t hire lawyers who don’t have a solid experience level. I generally say in the neighborhood of three-to-five years experience—you need to have that to be competitive.

Another thing that’s very important, on a more substantive level, is to be a good lawyer first. We receive inquiries from people that say I’d love to come work for the NFL—I’m going to graduate from law school in six months. And I always tell them, you don’t know enough about the practice of law to come work for us. You’re not experienced enough yet. We don’t hire people right out of law school largely because the level of work that we do here is more complex, and you’re expected to be knowledgeable when you’re hired. All the lawyers here really love the management style, which tends to be very hands off. Our bosses are so busy that they don’t have time to babysit and spoonfeed you.

going to take the time to find out what my boss’s name is and spell it correctly. Those are the types of things that demonstrate professionalism to me. Resumes should be flawless. Eliminate misspelled words and poor grammar. Those things can get by in an industry that’s really not that competitive, but when you’re in a competitive area, you need to give yourself every advantage.

Minority Trial Lawyer Committee • Section of Litigation • American Bar Association
You also need to develop your practice in an area that’s important to the NFL’s business. I’ve identified four areas: Litigation—always a good one; Intellectual property—we are huge in this area as you can imagine; Labor law—we have a number of very good labor lawyers here, who handle the collective bargaining agreement between the NFL and the Players Association; Transactional—we do a lot of deals. So try to focus your practice in one of these four areas that are really important to the NFL.

One thing that I cannot emphasize enough—and sometimes it may be like the 800-pound gorilla—is networking. You really have to get to know people in this organization. That’s how I got my opportunity here. Some extremely talented lawyers, in terms of the resumes that are sent to this office, will find it very difficult to get hired here because they don’t know anyone.

On average, the resumes we receive are from very qualified people. All of them are outstanding. It’s very difficult trying to choose between 30 resumes, because number one looks as good as number 30. As a practical matter, you can’t bring all the folks in that you want to for interviews, so invariably the people who get interviews are the people who have established relationships here. That’s not to say that somebody’s cousin is always going to get hired—that’s not the case. But you do have to develop relationships with the lawyers here in the NFL if you want to get an opportunity. You need to do that for two reasons: One, we don’t advertise externally, so you’ll never find out that we have an opening unless you know someone who works here; two, you want your resume taken to the decision maker. You need to be able to know one of us so that we can take your resume to the boss and say, “Hey, here’s so and so and this person is outstanding. Please bring him in for an interview.” That’s the kind of thing that gets you opportunity at the NFL. And MLB (Major League Baseball), the NHL (National Hockey League), and the NBA (National Basketball Association) are very similar.

One of my colleagues on our staff worked at the NBA. So we all know the process and procedures fairly well with the other organizations.

Sports law is the ultimate insider’s profession. You have to know people who work in these organizations to get recognized, and there are a number of ways that you can do that. I’ve told many lawyers to join the Sports Lawyers Association. The Sports Lawyers Association is a who’s who of lawyers in the legal profession. The general counsels of the major sports organizations are usually members and generally attend the annual convention. In fact, every year at the Sports Lawyers Association convention, they have the general counsel’s roundtable.

The general counsels for the four major professional sports organizations discuss contemporary issues in their respective organizations. It’s an excellent opportunity to meet all four of them in one location. You won’t be able to have lengthy substantive conversations because they will be dealing with many other people who want to meet them as well. But it’s a good opportunity to meet people who are in the sports industry and to meet folks like me or attorneys from the MLB, the NBA, or even the USTA (U.S. Tennis Association). It’s really important.

I also advise people to try to have an informational interview if you can. Many times there will not be an opening, but that should not preclude you from writing a letter to general counsel and saying, “I’m interested in working in this organization. I understand you don’t have any openings right now, but would it be possible for me to meet with you for 15 or 20 minutes, just to let you know who I am?” That’s really good so they can put a face with a name. I’ve found in many situations when the interview is going very well, I will invariably give someone more than 15 or 20 minutes. But, I tell people, never ask for an hour. If you ask my boss for an hour, it will be almost impossible. Ask for 15 minutes, and make sure you ask for that time during our non-playing season. Sometimes people have the worst sense of timing.

Internships are huge. A number of our interns, not necessarily in the legal department but in other departments, have gotten offers following their internships when they did a good job. One of my colleagues, Derrick Heggans, came in that way. He had an internship and did a phenomenal job. Derrick’s hiring is one of the rare occasions where one of our attorneys was hired right out of law school. Internships are critical because they give you an opportunity to work and meet people so they can observe you and your work habits. You just really get to meet all the right people so that when you’re back in school and you graduate and you make a phone call, your call is returned.

This profession is particularly challenging for women and minorities because so much of it is based on relationships, and if you haven’t had access in the past 10 to 20 years, it’s often very difficult to break in. One of the greatest things I love about my job, and those I work for, is that my boss is a true diversity champion.
MTL: And what’s his name?

DC: His name is Jeff Pash. He hired me. He hired Derrick Heggans. He’s hired another African American attorney, Charles White, as the primary attorney for the NFL network. He gets diversity in a way that very few people out there get it. He really is committed to diversity not just in words, but also in deeds. I don’t think he does it on a racial or gender basis. He simply looks for good people. The legal department is probably one of the most diverse groups at the NFL. Out of a staff of roughly 20 attorneys, five are black males and three are white females. You don’t find that level of diversity in many companies as prominent as ours. It’s largely due to his leadership and the Commissioner’s. The Commissioner has been very supportive of our diversity efforts and has really encouraged the senior staff to promote diversity. Diversity is one of our five priorities and mission values for the NFL.

MTL: What is the NFL Diversity Council?

DC: It’s an internal organization that was formed about two years ago to work on our diversity issues. I’m sure you know about the head-coaching situation.

MTL: Give me a couple of initiatives that the council has instituted to further its goals of making opportunities for women and minorities.

DC: There is a mentoring program where we have real strong support and participation from our senior executives. The mentoring program was designed for everyone, but with a special emphasis on women and minorities, so that they could have mentors in this company. It’s like any organization in that you’ve got to get ahead largely on your work, but you need strong advocates. We wanted women and minorities to have access to senior executives in this organization so the executives could get to know them, know something about them, and advocate for them. We had tremendous interest in terms of employees who applied to be mentors. We had so much interest that we were able to accept everyone who wanted to be a protégé.

The other program we focused on is the internship program. We’ve had an internship program for a number of years, but it wasn’t particularly well organized. The Diversity Council was instrumental in helping to revamp that program. We went to a lot more historically black colleges and universities to recruit. We wanted quality people, but we wanted to make sure we had a diverse group of interns because that’s how you get so many opportunities to work in the sports world. When an intern graduates from school and they’ve done a good job for us, they have an ally in this office who can call perhaps the general manager at the Dallas Cowboys or the Tampa Buccaneers and say, “Here’s so and so. She was outstanding. Please give her an interview.”

Those are two initiatives that the NFL and the diversity council are very proud of because we were able to play a significant role in really pushing the diversity agenda.

Judges Gone Wild

Continued from page 1

derence to the Hispanic defendants and attorneys in the courtroom. The judge’s habit of passing notes containing ethnic racial slurs caught the ire of the bar, a member of Congress, and others.

If you would not have the slightest idea how to react in any of these situations—each an actual reported incident—then you are in good company. Rarely does judicial temperament yield to biased, prejudiced traits. And gladly so. On those rare occasions, however, when judges “go wild,” there are rules and processes in place to address the situation.

Judges Are Held to Certain Standards of Conduct

The ABA Model Code of Judicial Conduct was first developed in 1924 (known then as the Canons of Judicial Ethics) to provide standards for use in developing canons of judicial conduct of individual states. States generally define judicial misconduct as an action that brings discredit upon the judicial administration of justice. It could be a violation of the state’s constitution, penal code, code of judicial ethics, or other rules established by the highest court of the state. State codes typically disallow inappropriate or demeaning courtroom conduct such as the use of racial slurs. The ABA Model Code speaks to the underlying bases for such disallowance. For example, such conduct is generally seen as contrary to Canon 1 of the Code, which provides, “A judge shall uphold the integrity and independence of the judiciary.” Underlying this canon is the concept that an “honorable judiciary is indispensable in our society.” Also pertinent in this regard is Canon 2, which provides, “A judge shall avoid impropriety and the appearance of impropriety in all of the judge’s activities.” Included in this concept is the idea that a judge “should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” It has been said that the Code of Judicial Ethics adopted by a state constitutes written notice to a judge of the conduct expected of him or her.

Commissions/Complaint Procedure

Individual states have established bodies vested with authority to receive and investigate complaints of judicial misconduct. California’s Commission on Judicial Performance, Texas’s State Commission on Judicial Conduct, and Georgia’s Judicial Qualifications Commission are examples of such authorized bodies. One recognized limitation on a state disciplinary commission’s powers is the lack of
authority to investigate a complaint against federal magistrates and judges. Rather, the applicable federal circuit court of appeals fields such complaints.

While the process may vary among jurisdictions, generally, a disciplinary commission will entertain complaints of judicial misconduct from a number of sources, such as attorneys, judges, litigants, and anonymous sources. For example, a magistrate court judge in Georgia filed with the Georgia Judicial Qualifications Commission a complaint against another magistrate judge. The complaint alleged, based on “multiple authoritative sources,” that the judge used racial slurs when inquiring about the race of suspects before the judge ruled on an arrest warrant.5

Typically, commissions require that the complaint identify the judge against whom the complaint is filed and specify the allegations and, if the complaint arises out of a particular case, the names of lawyers involved in that case. Supportive documents may also be accepted. The commission determines whether sufficient facts exist to warrant further investigation, or the complaint is unfounded and should not be pursued. Investigations may include contacting witnesses, reviewing court records and other documents, observing courtroom proceedings, and conducting other investigation as may be warranted. The judge herself may be asked to comment on the allegations.

If, after an investigation and opportunity for comment by the judge, the commission determines that relatively minor conduct of an improper or questionable nature occurred, it might issue the judge a letter that advises caution or expresses disapproval of the conduct. A matter can also be dismissed contingent on the judge’s satisfying certain conditions the commission imposes. The judge’s failure to satisfy the conditions may result in reinstatement of the grievance. The commission may also issue a private admonishment for more troublesome conduct.

In cases of serious misconduct, the commission may issue a formal complaint. After the judge has filed an answer to the charges, the commission may set the matter for a hearing. The ultimate outcome of an investigation can include dismissal of the complaint, issuance of advisory letters, an order requiring the judge to attend an educational course, suspension, sanction, censure, or proceedings resulting in acceptance of the recommendation for removal from the bench.

The judge advised an Hispanic defendant to “get out of this town and go back to Puerto Rico.”

Judges Disciplined for In-Court Racial Slurs

In what seems to be the rare instance where a judge utters a racial slur or otherwise displays racial bias in the context of a court proceeding, there is consistent disapproval, but with varying consequences. There have been several documented incidents in which judges referred to minority litigants in a racially derogatory manner, for example:

- Addressing an African American woman seeking temporary custody of her biracial daughter, a district judge in Nebraska stated: “I know that chocolate people belong together. They think they need to be together, but in this case, this isn’t going to happen.” The same judge, during a sentencing proceeding, allegedly said: “I don’t know if he’s worth hauling down here or not. But he’s Hispanic, and I suppose everybody feels sorry for Hispanics nowadays.”

- Years before, the same judge allegedly used the “n” word during another proceeding. Reportedly, he received a one-month suspension and was ordered to take a workshop on human relations offered by a local college. He, however, retired before the Nebraska Commission on Judicial Qualifications could rule in his case.

- While questioning prospective jurors about their attitudes concerning race, a judge repeatedly used a racial epithet and negative stereotypes in reference to the defendant’s race; apparently, with the defendant’s consent. The State of California Commission on Judicial Performance issued an Advisory Letter to the judge urging the use of other means to accomplish the judge’s stated purpose.

- Appearing in an immigration asylum proceeding in Boston, a Ugandan woman testified that she was beaten, raped, and tortured in her native country. The immigration judge hearing the matter stated: “Jane, come here. Me Tarzan!” The judge was placed on administrative leave.

Several judges have been disciplined for uttering racial slurs and other commentary of a racial nature regarding litigants both on and off the bench. For example, in In re Gorenstein, during a probation proceeding involving an African American defendant, the judge remarked that “[s]eventy-five percent to eighty percent, [], of the people I see in court are born illegitimate and black and come from welfare families, and I pay for this courtroom and the staff, and I am sick of it and so is the rest of Wisconsin.”6 In another case, In re Agresta, during the sentencing hearing of two black defendants, the judge referred to a black person as “another n——r in the woodpile.”7 In another Wisconsin case, In re Seraphim, the judge advised an Hispanic defendant to “get out of this town and go back to Puerto Rico . . . because you can’t make it in a civilized community.”8

Counsel-Specific Racial Slurs

A rarer but no less shocking occurrence is when a judge directs racial slurs toward a minority attorney appearing before the judge or with whom the judge has otherwise come in contact, for example, the judge’s remarks included at the beginning of this article to the African American deputy district attorney regarding the attorney’s wife’s miscarriage.9 The judge also asked a Jewish district attorney, “With all the inbreeding your
people do, aren’t you afraid that they will produce a race of idiots?” The Supreme Court of California removed the judge from office in response to this, as well as other, conduct. The judge defended his comments as being made in jest. As the court found, however, the judge’s subjective intent or motivation is irrelevant. Ethnic slurs cast doubt on the judge’s “appreciation of the nature and importance of his judicial duties.” While the comment did not pose as serious a threat to public esteem for the integrity of the judiciary as do racial slurs uttered from the bench, the comments were nonetheless “conduct prejudicial” because they “may become public knowledge and thereby diminish the hearer’s esteem for the judiciary.” The California Supreme Court ordered the judge removed from the bench. He, however, was permitted to practice law in California after passing the Professional Responsibility Examination.

During a civil settlement conference, a California Superior Court judge characterized an Hispanic attorney as “acting like a Mexican jumping bean” after the attorney changed his position on settlement. This comment to a minority attorney was just one of the circumstances that the California Supreme Court observed among that judge’s “repeated[] and persistent[] use[] [of] racial and ethnic epithets to counsel and court personnel,” most of which occurred during in-chambers conferences rather than in open court. The pattern of offensive statements was detailed in the concurring opinion:

During an in-chambers discussion regarding a criminal case involving two black defendants and a white victim, Judge Stevens remarked to counsel that black persons have to learn how to live in their own neighborhoods and that it was “typical” of black persons to fight unfairly.

Judge Stevens, during his term in office, referred to black persons as “Jig, dark boy, colored boy, nigger, coon, Amos and Andy, and jungle bunny.” With one exception, Judge Stevens did not use these terms in open court or with reference to a party, witness or attorney in a case before him. In 1974, in a probate case involving a controversy between black litigants regarding burial of a loved one, Judge Stevens stated in the presence of court personnel only, “let’s get on with this Amos and Andy show.” On another occasion, he privately referred to his court clerk as being “lazier than a coon.”

During another in-chambers discussion, Judge Stevens stated to a public defender that an Hispanic defendant with a Spanish surname, Judge Stevens observed from his prior experience that (in effect) Spanish persons live by different standards than we do; that wife abuse is common and more acceptable for them; and that such abuse might explain defendant’s conduct toward her child.

During his term in office, Stevens used such terms as “cute little tamales,” “Taco Bell,” “spic,” and “bean” when referring to persons with Hispanic surnames in conversations with court personnel.

The commission concluded that such conduct was “prejudicial to the administration of justice that brings the judicial office into disrepute.” The California Supreme Court ultimately adopted the commission’s recommendation to censure the judge.

Interestingly, in a dissenting opinion in In re Stevens, one justice stated that while he was “morally offended by racial epithets” uttered in the courtroom or the locker room, he felt the judge’s “colorful vocabulary” was an impermissible basis for censure. Citing the First Amendment’s prohibition against curbing freedom of expression, the justice opined that the matter should have ended with the commission’s finding that the judge had “at all times performed his judicial duties fairly and equitably, and free from actual bias against any person regardless of race, ethnicity or sex.” The justice warned that the recommended censure threatens judicial independence.

If the day comes—and in view of the majority opinion it may be here—when judges at any level are to be disciplined for their manner of expression, however primitive, then we no longer have an independent judiciary in California. Judges will inevitably become timid and stifled, even though the Constitutions of the United States and of California apply to all persons; nothing in their text suggests that judges are excluded from protection.

While it may be difficult to find a case that suggests that judges have circumscribed rights, there is an underlying notion in these cases that a judge “must be held to a higher standard of conduct than the public at large.” The concern often expressed is the erosion of public confidence in the judiciary.

Another story exemplifies this point. While attending a charity dinner, a judge remarked to the district attorney, “You know how you Italian types are with your Mafia connections.” During the disciplinary proceedings that inevitably followed, the judge defended his comments as having been “provoked” by the district attorney. The New York Court of Appeals found, however, that even where “provoked” by the target of the ethnic slur, a judge’s utterance of the slur “manifest[s] an impermissible bias that threatens public confidence in the judiciary.” The court ultimately found in view of the cumulative, serious judicial misconduct established here, we conclude that removal is an appropriate sanction. Petitioner’s judicial record cannot excuse racial epithets and ethnic slurs in the official and quasi-official context in which they were uttered, attempts to influence dispositions, intemperate behavior and false testimony. Recognizing that Judges ‘must be held to a higher standard of conduct than the public at large,’ we conclude that petitioner’s pattern of misconduct warrants removal.” (citations omitted).
Judges Disciplined for Out-of-Earshot Slurs

Indeed, communication between a judge and courtroom personnel, outside the earshot of and not intended to be communicated to counsel or litigants, has been the basis for complaint. For example, during the testimony of an African American litigant, a federal district judge in Washington State passed a note to a member of his courtroom staff that read: “Ah is im po tent!” On a separate occasion, when several Hispanic defendants and attorneys were present in the courtroom, the courtroom deputy passed the judge the note mentioned at the beginning of this article, which read: “It smells like oil in here—too many Greasers.” After the notes were extracted from the trash can, an investigation of the judge was requested by the chief judge, journalists, attorneys, and politicians alike. The matter was referred to the Ninth Circuit Judicial Council to investigate. While the matter was pending, the Washington State Bar Association, in a published statement, condemned the judge’s behavior:

The acknowledged statements about U.S. District Judge Alan A. McDonald involving the practice of writing notes about people appearing before the court, revealing apparent racial, ethnic and religious bias, goes to the very heart of the American judicial system. The system requires unequivocal faith that all who seek its justice will be treated with fairness and respect. In every judicial action the integrity of the judiciary, due process, and the institution itself, are at stake. To safeguard public trust and confidence in the courts, the Code of Conduct for United States Judges cautions judicial officers to avoid even the appearance of impropriety in all activities, including the discharge of adjudicative and administrative responsibilities. All judges are duty bound to be respectful of all who come before them and must refrain from comment or behavior that can reasonably be interpreted as manifesting bias toward another on the basis of personal characteristics like race, gender, religion or national origin.23

Comments Made Outside the Courtroom

A 1991 interview with Chief Judge John Santora, Jr., published in a Florida newspaper offers another example:

**Question:** Are your thoughts that whites are somehow different?

**Santora:** When you’re trying a case, it doesn’t make a difference what your color is.

**Q:** What about when you’re not trying a case?

**Santora:** You mean my private, personal thoughts? ... I would not date a black girl. I would not take one home, my mother would kill me. I wouldn’t mistreat one. I would not want my children to marry a black or an Asian or a Chinese or a Puerto Rican. I would not want them to. And they know that. I have friends who are black, we all do. You have them in your workplace; I’ve got ‘em in my workplace. The best judicial assistant in this building, one of the best, is a black girl. One of the best, without a doubt. But that’s unusual. One of the best judges is black. One of the worst is black. I think that there is a difference between a lot of them that they can’t overcome. And it’s not all of it their fault. It’s the fault of their mothers and their daddies and their ancestors. And our fault. We have been too good to them. We, the United States Congress. Because they make more money by staying home on welfare than they do working. And you can’t blame ‘em. Why give up $1,500 a month when you can’t make but $800 working.

**Q:** You see that as a black issue, not white?

**Santora:** Oh yeah, we have whites doing it, but most of them are black. We talk about ... why is it that 20 percent of the prison population is black and 45 percent of the prisoners are black. That’s because, goddamn it, they’re the ones committing the crimes.24

In *In re Removal of a Chief Judge*, a local newspaper, *The Florida-Times Union*, published an interview with the chief judge, who had recently issued a ruling condemning a cross-burning and racial slurs directed at a black family. While the judge stated in the interview that he had “never, ever, ever, judged a case on a person’s ethnic background, color or creed, or religion or anything else” and that “whatever my personal biases or prejudices are, it does not enter the courtroom,” the judge’s comments resulted in his removal.

The Florida Supreme Court found the comments to “have been read by a significant portion of the community as affirmatively embracing and endorsing discriminatory stereotypes that are inimical to the laws of this state, the interests of the judiciary, and the oft-stated policies of this Court.”

The court concluded that the chief judge’s “actions have significantly eroded his ability to work effectively with all segments of the community in administering the courts . . . in his present office as chief judge.” Upon stipulation between the Florida Judicial Qualifications Commission and the judge, the commission recommended public reprimand of the judge for his remarks. The Florida Supreme Court removed the judge from his chief judgeship.

More recently, a general district court judge in Richmond, Virginia, elected to retire from the bench after *The Richmond Free Press*, a local African American newspaper, notified him of its plans to publish an article disclosing the racially charged statements the judge had published in an Internet chat room. According to newspaper reports, the judge had participated in the “Atticus” chat room on Yahoo. Allegedly in response to comments suggesting that the United States should be off limits to those not of European descent and that interracial marriage should be banned, the judge wrote: “Personally, I like a country where morality has a meaning. We have had more people killed in the city I live in by minorities in the last 15 years than ever were supposedly lynched. When do they get through being even?”25 Reportedly, the judge also described himself as a “racialist” who believed that the races are different due to
differences in their DNA. When his comments came to light, the judge, who had been on the bench for 19 years and had presided over criminal cases, tried to stifle concerns that his expressed views affected the performance of his judicial duties: “My heart and my deepest apology go out to the black community in the city of Richmond. I want them to know that I have never done anything in my court that has ever reflected racism.”

During a continuing education class attended by 48 district judges, the instructor asked the entire class whether it was illegal to be a black man. One judge responded yes. He proceeded to explain: “They’re all in jail. They’re the ones doing illegal to be a black man. One judge.

As in a bar or other public place, and did not regard the remarks as reportable to the judge’s “impartial and evenhanded conduct” during the commission’s investigation, as opposed to the racial comments themselves, the Michigan Supreme Court subsequently removed the judge.31

If the relatively small number of reported cases is any indication, we can all take comfort in the notion that rarely do judges direct racial slurs and racially insensitive comments toward minority attorneys or litigants. It is also comforting to note that, generally, when a judge does indeed “go wild,” his or her actions are met with outrage and taming consequences.

Notes
1. Several revisions have occurred in the interim, most recently in 1990. In September 2003, ABA President Dennis W. Archer, Jr., announced the appointment of a Joint Commission to Evaluate the Model Code of Judicial Conduct. The commission consists of judges and experts in the field of judicial and legal ethics who will review the ABA’s model ethics code for judges and recommend revisions for possible adoption in February 2005.
2. See e.g. Texas SJC.
3. See In re Seraphim, 97 Wis.2d 485, 493 294 N.W.2d 485, 491 (1980).
4. A listing of the body in each state that has been established to investigate allegations of misconduct by judges is at www.ajs.org/ethics/eth_jud_.conduct.asp.
8. In re Seraphim, 294 N.W.2d 485, 498 (Wis. 1980).
10. See id. at 376.
11. Id.
12. Id. at 377.
13. See id. at 378.
15. Id.
16. Id.
17. Id.
18. Id. at 102 (dissent).
20. See e.g. In re Goodfarb, 179 Ariz. 400, 880 P.2d 620 (1994) (removal of judge where “there was also substantial evidence … that many citizens have lost faith in [judge’s] judgment because he used racially inflammatory language in an official court proceeding and because of his chronic use of profanity in official proceedings”).
22. Id.
26. Id.
27. Id.
29. Id.

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