State of New York
Commission on Judicial Conduct

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In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to

GEORGE C. SENA,

a Justice of the Civil Court of the City of New York, New York County.

# Determination

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BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch
Victor A. Kovner
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

The respondent, George C. Sena, a justice of the Civil Court of the City of New York, was served with a Formal Written Complaint dated January 23, 1979, alleging in 29 charges that respondent's manner was impatient, undignified, discourteous and inconsiderate toward attorneys and litigants during the course of 30 different proceedings in his court. Respondent filed an answer dated May 11, 1979.

The administrator of the Commission and respondent entered into an agreed statement of facts on October 23, 1979, pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law, and stipulating that the Commission make its

determination on the pleadings and the facts as agreed upon. The Commission approved the agreed statement on October 25, 1979, determined that no outstanding issue of fact remained, and scheduled oral argument with respect to determining (i) whether the facts establish misconduct and (ii) an appropriate sanction, if any. The administrator and respondent submitted memoranda prior to oral argument.

The Commission heard oral argument on November 13, 1979, thereafter considered the record of this proceeding, and upon that record makes the findings and conclusions herein.

With respect to Charges I through XXII and Charges XXIV through XXIX of the Formal Written Complaint, the Commission makes the findings of fact set forth in the annexed appendix.

Upon those facts, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a), 33.3(a)(1), 33.3(a)(3) and 33.3(a)(4) of the Rules Governing Judicial Conduct, Canons 1, 2A, 3A(1), 3A(2), and 3A(3) of the Code of Judicial Conduct, and Sections 604.1(e)(1), 604.1(e)(2), 604.1(e)(3), 604.1(e)(4) and 604.1(e)(5) of the Rules of the Appellate Division, First Judicial Department. Charges I through XXII and Charges XXIV through XXIX of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Charge XXIII is not sustained and is dismissed.

The facts set forth in the appendix constitute an extremely serious record of judicial misconduct. The obligation of a judge to conduct himself in a dignified, courteous manner is essential to the effective administration of justice. The very purpose of the judicial process is thwarted by intemperate, in-

judicious and discourteous conduct, such as that repeatedly shown by respondent.

The record of this proceeding is replete with instances of rude and arbitrary behavior by respondent. On numerous occasions he (i) raised his voice in addressing litigants and attorneys, (ii) questioned the competence, honesty and good faith of attorneys, (iii) commented unfavorably on the motivations of those before him and the merits of their claims, (iv) without provocation announced that a litigant or attorney either was "in contempt" of court or would be held "in comtempt", (v) directed individuals to "shut up" as they attempted to address the court, (vi) directed the physical removal or restraint of litigants, without apparent justification, as they attempted to address the court, and in one instance required an attorney to stand in a corner of the courtroom for several minutes, and (vii) inappropriately ascribed racial prejudice to those before him.

Respondent's misconduct was not an isolated instance of discourtesy that might be excused as a lapse in judicial temperament. It occurred over the 26-month period between July 1975 and November 1977, while respondent was sitting in the housing part of Civil Court or otherwise adjudicating landlord-tenant matters.

It is improper for a judge to evince discourtesy and rudeness, even if occasionally provoked by a difficult litigant or lawyer. It should be noted that many of the attorneys whom respondent chastised in the matters before him are experienced litigators, and it would have been more appropriate for him to have exhibited more patience with the young and inexperienced attorneys who appeared before him. Moreover, Part 604 of the Rules of the Appellate

Division, First Department, entitled "Special Rules Concerning Court Decorum", sets forth rules by which a judge must be guided in response to provocative conduct.

> The judge should be the exemplar of dignity and impartiality. He shall suppress his personal predilections, control his temper, and emotions, and otherwise avoid conduct on his part which tends to demean the proceedings or to undermine his authority in the courtroom. When it becomes necessary during trial for him to comment upon the conduct of witnesses, spectators, counsel, or others, or upon the testimony, he shall do so in a firm and polite manner, limiting his comments and rulings to what is reasonably required for the orderly progress of the trial, and refraining from unnecessary disparagement of persons or issues. [Section 604.1(e)(5), Rules of the Appellate Division, First Judicial Department.]

In Matter of Waltemade, the Court on the Judiciary noted that "[r]espondent's excoriation of lawyers and witnesses alike was frequently accompanied by angry threats of 'sanctions' and sometimes of contempt proceedings in particular...[though] not one of these violent denunciations was ever followed by a contempt citation or any other disciplinary action." Matter of Waltemade, 37 NY2d (nn), (iii) (Ct. on the Judiciary 1975).

In Matter of Mertens, the Appellate Division stated that "[s]elf-evidently, breaches of judicial temperament are of the utmost gravity," and went on as follows:

> As a matter of humanity and democratic government, the seriousness of a Judge, in his position of power and authority, being rude and abusive to persons under his authority--litigants, witnesses, lawyers--needs no elaboration.

> It impairs the public's image of the dignity and impartiality of courts, which is essential to their fulfilling the court's role in society.
>
> * * *
>
> One of the most important functions of a court is to give litigants confidence that they have had a chance to tell their story to an impartial, open-minded tribunal willing to listen to them. And lawyers must feel free to advance their client's cause--within the usual ethical limitations--without abuse, or threats. Parties must not be driven to settle cases out of such fear. [Matter of Mertens, 56 AD2d 456, 470 (1st Dept. 1977).]

It is deplorable that respondent's misconduct violated specific standards of judicial behavior. Moreover, the fact that this behavior continued long after the censures in Waltemade and Mertens, supra, indicates a disregard of judicial directives regarding courtroom demeanor. Such conduct undermines public confidence in the judiciary.

With respect to sanction, removal under the circumstances would be too severe and the Constitution does not provide for a more appropriate sanction, such as a suspension from office. Suspension would have impressed upon respondent the severity with which we view his conduct while affording him an opportunity to reflect on his conduct before returning to the bench. Absent such option, the Commission has concluded that a severe censure should be imposed.

All concur.

APPEARANCES:

Gerald Stern (Robert Strauss, Of Counsel) for the Commission

Bower & Gardner (By John J. Bower) for Respondent

## APPENDED FINDINGS OF FACT

Following are the Commission's findings of fact in the matter herein, as noted on page 2 of this determination.

1. On or about July 21, July 23 and July 24, 1975 in Civil Court, New York County, Trial Term, Part 52, during the non-jury trial of Freidus v. Duluna, respondent, in open court:

(a) frequently interrupted tenant-respondents' counsel and prevented him from speaking;

(b) addressed tenant-respondents' counsel in a loud, intemperate manner;

(c) in denying a motion for adjournment, stated that tenant-respondents' counsel was "playing around";

(d) stated that tenant-respondents' counsel was "wasting the court's time";

(e) refused to hear certain statements and arguments of tenant-respondents' counsel;

(f) deprived tenant-respondents and their attorney of the opportunity to be heard fully; and

(g) was impatient, undignified, inconsiderate and discourteous to tenant-respondents and their attorney.

2. (a) On or about July 28, 1975, in Civil Court, New York County, Trial Term, Part 49, prior to and during the non-jury trial of Silverman v. Blanco, respondent, in open court:

(1) exhibited anger to tenant-respondent's counsel in response to her request for a trial by jury;

(2) stated that tenant-respondent's counsel was "wasting time and money" by requesting a jury trial;

(3) stated, in a loud, intemperate voice, after tenant-respondent's counsel refused to withdraw the demand for a jury trial, that he would try the case himself after all other matters on his calendar had been disposed of; and

(4) stated, after tenant-respondent's counsel offered to waive a jury trial if an immediate non-jury trial could be had in a different part of the court, that a jury trial had been waived and that he would try the case himself after he had disposed of the other cases on his calendar.

(b) During the non-jury trial which followed, respondent:

(1) stated that tenant-respondent's counsel was "abus[ing] and us[ing]" the court;

(2) threatened tenant-respondent's counsel with charges of contempt and with physical removal from the courtroom;

(3) denied a request by tenant-respondent's counsel to make a record of what had occurred at the bench;

(4) addressed tenant-respondent's counsel in a loud and intemperate manner;

(5) stated that tenant-respondent's counsel had engaged in reprehensible conduct;

(6) deprived tenant-respondent and her attorney of the opportunity to be heard fully; and

(7) was impatient, undignified, inconsiderate and discourteous to tenant-respondent and her attorney.

3. On or about July 29, 1975, in Civil Court, New York County, Trial Term, Part 49, during the argument of motions in Harlem Savings Bank v. Lucas, Marber v. Hernandez and Granada Hills v. _____, respondent, in open court:

(a) repeatedly denied the requests of tenant-respondents' counsel for a record of the proceedings;

(b) stated, in a loud and intemperate manner, that tenant-respondents' counsel was disrespectful;

(c) directed tenant-respondents' counsel to "shut-up";

(d) stated that tenant-respondents' counsel was "in contempt" of court;

(e) stated that tenant-respondents' counsel lacked the requisite knowledge to represent his clients;

(f) stated that tenant-respondents' counsel was not acting in the best interests of his client;

(g) after the arrival of a court reporter, stated his version of what had occurred earlier, while denying a request by tenant-respondents' counsel to make a record of those events;

(h) stated that the conduct of tenant-respondents' counsel was directed at him because respondent was black;

(i) deprived tenant-respondents and their attorney of the opportunity to be heard fully; and

(j) was impatient, undignified, inconsiderate and discourteous to tenant-respondents and their attorney.

4. On or about November 20, 1975, in Civil Court, New York County, Trial Term, Part 46, during the calendar call of Ker-Men Realty Corp. v. Liebowitz and Butler, respondent, in open court:

(a) addressed landlord-petitioner's counsel in a loud and intemperate manner;

(b) responded to the requests of landlord-petitioner's counsel for a record of the proceedings by stating that he was holding counsel in contempt of court;

(c) ordered the physical removal of landlord-petitioner's counsel from the courtroom;

(d) in a loud, intemperate manner, interrupted the efforts of landlord-petitioner's counsel to address the court;

(e) deprived landlord-petitioner's attorney of the opportunity to be heard fully; and

(f) was impatient, undignified, inconsiderate and discourteous to landlord-petitioner's attorney.

5. (a) On or about January 6, 1976, in Civil Court, New York County, Trial Term, Part 49, during the argument of motions in Silbe v. Olney, respondent, in open court:

(1) refused, in a loud and intemperate manner, to hear the legal arguments of tenant-respondent's counsel;

(2) repeatedly interrupted tenant-respondent's counsel when he attempted to address the court;

(3) in a loud, intemperate manner, directed tenant-respondent's counsel to appear in court later that day while refusing to state the purpose of that appearance.

(b) When tenant-respondent's counsel appeared later that day as directed, respondent, in open court:

(1) in a loud, intemperate manner, stated that tenant-respondent's counsel had engaged in reprehensible and unethical conduct;

(2) stated: "-- I'm black and I feel, sir, that your conduct was directed against me, personally";

(3) repeatedly directed counsel to apologize for his behavior while refusing to respond to the inquiries of counsel's attorney about the nature of the proceedings which were being conducted;

(4) repeatedly interrupted counsel's attorney during his presentation to the court;

(5) conducted the proceedings in a loud, intemperate manner;

(6) ordered tenant-respondent's counsel and his attorney to appear on a subsequent date while refusing to state the purpose of that appearance;

(7) failed to appear on the subsequent date; and

(8) was impatient, undignified, inconsiderate and discourteous to tenant-respondent's counsel and to his personal attorney.

6. On or about January 13, 1976, in Civil Court, New York County, Trial Term, Part 52, during a hearing in Booke v. Liffman, respondent, in open court:

(a) on several occasions, addressed tenant-respondent's counsel in a disrespectful manner;

(b) rose from his chair, and, in a loud, intemperate manner, interrupted tenant-respondent's counsel and restricted her from addressing the court; and

(c) engaged in the following improper colloquy with tenant-respondent's counsel:

> THE COURT: Madam, why do you argue. The Court has ruled.
>
> MS. BIBERMAN: I really don't understand the Court's ruling.
>
> THE COURT: I am suggesting that you may not show that to the witness for him to make a comparison.
>
> MS. BIBERMAN: Yes, but --
>
> THE COURT: Don't you understand my ruling? Be seated or continue your cross-examination, one or the other.
>
> MS. BIBERMAN: Your Honor, there is --
>
> THE COURT: Do you wish to cross-examine?

MS. BIBERMAN: I wish to cross-examine whether or not he can tell what signature is his and what is not. He is attempting to testify that he has not -- he was not present when this lease was signed.

THE COURT: I am going to advise you at this time that you will now continue your cross-examination of this witness or I will conclude it; it's that simple.

MS. BIBERMAN: Your Honor, if you are telling me that I can't cross-examine --

THE COURT: I just told you --

MS. BIBERMAN: Your Honor --

THE COURT: I hold you in contempt, and now that is the end of that.

MS. BIBERMAN: Your Honor --

THE COURT: That is all. Do as you please.

MS. BIBERMAN: Your Honor, I don't --

THE COURT: Madam, I don't know how long you have been practicing, but one of the things you don't do -- and one of the things that holds this country today is the fact that this is a land of law, and I am the judge. When I make rulings, you will abide by my rulings. If you think I am in error, you have a procedure to follow; do you understand?

MS. BIBERMAN: I understand.

THE COURT: Now, either continue your cross-examination now or take your seat.

MS. BIBERMAN: Your Honor --

> THE COURT: One or the other. I am not asking you for argument. I don't know how many cases you've tried, but it's apparent you haven't tried too many, and I would recommend to you whether you like it or not, I am the judge of this court, and I would recommend that one of the things you should do is read the Canons of Ethics which advises you when a Court has ruled, you abide by the ruling, and if you have any argument about the rulings, you have your avenues on which you may make a motion to reargue. The C.P.L.R. is full of things you may do. You may appeal. Now, move ahead.

(d) and was impatient, undignified, inconsiderate and discourteous to tenant-respondent's counsel.

7. (a) On or about May 6, 1976, in Civil Court, New York County, Trial Term, Part 49, during oral argument of pre-trial motions in Dastu Realty Co. v. Pearson, respondent, in open court:

(1) addressed tenant-respondent's counsel in a loud and intemperate manner, while criticizing him for making pre-trial motions;

(2) stated, in a loud, intemperate manner, in response to the attempts of tenant-respondent's counsel to cite legal authority, that counsel was being disrespectful;

(3) ordered tenant-respondent's counsel to cease argument and when counsel did so and left the area of the bench demanded to know, in a loud, intemperate voice, why counsel had turned his back on the court;

(4) refused to allow tenant-respondent's counsel to respond to his remarks;

(5) declared that tenant-respondent's counsel's conduct was directed against him personally because respondent was black;

(6) directed a court officer to seat tenant-respondent's counsel at the side of the courtroom;

(7) threatened to hold tenant-respondent's counsel in contempt of court;

(8) directed tenant-respondent's counsel to return later that day with his personal attorney;

(9) deprived tenant-respondent and her attorney of the opportunity to be heard fully; and

(10) was impatient, undignified, inconsiderate and discourteous to tenant-respondent's attorney.

(b) When counsel appeared later that day with his attorney, as directed, respondent, in open court:

(1) while addressing the courtroom audience in a loud, intemperate manner, stated that he was putting the fact that he was black on the record, then gave his version of the earlier conduct of tenant-respondent's counsel;

(2) demanded an apology from tenant-respondent's counsel;

(3) barred tenant-respondent's counsel from ever again appearing in a court in which respondent presided;

(4) responded to a request of tenant-respondent's counsel for permission to consult with his attorney by stating:

> THE COURT: You may consult with whom you wish. You know what summary contempt is. He doesn't have to be represented for that.
>
> MR. KLEIN: Your Honor, I missed the last thing you said.
>
> THE COURT: I'm just putting something on the record so he will understand.
>
> I would say this: I am not heaping any praise on myself. I have practiced law for twenty years. I have tried over sixty homicides. I tried cases all over this country. I have never had the temerity to do what he did.
>
> I say this: When Blacks, Puerto Ricans, Whites, who, I will admit, are ignorant as to the law, see something like that happen by a member of the Bar, they believe that's the course of conduct they should follow.
>
> I won't accept it. I would never hold a lawyer in contempt unless he did something which I thought was so flagrant he had to be. But, I think, sir, you had better take yourself in check and if this is the manner in which people from your office are going to conduct themselves, then, perhaps, you would do better if you remained in the hallway.
>
> All right. That's the end of it.
>
> MR. JAFFE: May I consult with my attorney?
>
> THE COURT: The matter is closed. I am barring you from this courtroom.
>
> MR. KLEIN: I'm sorry. What was that part? I didn't hear it.
>
> THE COURT: I said that I am barring him from my courtroom, sir.

(5) unduly restricted counsel's attorney from addressing the court;

(6) engaged in the following improper colloquy:

> THE COURT: Are you representing this man? There is nothing to represent him about.
>
> All right. I just say he is barred from my courtroom, period.
>
> MR. JAFFE: He is representing me.
>
> THE COURT: That's the end of it. If you wish to take it further, you do as you please. If you wish me to hold him in contempt --
>
> MR. KLEIN: I wish you would not.
>
> May I ask, respectfully, if you will withdraw the barring of him from the courtroom?
>
> THE COURT: I ruled. Once I say something, I mean it. I don't play games. It's not a game.
>
> MR. KLEIN: I asked if you would, respectfully --
>
> THE COURT: That's the end of it.
>
> MR. KLEIN: I don't mean to be disrespectful.
>
> MR. JAFFE: May I respond to your remarks on the record?
>
> THE COURT: No, you may not. That's the end of it.
>
> MR. KLEIN: May I make an objection? I think --
>
> THE COURT: Sir --
>
> MR. KLEIN: May I have an opportunity to reply?
>
> THE COURT: There is nothing to reply to.

MR. KLEIN: Is that a unilateral decision?

THE COURT: That's the end of it. Thank you. You may step out.

(7) and was impatient, undignified, inconsiderate and discourteous to tenant-respondent's counsel and to his personal attorney.

8. On or about May 6, 1976, in Civil Court, New York County, during oral argument of motions in Michlick v. Hickey, respondent, in open court:

(a) loudly interrupted tenant-respondent's counsel and prevented him from speaking;

(b) stated that tenant-respondent's counsel's motion was a waste of time;

(c) stated that tenant-respondent's counsel lacked the requisite knowledge to practice law;

(d) ordered an immediate trial although neither attorney was prepared for nor had requested one;

(e) ordered a court officer to seat tenant-respondent's counsel;

(f) deprived tenant-respondent and his attorney of the opportunity to be heard fully; and

(g) was impatient, undignified, inconsiderate and discourteous to tenant-respondent's counsel.

9. On or about August 26, 1976, in Civil Court, New York County, Trial Term, Part 49B, prior to the trial of Popp v. Flenvol, respondent, in open court:

(1) in a loud, intemperate manner, questioned several persons present in the courtroom, then directed them to cease taking notes; and

(2) over tenant-respondent's counsel's objections, conducted a portion of the trial in chambers while excluding the public.

(b) During the trial of Popp v. Flenyol respondent:

(1) at one point in the proceedings, in a loud, intemperate manner, denied the request of tenant-respondent's counsel to record an objection to the court's decision to conduct a non-public trial;

(2) directed tenant-respondent's counsel to "shut (his) mouth";

(3) interrupted the cross-examination of landlord-petitioner to direct tenant-respondent to testify;

(4) questioned tenant-respondent about an ex parte conversation respondent allegedly had with her on a previous occasion;

(5) implied that tenant-respondent was lying and had made damaging admissions during her ex parte conversation with respondent;

(6) in a loud, intemperate manner, denied counsel's request that respondent disqualify himself;

(7) in a loud and intemperate voice, told tenant-respondent's counsel never to bring lawyers into court to take notes on him because respondent was not frightened;

(8) deprived tenant-respondent and her attorney of the opportunity to be heard fully; and

(9) was impatient, undignified, inconsiderate and discourteous to tenant-respondent and her attorney.

10. (a) On or about August 27 and 31, 1976, and September 14, 1976, in Civil Court, New York County, Trial Term, Part B, during pre-trial discussions at the bench in Oxford Associates v. Reynolds, respondent:

(1) stated, in a loud, intemperate manner, that petitioner's premises were "not a slum," and, therefore, tenant-respondents had no defense unless the holes in their ceiling were enormous;

(2) stated that tenant-respondents' defenses would be "a waste of time."

(b) During the trial of Oxford Associates v. Reynolds, respondent:

(1) in a loud, intemperate voice, stated that counsel for both parties were "playing games" and "wasting time";

(2) threatened to hold tenant-respondents' counsel in contempt;

(3) repeatedly implied that tenant-respondents' counsel was engaging in unethical conduct;

(4) deprived tenant-respondents and their attorney of the opportunity to be heard fully; and

(5) was impatient, undignified, inconsiderate and discourteous to the attorneys and to tenant-respondents.

11. (a) On or about September 1, 1976, in Civil Court, New York County, Trial Term, Part B, prior to and during the trial of Long v. Adams, respondent, in open court:

(1) when tenant-respondent's counsel requested a continuance, denied the request, stating, in a loud, intemperate manner, that welfare checks which counsel sought to obtain "could not be found in 10,000 years";

(2) demeaned tenant-respondent's counsel and her associate by stating to the courtroom audience that her organization provided inadequate legal assistance and did a disservice to their clients; and

(3) interrupted tenant-respondent's counsel's attempts to state that she required the assistance of a more experienced associate.

(b) During the trial of Long v. Adams, respondent, in open court:

(1) after the supervisor of tenant-respondent's counsel attempted to join her at the counsel table, engaged in the following improper colloquy with him:

> THE COURT: Sir, are you trying this case. That's a direct question.
>
> MR. JAFFE: I am helping Miss Davidson.
>
> THE COURT: If you want to substitute for her, do that. Don't say anything in my courtroom. Put your name on the record.
>
> MR. JAFFE: Robert J. Jaffe. I am the supervisor in the office which Miss Davidson is an attorney of. She is a new attorney, just being --

THE COURT: I just asked you to identify yourself. That is sufficient. Now I am directing you. There will be no conversation before me with this lady. If you want a recess to talk to her --

MR. JAFFE: May I have a recess to talk to Miss Davidson?

THE COURT: Any time you want to. You have no standing in this case.

MR. JAFFE: Your Honor, may I have a recess to discuss this case with Miss Davidson.

THE COURT: No, sir.

MISS DAVIDSON: May I have a recess to discuss this case with Mr. Jaffe?

THE COURT: No.

(2) when the supervisor of tenant-respondent's counsel attempted to substitute for counsel, engaged in the following improper colloquy:

MR. JAFFE: Your Honor, I am going to substitute for Miss Davidson now.

THE COURT: You don't make decisions for your client.

MR. JAFFE: Unfortunately we do.

THE COURT: Step back and remove yourself. You have no standing. You don't represent anyone here.

MR. JAFFE: I represent this client, yes, I do.

THE COURT: Officer, if this gentleman opens his mouth again, restrain him and place him over here with me.

MISS DAVIDSON: I wish to be excused as attorney at this time.

> THE COURT: You will state on the record why you wish to be excused. If you wish to withdraw from this case, you may do so.
>
> MISS DAVIDSON: At this time I would like to have Mr. Jaffe substituted as attorney.
>
> THE COURT: You had better go and read the Canons of Ethics. Move ahead. Denied.

(3) throughout the proceedings, refused to permit the supervisor of tenant-respondent's counsel to conduct or participate in the trial, despite the statements of tenant-respondent's counsel that it would be in the best interests of her client to do so;

(4) in a loud, intemperate manner, stated that tenant-respondent's motions, including those for continuances and adjournments, would be made "at the end of the case";

(5) repeatedly interrupted tenant-respondent's attorneys when they attempted to address the court;

(6) engaged in the following improper colloquy with the attorneys for tenant-respondent:

> MISS DAVIDSON: I would just like --
>
> THE COURT: I direct you to ask your first question.
>
> MR. JAFFE: May I be heard?
>
> THE COURT: You are not involved in this case. Ask your first question. The court finds there are no questions. The Court directs the attorney for the respondent to ask questions. Attorney for respondent has seen fit to remain mute.

MR. GOLDSTEIN: Petitioner rests.

THE COURT: All right. What is your motion. You don't play games in this courtroom. If you don't feel you are efficient enought to represent these people, don't do it. You don't cut your eye teeth in here. Your office has had more than sufficient time to prepare this case. This lady has a right to have her case heard. All right. You are on the case now. Your motion --

MISS DAVIDSON: I think that my client has a right to counsel representing --

THE COURT: Your motion.

MISS DAVIDSON: I made my motions.

THE COURT: What is your motion at the end of the petitioner's case?

MR. JAFFE: Your Honor, may I be heard?

THE COURT: You have. What is your motion, ma'am? Your move to dismiss the petition for failure to make out a prima facie case. Denied. You may step down.

(7) stated to counsel, in a loud voice: "One doesn't play games in this courtroom";

(8) engaged in the following improper colloquy:

THE COURT: The Court takes note that the respondent has seen fit to leave the courtroom. Call your first witness. Sir, I am not speaking to you. If you open your mouth again, I will hold you in contempt. All right. Call your first witness, ma'am. Do you have any witnesses? The Court requested of the respondent's attorney to call her first witness.

MISS DAVIDSON: Your Honor, I can't.

MR. JAFFE: She is not counsel in this case any more.

THE COURT: Do you know how to make substitution?

MR. JAFFE: We are both of counsel to Mr. Glen.

THE COURT: There being no response from the respondent, call your first witness.

MR. JAFFE: We have a response. We are asking for a continuance to properly prepare this case.

THE COURT: Denied.

MR. JAFFE: We do not --

THE COURT: I am directing --

MR. JAFFE: Your Honor, at this time we ask that you excuse yourself from this case, because the remarks you have made concerning Miss Davidson, myself and the Legal Aid Society, indicate a total prejudice against us and our clients, and --

THE COURT: Sir, I happen to be black and I feel badly because that man is sitting there and this lady is sitting here.

MR. JAFFE: And you are denying him a fair trial.

THE COURT: The only issue in this case is payment.

MR. JAFFE: We could not prove payment unless you give us a chance or time to subpoena the records. You have refused to do that.

THE COURT: I direct you to shut your mouth. The Court has given the respondent such time to put in its answer. Final judgment --

MR. JAFFE: Your Honor, may we be heard as to why --

THE COURT: Don't you recognize I am dictating to this lady? The next time you speak to me you had better be on your feet.

> Landlord, $334.50 for rent through July 31. Ten day stay.

(9) responded to the requests of the supervisor of tenant-respondent's counsel for permission to be heard by stating that the supervisor had been "derelict" in assigning the case to her;

(10) deprived tenant-respondent and his attorneys of the opportunity to be heard fully; and

(11) was impatient, undignified, inconsiderate and discourteous to tenant-respondent and his attorneys.

12. (a) On or about September 3, 1976, in Civil Court, New York County, Trial Term, Part B, in the matter of Suphal v. Walker, respondent, in open court, prior to trial:

(1) stated in a loud, intemperate manner, that tenant-respondent's counsel had misrepresented facts to the court;

(2) repeatedly interrupted tenant-respondent's counsel and prevented him from speaking;

(3) directed a court officer to seat tenant-respondent's counsel and to prevent him from leaving the courtroom;

(4) in a loud, intemperate manner, denied the requests of tenant-respondent's counsel that a record be made of his application for a continuance; and

(5) engaged in the following improper collquy with tenant-respondent's counsel:

> THE COURT: And you told the Court you were actually engaged in Family Court, is that correct?

MR. EVANS: I told --

THE COURT: Is that correct, yes or no?

MR. EVANS: Let me say that --

THE COURT: If you want to play games, you're in a Court and --

MR. EVANS: That's right.

THE COURT: Just don't answer, I'm making a record and --

MR. EVANS: Let me tell you what my application --

* * *

THE COURT: Tell that Judge that Mr. whatever his name is, is before me, and he'll appear as soon as this case is over.

MR. EVANS: Judge --

THE COURT: Sit down.

MR. EVANS: -- may I be heard on the record for one moment?

THE COURT: Sit down now, that's the end of it. Seat that man, please sir.

MR. EVANS: I'll be seated out of courtesy to the Court Officers.

THE COURT: Thank you very much. See, one of the things that you don't recognize and I'm going to say for the benefit of every one here, is that if we allow lawyers to function the way you do, in a vain belief that they're representing their clients, you do no more than devoid the respect that a Court and a Judge should have. Now I would recommend to you that if you don't know what common sense and courtesy means,

that reflects back on you and your upbringing. What I think, this is preliminary, and when I grew up, I learned something. And I would recommend further that there are many people here who look at me and recognize what I have and I recognize what you do and --

MR. EVANS: May I make one statement?

THE COURT: Sit down, will you have a seat.

MR. EVANS: I merely want to say --

THE COURT: Seat him please. I direct you not to say anything. I now hold you in contempt, and I, when this is over, you'll sit over there, and we'll --

MR. EVANS: I --

THE COURT: Now, if you want to play games --

MR. EVANS: I just --

THE COURT: Seat him please.

MR. EVANS: Judge --

THE COURT: Sit down sir, that's all, you have nothing further to say except in the defense of your client, in representing your client.

(b) During the trial of Suphal v. Walker, respondent:

(1) when tenant-respondent's counsel requested permission to state the grounds for his objections to questions, responded that counsel should "make a note" of them;

(2) stated that tenant-respondent's counsel did not know the rules of evidence;

(3) stated that tenant-respondent's counsel could state the grounds for his objections at the end of landlord-petitioner's case, then interrupted him when he attempted to do so;

(4) when tenant-respondent's counsel attempted to make motions at the close of landlord-petitioner's case, directed him to "shut (his) mouth" and threatened to "put him out..." because he didn't "know how to try a case";

(5) when tenant-respondent's counsel requested permission to renew an application, directed him to appear at the offices of the Administrative Judge of Civil Court, with a representative from his office;

(6) after repeatedly interrupting the efforts of tenant-respondent's counsel to address the court and preventing him from speaking, respondent engaged in the following improper colloquy:

> THE COURT: This is the most obnoxious and most disturbing commission of conduct I've seen in my life. Now, I see a lot of my black friends here, and it's disturbing that you could come in a Courtroom and act as you have. And it's my intent to see that it doesn't happen again. And I apologize to every one assembled, because this man, a member of the Bar and --
>
> MR. EVANS: Judge --
>
> THE COURT: You may leave sir, or you'll have to be escorted --
>
> MR. EVANS: I merely want to know if I may make an application on the record?
>
> THE COURT: Sir, you may leave now.

(7) deprived tenant-respondent and his attorney of the opportunity to be heard fully; and

(8) was impatient, undignified, inconsiderate and discourteous to tenant-respondent's counsel.

13. On or about March 1, 1977, in Civil Court, New York County, Trial Term, Part 52, after testimony had been taken the previous day in the jury trial of Shabot v. Mitchell, respondent, in open court:

(a) addressed tenant-respondent's counsel in an intemperate manner;

(b) dismissed the petition without prejudice on his own motion, while stating, in an angry, intemperate manner, that he was doing so because the attorneys had been disrespectful to him by not being present in the courtroom;

(c) in a loud, intemperate manner, ordered all litigants and attorneys connected with the case to get out of the courtroom immediately; and

(d) was impatient, undignified, inconsiderate and discourteous to litigants and to tenant-respondent's counsel and, by his conduct, caused a waste of court time and resources.

14. (a) On or about March 2, 1977, in Civil Court, New York County, Trial Term, Part 52, during the jury trial of Lincoln Square Home for Adults v. Sajnani, respondent, in the presence of the jury:

(1) instructed tenant-respondent's counsel to make her preliminary motions "after the trial is over";

(2) unduly restricted the efforts of tenant-respondent's counsel to address the court;

(3) frequently directed tenant-respondent's counsel to sit down in response to her requests for permission to speak;

(4) frequently addressed tenant-respondent's counsel in a disrespectful manner;

(5) after stating that he had given tenant-respondent's counsel every opportunity to call a witness, stated, in a loud, intemperate manner:

> Now, Madam, go and get the C.P.L.R. and I'm going to read you the Code of Professional Ethics and I am going to submit this to the Bar Association.

(6) stated that tenant-respondent's counsel did not wish to put in a defense and directed a verdict for landlord-petitioner;

(7) deprived tenant-respondent and his attorney of the opportunity to be heard fully; and

(8) was impatient, undignified, inconsiderate and discourteous to tenant-respondent and his attorney.

(b) At the conclusion of landlord-petitioner's case in Lincoln Square Home for Adults v. Sajnani, respondent, in open court, out of the presence of the jury in response to the request of tenant-respondent's counsel to "say something that would preclude the jury," threatened to hold counsel in contempt of court.

(c) After dismissing the jury and granting judgment for landlord-petitioner in Lincoln Square Home for Adults v. Sajnani, respondent, in open court:

(1) stated that counsel for tenant-respondent had done her client a disservice;

(2) stated that counsel for tenant-respondent could now present whatever evidence she wished; and

(3) addressed the following remarks to tenant-respondent's counsel:

> Now I don't know where you got your law training, but whatever defense you have you may bring it up. No one ever tells you to do it. You do it. I don't know who's training you or who's suggesting what procedure you should follow in a Court of Law and I've tried cases for over twenty years and I have never seen anything like this.
>
> You don't have to respond. Your conduct here is sufficient. Be seated.

(d) A few days after the trial of Lincoln Square Home for Adults v. Sajnani, respondent telephoned tenant-respondent's counsel and, in a harsh and intemperate manner, directed her to bring the official court files of the case to him immediately, while ignoring her attempts to state that she did not have the files.

15. On or about March 22, 1977, in Civil Court, New York County, Trial Term, Part 49, during the oral argument of motions in Robinson v. Blackwell, respondent, in open court:

(a) frequently interrupted tenant-respondent's counsel when he attempted to address the court;

(b) stated that tenant-respondent's counsel was not representing his client properly and that his client should seek assistance elsewhere;

(c) in an intemperate manner, ordered tenant-respondent's counsel to sit down and to step aside or he would be held in contempt of court;

(d) ordered a court officer to seat tenant-respondent's counsel;

(e) stated that tenant-respondent's counsel was being disrespectful;

(f) deprived tenant-respondent and his attorney of the opportunity to be heard fully; and

(g) was impatient, undignified, inconsiderate and discourteous to tenant-respondent's counsel.

16. (a) On or about March 24, 1977, in Civil Court, New York County, Trial Term, Part 49, in Riverbend Housing Co. v. Lewis, respondent, prior to trial, at the bench:

(1) stated that he had a certain familiarity with the premises that were the subject of the action;

(2) stated that no condition existed in the premises which would justify tenant-respondent's non-payment of rent; and

(3) addressed tenant-respondent's counsel in a disrespectful and intemperate manner, questioning his understanding of English and his ability to hear.

(b) During a hearing on tenant-respondent's motions in Riverbend Housing Co. v. Lewis, respondent, in open court:

(1) questioned tenant-respondent's counsel's knowledge of courtroom decorum;

(2) stated that tenant-respondent's counsel was representing his client in an inadequate fashion;

(3) stated that tenant-respondent's defenses were frivolous and a waste of the court's time;

(4) repeatedly interrupted tenant-respondent's counsel in a loud, intemperate manner;

(5) inquired, in a sarcastic manner, whether tenant-respondent's counsel "wanted to bet" on the fact that tenant-respondent was not qualified to testify about the conditions in her apartment;

(6) interrupted tenant-respondent's testimony to state, in a loud and intemperate manner, that the witness "...could take her rug and throw it out of the window...";

(7) stated in a loud, intemperate voice, that the behavior of tenant-respondent's counsel was a "crime" and that he was "destroying" his client and was not "worth his salt";

(8) interrupted the proceedings to state that he was "going to grant a traverse"; directed the tenant to post rent with the Clerk of the Court; and stated that "poverty is not a defense," that other tenants would be required to pay the tenant-respondent's rent, that this was not a "socialistic land," that

the court could not help tenant-respondent and that she could have a trial if she was able to pay for it;

(9) stated to tenant-respondent's counsel, "Don't try to make a supreme court case out of this small proceeding";

(10) when tenant-respondent's counsel requested a clarification of the court's direction that he "sit down and step out. Just step out," directed counsel to be seated at the side of the courtroom because, "I'm holding you in contempt. You don't understand English";

(11) in a loud, intemperate manner, after stating that counsel was in contempt of court, stated that he would "submit this to the Bar Association" and that counsel had committed a "travesty" upon his client; invited counsel to read the Canons of Ethics; and stated that "...if this is the manner in which you are representing the people from Harlem then maybe something ought to be done about it";

(12) in a loud, intemperate manner, made disrespectful remarks to an associate of tenant-respondent's counsel, indicating that counsel's agency was being used to do "horrible" things and was violating its duty to be truthful with the court;

(13) stated to tenant-respondent, in reference to her attorney:

> Ask this guy over here who brought you here and told you to tell this horrendous thing, to take up a collection for you. That's what you need. Poverty is not a defense, ma'am.
>
> All right. You should go back to my black brothers.

(14) stated to the attorneys for the parties that he had engaged in an ex parte conversation with the tenant-respondent concerning the pending case;

(15) stated, in a loud, intemperate manner, in reference to his ex parte conversation with tenant-respondent:

> ...and don't tell me that you have paid the rent, Madam. I spoke to her in the corridor and don't you ever tell me that because you know darn well she hasn't.

(16) failed to rule on tenant-respondent's motion that he disqualify himself;

(17) deprived tenant-respondent and her attorney of the opportunity to be heard fully; and

(18) was impatient, undignified, inconsiderate and discourteous to tenant-respondent and her attorney.

17. On or about March 25, 1977, in Civil Court, New York County, Trial Term, Part 49, during a non-jury trial in Riverbend Housing Co. v. Lewis, respondent, in open court:

(a) interrupted the motion of tenant-respondent's counsel that he disqualify himself; directed court officers to seat tenant-respondent's counsel; and stated that all motions would be reserved until the trial was over;

(b) repeatedly interrupted tenant-respondent's counsel in a loud, intemperate manner;

(c) stated, in a loud, intemperate manner, that tenant-respondent's counsel was arguing with the court and that if he continued, "...I will take care of you, sir";

(e) stated that tenant-respondent's counsel was urging arguments on the court with knowledge that they had no basis;

(f) in a loud, intemperate manner, stated during the renewal of tenant-respondent's motion for the court to disqualify itself, "...I don't want to hear that nonsense. Don't you ever say that again";

(g) implied that tenant-respondent's counsel had not been truthful with the court;

(h) implied that tenant-respondent's counsel had not provided competent legal assistance to his client;

(i) in a loud, intemperate manner, engaged in the following colloquy with tenant-respondent's counsel:

> THE COURT: I am going to give you twenty days to move and I recommend this -- and I am putting this on record -- I think it is a travesty to urge defenses in a matter where you know that is not so and I urge you to read the Canons of Ethics.
>
> MR. LOINES: I would urge all concerned --
>
> THE COURT: You better watch your mouth.
>
> One of the things I have noted in this case, if you had a defense, you didn't raise it. If you don't know sufficient to submit things in evidence so the Court may look at it, then you are not doing your client any good at all.
>
> If it's necessary, maybe you should look into your education, as far as the law is concerned.
>
> MR. LOINES: The only thing I would like to add, for the record --

THE COURT: You have to pay for it.

MR. LOINES: I am offering for the record -- certain proof that we had hoped to offer in evidence.

THE COURT: That is your problem. You prepared the case.

Let me tell you a little secret, the way you did not serve your client was by not doing your duty to her.

(j) deprived tenant-respondent and her attorney of the opportunity to be heard fully; and

(k) was impatient, undignified, inconsiderate and discourteous to tenant-respondent and her attorney.

18. On or about May 24, 1977, in Civil Court, New York County, Trial Term, Part 16, during the non-jury trial of Brew v. Shalom Brokerage, Inc., respondent, in open court:

(a) frequently interrupted defendant's counsel in a loud, intemperate manner;

(b) repeatedly directed defendant's counsel to "shut up";

(c) offered to assist the plaintiffs in bringing the conduct of the defendants to the attention to the office of the district attorney;

(d) deprived the defendants and their attorneys of the opportunity to be heard fully; and

(e) was impatient, undignified, inconsiderate and discourteous to the defendants and their attorneys.

19. On or about August 2, 1977, in Civil Court, New York County, Trial Term, Part 49D, respondent stated in open court that a litigant was in contempt of court and directed that she be seated and that a court officer bring a Legal Aid Society or Legal Services attorney into the courtroom. In response, a law student, practicing law under the supervision of counsel, pursuant to an order of the Appellate Division, First Department, was brought by a court officer into the courtroom. Thereafter, respondent, in open court:

(a) stated to the student, in a loud, intemperate manner, "Explain to your client the meaning of contempt" and "I am making her your client";

(b) stated, in a loud, intemperate manner, that neither the student nor his "client" would be permitted to leave the courtroom until the matter was resolved;

(c) interrupted the efforts of the student to speak with his "client" by stating, in a loud, intemperate manner, "Contempt is when I fine you or imprison you or both";

(d) in response to the student's efforts to address the court, asked, in a loud, intemperate manner, if the student wanted to be held in contempt of court;

(e) interrupted the student's efforts to explain the reasons for the litigant's appearance in court by stating that she was using the court "as a toy" and "was wasting the court's time";

(f) on several occasions interrupted the regular business of the court to address improper remarks to the litigant, the student and to those seated in the audience of the courtroom; and

(g) was impatient, undignified, inconsiderate and discourteous to the litigant and the student.

20. On or about August 2, 1977, in Civil Court, New York County, Trial Term, Part 49D, during a non-jury trial in Donzelli Realty Corp. v. Sonnenschein, et al., respondent, in open court:

(a) frequently interrupted tenant-respondents' counsel and unduly restricted him from addressing the court;

(b) prevented tenant-respondents' counsel from stating the basis of objections;

(c) engaged in an unrecorded conversation at the bench with both attorneys, then refused to permit tenant-respondents' counsel to make a record of what had been said;

(d) questioned the legal training and hearing ability of tenant-respondents' counsel;

(e) stated, in a loud, intemperate manner, that tenant-respondents' counsel might state the grounds for his objections "at the proper time" while declining to indicate when that time would be;

(f) addressed tenant-respondents and their attorney in a loud and intemperate manner;

(g) deprived tenant-respondents and their attorney of the opportunity to be heard fully; and

(h) was impatient, undignified, inconsiderate and discourteous to tenant-respondents and their attorney.

21. On or about August 4, 1977, in Civil Court, New York County, Trial Term, Part 49D, during the calendar call of 202 St. Nicholas v. Sutton, respondent, in open court:

(a) directed tenant-respondent to deposit money with the court while interrupting the attempts of her attorney to state that she was ready for trial and was not requesting an adjournment;

(b) interrupted tenant-respondent's counsel when he attempted to cite legal authorities;

(c) denied tenant-respondent's counsel's request to have the official court reporter, who was present, make a record of the proceedings;

(d) stated, when tenant-respondent's counsel continued his attempts to address the court, that counsel was in contempt of court;

(e) in a loud, intemperate manner, ordered tenant-respondent's counsel to stand in the corner of the courtroom and required him to remain there for several minutes;

(f) when counsel's supervising attorney attempted to represent the tenant-respondent, ordered him, in a loud, intemperate voice "to move";

(g) indicated that if the supervisor of tenant-respondent's counsel did not move, he would be standing in the corner with tenant-respondent's counsel;

(h) in a loud, intemperate manner, directed a court officer to remove the supervisor of tenant-respondent's counsel from the courtroom;

(i) refused to permit the supervisor of tenant-respondent's counsel to address the court;

(j) stated to the courtroom audience that tenant-respondent's attorneys made "...a Supreme Court case out of a matter that could be resolved in five minutes...," did a disservice to their clients and were not concerned with the welfare of their client or her children;

(k) stated to tenant-respondent's counsel, at the bench, that counsel had been "...putting on a show for the white attorneys and the white people in the court...," was doing a disservice to the clients in "our community" and was being trained improperly by his agency;

(l) declared that the contempt citation was withdrawn, referred counsel to the Canons of Ethics and stated, "You can go back to your office. That seems to be the problem. Serve people, don't come down here and make capital cases";

(m) during a subsequent conversation conducted in a corridor of the courtroom, in a loud, intemperate manner criticized the attorney in charge of the office of tenant-respondent's counsel for the poor quality of the legal training provided to his staff;

(n) deprived tenant-respondent and her attorney of the opportunity to be heard fully; and

(o) was impatient, undignified, inconsiderate and discourteous to tenant-respondent and her attorney.

22. On or about August 4, 1977, in Civil Court, New York County, Trial Term, Part 49D, during the non-jury trial of Riverside v. Simmons, respondent, in open court:

(a) engaged in the following improper colloquy with tenant-respondent's counsel:

> MR. SMOLLINS: May I look at the books and records.
>
> THE COURT: You may not.
>
> MR. SMOLLINS: Judge, I'm entitled to look at it. The next question --
>
> THE COURT: You may not. If you wish to ask me, "Judge, may I have a moment to peruse this book --"
>
> MR. SMOLLINS: May I have a moment to peruse these books and records?
>
> THE COURT: Yes. Off-the-record.

(b) engaged in the following improper colloquy with tenant-respondent's counsel:

> THE COURT: There is no question outside what is due and owing. This man was not there prior to April and I understand that the book will speak for itself. So, why are you asking him what was there.
>
> MR. SMOLLINS: The book cannot speak for itself. It's blotted out or whited out.
>
> THE COURT: That's your problem.
>
> MR. SMOLLINS: No, that's the Court's problem.

THE COURT: Next question.

Q. In March you indicated --

THE COURT: The book does. He indicated nothing. The book does.

MR. SMOLLINS: Your Honor --

THE COURT: I'm telling you now, the book is involved. The book speaks for itself.

MR. SMOLLINS: I understand that.

THE COURT: That's the end of it, sir.

MR. SMOLLINS: Will the Court peruse the book?

THE COURT: Don't be concerned with what the Court does. If you want the book take it with you.

Next question.

(c) engaged in the following improper colloquy with tenant-respondent's counsel:

THE COURT: Anything further?

Sir, I asked for an offer of proof. Maybe your legal training hasn't indicated to you what that means --

THE WITNESS: Judge I --

THE COURT: Just a moment, sir. What do you intend to prove, if anything?

MR. SMOLLINS: From the books and --

THE COURT: I asked you W - H - A - T. Do you know what that means?

MR. SMOLLINS: Yes.

THE COURT: Tell me how --

MR. SMOLLINS: From the books and records I --

THE COURT: Show me in the books and records where there should be any reduction in this tenant's rent from what has been claimed. Show me the books and records right now.

MR. SMOLLINS: Books and records are incorrect to this extent. They indicate whited out areas.

THE COURT: The Court has indicated to this attorney, there is no witness here in his behalf to substantiate anything. It appears to the Court to be a grand fishing expedition and the Court will curtail cross-examination.

You're through. Is that the petitioner's case?

(d) engaged in the following improper colloquy with tenant-respondent's counsel:

MR. SMOLLINS: Judge, I'd like to voir dire on this.

THE COURT: Sir, don't waste my time. Don't waste my time.

MR. SMOLLINS: Judge, I'll ask only two questions.

THE COURT: Don't waste my time. Are you denying the lease?

MR. SMOLLINS: I haven't even asked any questions.

THE COURT: You're denying it, right?

MR. SMOLLINS: I may very well concede this in evidence.

THE COURT: You may ask him if you can look at the lease. You're not going to conduct a voir dire.

MR. SMOLLINS: Were you present at the signing of this lease?

THE WITNESS: No, I wasn't.

THE COURT: You know that I don't know --

MR. SMOLLINS: He says he wasn't employed then. I don't know if he was there.

THE COURT: Do you want to play games now?

(e) engaged in the following improper colloquy with tenant-respondent's counsel:

Q. What is the notation 31 - in the books and records already in evidence?

THE COURT: Sustained. Sir, before I asked for a Notice of Proof. You stand when I'm talking to you. What it means is this: The Court is asking you how, H-O-W, that spelled how, you intend to sustain whatever position you have.

You gave me no answer except for some nonsense about what you plan to do with Mr. Ferguson. I'm not going to allow you to play games. I have asked you, you have not answered. So, I'm precluding you. That's the end of that. Payment is an affirmative defense. You're not going to find it there.

MR. SMOLLINS: Judge, I have not rested, my witness is still on the stand.

THE COURT: You may do what you wish to do. The Court finds as a matter of law that you're wasting this Court's time.

MR. SMOLLINS: Judge, my witness is still on the stand. Are you precluding me?

THE COURT: You find out when you leave here -- you stand when you address this Court --

MR. SMOLLINS: I have recently undergone a knee operation.

THE COURT: Then with difficulty, right?

(f) engaged in the following improper colloquy with tenant-respondent's counsel:

> THE COURT: I'll tell you what you do sir. You listen to me carefully. I don't know whether you think you did your client any good by doing what you have done --
>
> MR. SMOLLINS: I believe I did my best in this case.
>
> THE COURT: If you think you --
>
> MR. SMOLLINS: Mr. Goldstein needed his money right away --
>
> THE COURT: Let me tell you a story. This business of people being owed something because they're poor is nonsense. I was poor. My mother raised six of us. My mother went out to work every day. She picked chickens and took lice out of my hair -- This is a Court of Law, not a social agency.
>
> MR. SMOLLINS: To my knowledge the denial of my request for ten days is based upon your Honor once was poor?
>
> THE COURT: Don't be smart sonny. Stay ahead of the game which you are right now. This case is over. Remove yourself.

(g) deprived tenant-respondent's attorney of the opportunity to be heard fully; and

(h) was impatient, undignified, inconsiderate and discourteous to tenant-respondent's attorney.

23. On or about August 12, 1977, in Civil Court, New York County, Trial Term, Part 52, during the non-jury trial of Mercer-Greene Investment Associates v. Vicale-Catania Clothing, Ltd., respondent, in open court:

(a) during cross-examination by tenant-respondent's counsel, engaged in the following improper colloquy:

> MR. PRAVDA: Any partner has authority under the law to bind the partnership.
>
> THE COURT: Offer of proof, sir. Do you say that the 30 day notice was rescinded?
>
> MR. PRAVDA: I don't necessarily say that.
>
> THE COURT: Sit down. I asked you for an offer of proof. What is your proof? What is the evidence you wish to offer this Court in support of your client's position? Offer of proof, put it on the record.
>
> MR. PRAVDA: I don't have any further questions of this witness.
>
> MR. LERNER: Petitioner rests, your Honor.
>
> THE COURT: Motions.
>
> MR. PRAVDA: At the close of the case, your Honor, the respondent moves to dismiss the petition on the grounds that the petitioner has failed to prove a prima facie case.
>
> THE COURT: Denied, you have an exception.
>
> MR. PRAVDA: I think there are substantial questions, your Honor, although your Honor has not permitted me to develop it --
>
> THE COURT: I am going to tell you now, if you don't know what an offer of proof means, and if you can't respond to it, then you don't know what you are doing, simple to me. Now, don't you ever throw the blame on the Court, do you understand that? I resent it. Move on to your case.
>
> MR. PRAVDA: Can we have a two minute recess?
>
> THE COURT: No, sir, move on to your case right now. Call your witness now.
>
> MR. PRAVDA: If your Honor pleases --

THE COURT: You don't hold a discussion after I gave you a direction, call your witness.

MR. PRAVDA: Your Honor, I have to discuss with the client whether or not he wishes to take the stand.

THE COURT: Do you wish to take the stand? I am not going to play games, you didn't prepare this case before you got here?

MR. PRAVDA: If your Honor pleases --

THE COURT: Did you prepare this case before you got here?

MR. PRAVDA: Your Honor, I full --

THE COURT: Call this case again at 12 o'clock, you want a recess?

MR. PRAVDA: I asked for two minutes.

THE COURT: It's inconsiderate to all of those people. Now, I direct you to put your offer of proof on the record right now. No games in this courtroom.

MR. PRAVDA: On which issue?

THE COURT: Any issue, the man has established that he has served a 30 day notice. The lease term has ended. What is your defense?

MR. PRAVDA: Our defense is, your Honor, that the ownership of the property is not as it appears.

THE COURT: You will do it right now. You won't do it through him. Call your next witness. We are not going to play games. Call your next witness. Do you have proof to establish that they don't own it? Submit your proof. Let's not play games. He is from the Registrar's Office?

(b) terminated counsel's direct examination of tenant-respondent by ordering the witness to step down and responded to counsel's objection by stating:

THE COURT: When you leave here you ask what an offer of proof means. And, if you feel that you are going to stand here and waste their time and this Court's time, I am not going to allow it. I would suggest to you that you read the Canons of Ethics with respect to what an attorney must do when he is asked by the Court to do something. Don't play with the court. That is what you are doing.

(c) engaged in the following improper colloquy with tenant-respondent's counsel:

THE COURT: One of the things that bothers me greatly is this, why don't people resolve their own problems? Why do you put the landlord to the task of bringing a plenary action --

MR. PRAVDA: Your Honor, we --

THE COURT: He doesn't have the money, work something out with the landlord. You just clutter up the court with a lot of nonsense. I think you should, and I refer you to the Canons of Ethics again. That is one of the obligations of attorneys is to see that litigation is cut down to a minimum.

MR. PRAVDA: I also have an obligation to --

THE COURT: Why would your client be entitled to withhold the money? He says, this gentleman says that there are certain monies due and owing, more back rent; is that what he is saying?

MR. PRAVDA: Yes, he is saying that.

THE COURT: Now you tell me well the tenant tendered money. Would that be a defense to a plenary action? The answer is no, no, unless your client did not use the space, something of that nature. What would your defense be, zero, so what you are saying is start another action.

I refer you again to the Canons of Ethics. You may do what you wish. If your client just wants to bring a lawsuit for the sake of bringing it, that is your position and your duty is you do it.

(d) engaged in the following improper colloquy with counsel for tenant-respondent:

THE COURT: What are you asking? You're asking the landlord to extend to him some security, is that it?

MR. PRAVDA: That's correct.

THE COURT: Yet, you still want to pinch him right in his eye with regard to money?

MR. PRAVDA: No, I don't get a chance to finish.

THE COURT: Why do you play games with the court now, sir?

* * *

THE COURT: You will get any consideration from the court because I heard you. If you want to change your position, that is your business. Do you understand? One hand washes the other... ...I have the urge to bring up the Canons of Ethics and read them to you.

MR. PRAVDA: Don't I have to vigorously assert a claim?

THE COURT: The Court will hear you.

MR. PRAVDA: They haven't claimed rent in this proceeding.

THE COURT: Do you want time?

MR. PRAVDA: Of course, we don't want to put 105 people out of work and be out of business.

THE COURT: This is not a social agency. I am obliged to do what I am obliged to

do as a judge. If I offered a final judgment of possession, he is entitled to the property now, n-o-w; you think about that.

MR. PRAVDA: If your Honor pleases --

THE COURT: Sir, step out; what would you like to do? If you have a position which you think is applicable, submit a memorandum of law to me.

MR. PRAVDA: May we discuss the stay, your Honor.

THE COURT: Discuss anything with me. Judgment for possession for the landlord.

(e) engaged in the following improper colloquy with tenant-respondent's counsel:

MR. PRAVDA: May I be heard?

THE COURT: You may be heard. I hear you.

MR. PRAVDA: Judge, you asked me before if I had something to submit on the question of the stay to do so. I would like to hand you these papers, I served a copy. It indicates, if your Honor --

THE COURT: I heard what you said, 105 people out of work. You will now do some work for your client. One hand washes the other. I never heard of such nonsense in a long time. Do you know what you are asking this landlord to do is to extend a security to your client. Now, the facts are, I told you, if the rent had not been paid, you should turn it over to this gentleman in an escrow account, hold it in escrow, simple, but you wouldn't do it, so be stubborn.

MR. PRAVDA: Your Honor --

THE COURT: In behalf of your client, step out.

MR. PRAVDA: May I --

> THE COURT: I've ruled, I've made my determination. I think it is absolutely ridiculous for any attorney to conduct himself in this manner. I think the interest of your client is not in front of you...

(f) throughout the proceedings, criticized tenant-respondent's counsel's preparedness, legal competence and concern for his client's interests;

(g) on numerous occasions implied that counsel was engaging in unethical conduct;

(h) deprived tenant-respondent and its attorney of the opportunity to be heard fully; and

(i) was impatient, undignified, inconsiderate and discourteous to tenantrespondent's attorney.

24. On or about August 30, 1977, in Civil Court, New York County, Trial Term, Part 49, during argument of pre-trial motions in R.,G.,J. and L. Realty Corp. v. Bovier, respondent, in open court:

(a) frequently interrupted tenant-respondent's counsel when she attempted to address the court;

(b) pointed to a representative of landlord-petitioner and stated: "Look at this lady. She doesn't look like a slumlord, like one who would grab money from your people";

(c) stated, in a loud, intemperate manner, that tenant-respondent's counsel was employed by a legal services organization which did a disservice to its clients by leading them to think that they were not required to pay rent and, as

a result, the neighborhoods served by the organization were deteriorating;

(d) implied that tenant-respondent's counsel was wasting the court's time;

(e) made disparaging and insulting remarks concerning the legal ability and competence of tenant-respondent's counsel and the legal services agency which employed her;

(f) deprived tenant-respondent and her attorney of the opportunity to be heard fully; and

(g) was impatient, undignified, inconsiderate and discourteous to tenant-respondent's counsel.

25. (a) On or about September 2, 1977, in Civil Court, New York County, Trial Term, Part 52, prior to a hearing in Federman v. Martinez, respondent, in open court:

(1) in an intemperate manner, interrupted the efforts of tenant-respondent's counsel to address the court; and

(2) engaged in the following improper colloquy with tenant-respondent's counsel:

> MISS RAND: Your Honor, may I make a statement for the record first?
>
> THE COURT: You are ahead of the game. You know where you are. Stop it. Make a statement about what?
>
> MISS RAND: I just want to put on the record that I request an adjournment on behalf of Mr. Englard on the basis that he had to be at a funeral.
>
> THE COURT: Let me say that the thing that bothers me greatly with Legal Aid and with MFY is the fact that they fail to recognize

> that they represent people and what they do, in many instances, is cause poor people, who are ignorant of what their rights are, to believe that their rights are greater than what they really are and one thing I will not allow and I will tell you this now and you better read the canons of ethics, there must be absolute truth to the Court, absolute disclosure to the Court, and don't flirt with that, Miss.
>
> MISS RAND: Your Honor, may I respond to your comments?
>
> THE COURT: That is sufficient. You may not.
>
> (To Mr. Roth) Call your first witness.

(b) During the subsequent hearing in Federman v. Martinez, respondent:

(1) frequently referred to tenant-respondent's counsel in a disrespectful manner;

(2) was impatient, undignified, inconsiderate and discourteous to tenant-respondent and her attorney.

(c) After the hearing had been concluded, respondent, in open court:

(1) in a loud, intemperate manner and while directing his remarks to the courtroom audience, stated:

> One of those things most disturbing to me and I am saying this for the people in the audience, New York City is going to pot and it is going to pot simply because people who live in certain areas don't pay rent, but they expect the landlord to give them palaces. It is obvious to me that this woman hasn't paid rent but she is living on this man's property. Why should that be? Will you tell me? Now the horror is I happen to live not too far from where she lives and I see what happens to these areas. The landlords

> can't do anything there because they don't have the money. All right.

(2) when tenant-respondent's attorney objected to providing the landlord's counsel with her client's name and address, stated that he would hold her in contempt if she made "another outburst" and that she was "not involved in this proceeding at all. Do you understand that?";

(3) engaged in the following improper colloquy with tenant-respondent's counsel while speaking in a loud, intemperate manner:

> THE COURT: Now give the name and address to the landlord and the apartment.
>
> What bothers me, and I am saying this clearly, I do know what service you believe your agency is performing. What I am certain is that this is a business on Manhattan Avenue, which these people could inhabit. The machinery in this court will give this woman the opportunity to have a palace there, if she wants to, because she can bring this landlord to court under a 7-A Proceeding and many other proceedings where her rent could be used to appoint her apartment in any fashion that the law says he can. What you are telling her is that she is entitled to live there for nothing.
>
> MISS RAND: Your Honor, you don't even know what I told her. I told her nothing.
>
> THE COURT: It is obvious to me if you would speak to her landlord and work something out. In this instance all that you are doing is requiring the Court to hear another case because there is no doubt in my mind he plans to bring another proceeding. Come on, what she is doing is living there for free.
>
> Next case.

(4) addressed loud, intemperate remarks to the managing attorney of a legal services office who was seated in the courtroom audience and directed him to "step outside" while pointing in the direction of a courtroom corridor; and

(5) while standing in close proximity to the managing attorney in the courtroom corridor, in a loud and intemperate manner stated that "Legal Services" was obstructing the courts and training its attorneys improperly.

26. On September 23, 1977, in Civil Court, New York County, Trial Term, Part 16, during the non-jury trial of Judson Jewelry Corp. v. Simon, respondent, in open court:

(a) frequently interrupted defendant, in a loud intemperate manner when she attempted to address the court;

(b) frequently addressed defendant in a loud and intemperate manner;

(c) unduly restricted defendant's opportunity to be heard fully; and

(d) was impatient, undignified, inconsiderate and discourteous to defendant.

27. (a) In the case of U.P.A.C.A. Houses v. Velez, which commenced on November 9, 1977, in Civil Court, New York County, Trial Term, Part 52 and was concluded on November 30, 1977, respondent:

(1) deprived tenant-respondent and her attorneys of the opportunity to be heard fully; and

(2) was impatient, undignified, inconsiderate and discourteous to tenant-respondent and her attorneys.

(b) On or about November 9, 1977, in the case of U.P.A.C.A. Houses v. Velez, respondent, prior to trial, in open court:

(1) interrupted tenant-respondent's counsel's statements relating to the defenses of rat and roach infestation of the premises to state to the courtroom audience, in a loud, intemperate manner, that counsel should not tell the court about rats and roaches and "Has anybody heard of Black Flag?"; and

(2) stated that he had personal knowledge of the premises which were the subject of the case.

(c) On or about November 9, 1977, in the case of U.P.A.C.A. Houses v. Velez, during jury selection, respondent:

(1) in a loud, intemperate manner, barred tenant-respondent's attorney-of-record (trial counsel's supervising attorney) from entering the jury room;

(2) stated that tenant-respondent's counsel was "playing games";

(3) stated that the attempts of tenant-respondent's counsel to question prospective jurors about their expressions of prejudice against tenant-respondent were "nonsense"; and

(4) in a loud, intemperate manner criticized tenant-respondent's attorneys for discussing the case in front of the prospective jurors.

(d) On or about November 9, 1977, in the case of U.P.A.C.A. Houses v. Velez, respondent:

(1) interrupted his opening address to engage in the following improper colloquy with tenant-respondent's attorney-of-record, in the presence of the jury:

> I understand further that there is a counterclaim in this case. And I would assume that something was said to you -- sir, are you taking notes of what I'm saying?
>
> MR. YORK: Yes, sir.
>
> THE COURT: All right. It's on the record.
>
> MR. YORK: I understand that, Judge.
>
> THE COURT: All right, sir. I don't like that. Don't take notes in my courtroom of what I do. If you want to put it on the record, I'll put it on the record, because I'm not going to be bound by what you write. You understand that, sir? You want it on the record?
>
> MR. YORK: That I can't take notes?
>
> THE COURT: Did you hear what I said?
>
> MR. YORK: Yes, I think it should be on the record.
>
> THE COURT: All right. If you want it on the record.

(2) in response to the request of tenant-respondent's counsel for an interpreter for her client during the opening address of counsel, conducted side-bar conference, then engaged in the following improper colloquy in the presence of the jury:

-- the Court conducted an inquiry of the respondent, and the Court finds that this person is able to understand the English language sufficiently for counsel to open, and when the case commences, the Court will then allow the interpreter.

MISS HILGEMAN: Your Honor, I have a motion to make.

THE COURT: Madam, you will do it later. Sit down and let's proceed.

MISS HILGEMAN: I would like to make a motion at side-bar.

THE COURT: Will you step down, please.

MISS HILGEMAN: Well, I would like it noted for the record that I tried to make it on the record.

THE COURT: Step down, please. This is the second time I have asked this young lady to step down and I won't ask you again.

All motion will be heard at the proper time, you understand that?

All right. You may continue, sir. And excuse me for the interruption.

(3) in an intemperate manner, stated to tenant-respondent's counsel during her opening address, in the presence of the jury:

THE COURT: Now, madam, I'm going to stop you because I suggested to you that payment is an affirmative defense, that is something for you to establish. Now, either you have paid it or you have not. I suggested to you, and perhaps -- step up, please. Step up, Mr. Raines, please.

MR. RAINES: Thank you.

(4) after side-bar conference conducted out of the hearing of the jury, respondent, in a loud, intemperate manner,

engaged in the following improper colloquy with tenant-respondent's counsel, at the sidebar:

> THE COURT: On the record. Now, I'm not trying to be harsh with you, but the fact of the matter is if I ask for an offer of proof, you give it to me, you understand? And I told you this earlier today, do you have a trial memorandum for the Court?
>
> MISS HILGEMAN: Yes, sir.
>
> THE COURT: And have you given it to the Court?
>
> MISS HILGEMAN: You told me you didn't want it.
>
> THE COURT: Madam, did you hear what I said?
>
> MISS HILGEMAN: Yes.
>
> THE COURT: Simple. So you will not allude to that when I asked you for an offer of proof and you haven't given it to me.
>
> MISS HILGEMAN: Your Honor, I offered to give you the memorandum.
>
> TE COURT: Madam, don't you tell me that, because I am very specific in when I ask for something, and if you don't know what an offer of proof means, I'll teach you; you understand? All right, you may continue. Is that on the record, sir? So I'm precluding you at this time from going into that. I am running the law and I told you this.
>
> MISS HILGEMAN: Will you please state exactly what you are referring to?
>
> THE COURT: Let me ask you, what is an offer of proof, ma'am?
>
> MISS HILGEMAN: An offer of proof is when you tell what kind of evidence --

THE COURT: How you plan to do it and what you want to do?

MISS HILGEMAN: Yes. I said my client's testimony --

THE COURT: And you know what you told me? You told me that it was the landlord's obligation to apply for a subsistence for this woman. That's exactly what you said; you know that? Is that correct, Mr. Raines?

MR. RAINES: That's correct.

MISS HILGEMAN: I'm sorry, I disagree with you.

THE COURT: Well, let's not go into that.

MISS HILGEMAN: I'd like to note for the record --

THE COURT: You may continue, madam. You may continue, Miss.

MISS HILGEMAN: Thank you.

(5) interrupted tenant-respondent's counsel's opening address to engage in the following improper colloquy in the presence of the jury:

MISS HILGEMAN: -- where a Federal grant --

THE COURT: Sustained.

MISS HILGEMAN: Will you state the basis?

THE COURT: No, madam. If you don't know by now, you'll never know.

Members of the jury, payment is an affirmative defense. When the question arises as to whether or not a debt has been paid, it is the obligation and duty of the person who is the debtor to establish that he or she has paid.

You know that, madam, Miss? All right. Now you may continue. And I told you just a moment ago what my position was and what you are about to do, didn't I just tell you that?

MISS HILGEMAN: You have made nothing clear --

THE COURT: Madam, I direct you not to allude to that until you have satisfied me as to your position.

MISS HILGEMAN: Yes. Well, I'd like to do that.

THE COURT: Madam, continue with your opening. We are not going to stop and do it now. All right, you may continue.

(6) at the conclusion of the opening remarks of both attorneys, respondent, in the presence of the jury, engaged in the following improper colloquy with tenant-respondent's counsel:

THE COURT: All right. Anything further, ma'am?

MISS HILGEMAN: No.

THE COURT: All right.

MISS HILGEMAN: I'd like to approach the bench.

THE COURT: The Court will take judicial notice of this: UPACA is an organization nonprofit formed under the auspices of the Federal government to rehabilitaite and build in areas that were depressed, and this building is in that area. This woman is a tenant in one of those buildings.

All right. Let's proceed. You may call your first witness.

MISS HILGEMAN: Your Honor, I have several motions to make before.

(7) stated that tenant-respondent's counsel had not represented her client to the best of her ability;

(8) questioned tenant-respondent's counsel's concern for her client;

(9) stated that, on his own motion, he would direct the tenant to deposit two months' rent with the court while he adjourned the case for a building inspection;

(10) when tenant-respondent's counsel objected to the requirement of a deposit, questioned whether she was acting in her client's best interest;

(11) engaged in the following improper colloquy:

> MISS HILGEMAN: I don't mind the inspection, but requiring her to put up the money as a term of that.
>
> THE COURT: Well, let me ask you this Miss: Has she lived there since May and not paid the rent? Do you know why the buildings in Harlem are falling apart and the South Bronx are falling apart?
>
> MISS HILGEMAN: You have already prejudged this case, and I think you should excuse yourself.
>
> THE COURT: I'm not prejudging anything. You have told me so.
>
> MISS HILGEMAN: You keep telling me my client is responsible for buildings in Harlem falling apart.
>
> THE COURT: Do you know why? Because we have had the situation -- I have lived in Harlem all my life, so don't tell me what is not so. What is so is that people who have lived in buildings are not paid and as a consequence, landlords have walked away from them.

> THE COURT: Madam, would you please be seated. I told you earlier on, I will give you time to make motions at the proper time, didn't I? And I will indicate to you when the proper time is. All right. So you will reserve all motions. The Court has noted that.

(e) On or about November 9, 1977, in the case of U.P.A.C.A. Houses v. Velez, during direct-examination by counsel for landlord-petitioner, respondent:

(1) in the presence of the jury, requested tenant-respondent's counsel to concede certain elements of the landlord-petitioner's case;

(2) in the absence of the jury, addressed the following statements to tenant-respondent's counsel:

> THE COURT: That's all. And I would submit to you, Miss, listen to me carefully, with regard to this business of being on welfare, there is something in the Department of Social Services where they seek to give dignity, lend dignity to recipients where rent used to be paid directly to the landlord with the landlord's name on it, that's no longer so. And I would submit to you that when this woman made application for welfare, that she was budgeted, they took everything into consideration, including her rent, including her rent. And if she did not go back to the welfare department in an effort to increase her rent when she received rent increases, that's her business, not the landlord's business, and I see nothing in that lease that obliges the landlord to do anything with regard to seeking that she received subsistence from anywhere.
>
> Now, that's something that has to be initiated from somebody, because, you see, what I don't like, and will not allow, is for this court to be used for other purposes.

> Now, there is no doubt in my mind that every New Yorker is interested in one thing: making the city a better place to live, and the only way it's going to be a better place to live is where we all, all, landlords and tenants, try to do that. And there are certain rights that people have to advance for themselves. You can waive whatever right you have. You can waive your right to live just by jumping off the Empire State Building and not missing the sidewalk, head first.
>
> So all I'm suggesting to you is this: We cannot be the leaders of people, hands and feet, and so on and I'm not going to allow it in my courtroom.
>
> Now, I think this is a matter that should be resolved. Resolved. There is no doubt in my mind that this lady could not pay her rent, $2,000, $1,000 today if she she had to. You know it and I know it.
>
> So what are we doing with her? She winds up in the street unless there's some arrangement made with management.
>
> Now, you think that you're helping her? I don't think so.

(3) prevented tenant-respondent's counsel from responding to the above-quoted remarks;

(4) stated that he knew the building which was the subject of the case;

(5) stated that tenant-respondent's counsel should have gone to the building to verify what her client had said, as the court had done;

(6) implied that tenant-respondent's counsel had represented her client in an improper fashion;

(12) stated that tenant-respondent's claim for a rent abatement was "nonsense";

(13) unduly restricted tenant-respondent's counsel when she attempted to address the Court;

(14) while ordering the return of the jury to the courtroom, stated to tenantrespondent's counsel, "Madam, we'll just waste time and sit here for the rest of our lives for absolute nonsense";

(15) when tenant-respondent's counsel objected to the fact that respondent was conducting direct examination of a witness for landlord-petitioner, responded by requesting certain concessions from her in the presence of the jury;

(16) in the presence of the jury, questioned the sincerity of the request of tenant-respondent's counsel for permission to conduct a voir dire;

(17) engaged in the following improper colloquy in the presence of the jury:

> THE COURT: All right. Let's hear the questions.
>
> MISS HILGEMAN: Have these been identified, this paper?
>
> THE COURT: He just said what they are. Now, what questions do you wish to put to him?
>
> MISS HILGEMAN: Well, for the record, I would identify two long sheets of paper, the first one is headed --

THE COURT: Madam, why don't you have them marked for identification, if that's what you wish to do.

MISS HILGEMAN: I think you should.

THE COURT: That's absolutely unnecessary. You wish to ask some questions about it, do so.

MISS HILGEMAN: Okay. Well, could we have it marked then?

THE COURT: I'm not going to have it marked. Ask your questions, please.

MISS HILGEMAN: Well, it's going to be difficult for the record to know which is which.

THE COURT: Miss, ask your questions, please.

MISS HILGEMAN: All right.

(18) stated to landlord-petitioner's counsel, "Did you hear that Mr. Raines? And you're going to request to be permitted to open your case?";

(19) stated that the motions of tenant-respondent's counsel were a waste of time and that tenant-respondent's counsel had not grasped the fact that this was "...a very busy court, and this court does not waste the time of six jurors and myself and the court personnel for technicalities and I'm not going to do it";

(20) in responding to the motion of tenant-respondent's counsel to dismiss the petiton for failure to prove exemption of the premises from rent control, stated in open court: "Well, I'm not going to go into all that. The Court will certainly take judicial notice of all of that";

(21) engaged in the following improper colloquy, in open court:

> MISS HILGEMAN: I'd like to also make a motion that you excuse yourself.
>
> THE COURT: Oh, how many times have I heard that? Why don't you put it on paper and then I will have it for all time.
>
> MISS HILGEMAN: Well, that paper is fine.
>
> THE COURT: All right. Thank you. Anything further? Denied.
>
> MISS HILGEMAN: Can I state the basis for the motion?
>
> THE COURT: No, I didn't ask you to. Denied. For any reason that you may think of. All reasons that may be factually supported --
>
> MISS HILGEMAN: I can't hear what you are saying, your Honor.
>
> THE COURT: Well, I heard it. I said denied. Anything further?

(22) during a conference at the bench, stated that tenant-respondent's counsel's objections were "frivolous" and "obstructionist" and that she had violated the Canons of Ethics by making them;

(f) On about November 10, 1977, in the case of U.P.A.C.A. Houses v. Velez, respondent, in open court:

(1) implied that tenant-respondent's counsel was interested neither in having necessary repairs made nor in the best interests of her client;

(2) stated repeatedly that he had "been to the building" and "had seen the building";

(3) prior to the completion of landlord-petitioner's prima facie case, stated that he was inclined to grant motions severing the counterclaims and directing a verdict for the landlord-petitioner and demanded that tenant-respondent's counsel make an offer of proof;

(4) stated that he had lived within three blocks of the premises in question "until very recently," that he had been in the building that day and that he, "as a judge, may go and look at anything";

(5) engaged in the following improper colloquy with tenant-respondent's counsel:

> THE COURT: What did you tell her to do?
>
> MISS HILGEMAN: It's privileged.
>
> THE COURT: Oh, privileged, my toe nails. Didn't you think to inform the landlord and find out whether there was any liability insurance coverage on that? Were you protecting your client's right, Miss?
>
> And I would submit to you that if there's such insurance, he has a right to have his insurance company come in and defend him on each and every such claim, and that's enough to sever your counterclaim.
>
> MISS HILGEMAN: Well, I would object to that.
>
> THE COURT: I see. Now you have learned something, now you object. Is that correct? And that's what you are urging on the Court; is that a part of your counterclaim?

MISS HILGEMAN: What, the property damage?

THE COURT: Yes, Miss.

MISS HILGEMAN: Yes, it is.

THE COURT: All right. Based on that the Court hereby severs the counterclaim because there is a right on the part of the landlord to have his insurance carrier, if any, come in and defend him with regard to those questions. Is there a liability insurance carrier?

(6) unduly restricted tenant-respondent's counsel from addressing the Court and from making a full and orderly presentation of her case;

(7) in a loud and intemperate manner, repeatedly requested that tenant-respondent's counsel make offers of proof relating to her entire case, and interrupted her efforts to do so;

(8) repeatedly prevented tenant-respondent's counsel from commenting upon or responding to the Court's narrative statements relating to the history of the case, the facts or the legal issues;

(9) repeatedly questioned the competence, earnestness, preparedness, devotion, intelligence and legal knowledge of tenant-respondent's counsel;

(10) made rulings which contradicted previous rulings, then denied the requests of tenant-respondent's counsel for clarification;

(11) on his own motion, excused the jury, "suspended" the trial, directed tenant-respondent to deposit "every nickel

that's due and owing" and stated that he would declare a mistrial and order an immediate inspection of the premises;

(12) when tenant-respondent's attorney of record requested permission to ask a question about procedure, responded:

> THE COURT: Well, don't be concerned about it at this moment. I'll make that determination. Because it's astounding to me that the fact is that this lady has been living under these conditions and you have known about it since June. The question in my mind is whether you have serviced her.

(13) stated that tenant-respondent's attorneys had "not done well by their client" and had been "derelict" in their representation of her; and

(14) in a loud and intemperate manner, over the objection of tenant-respondent's counsel, on his own motion, discharged the jury, declared a mistrial, ordered the tenant-respondent to post $1,150.00 with the Clerk of the Court and stated that if she failed to do so a final order for the landlord-petitioner would be granted.

(g) On or about November 10, 1977, in the case of U.P.A.C.A. Houses v. Velez, respondent, in the presence of the jury:

(1) engaged in the following improper colloquy:

> MISS HILGEMAN: Your Honor, may I have the original of the petitioner?
>
> THE COURT: You may.
>
> (The document was handed to Miss Hilgeman.)
>
> MISS HILGEMAN: Thank you.
>
> Would you mark this as Respondent's 1.

THE COURT: Madam, that's a part of the record of the court.

MISS HILGEMAN: But I want it as part of the trial record.

THE COURT: Now, madam, look, do you ask or do you tell somebody what to do in this court? Pardon me?

MISS HILGEMAN: I'm sorry, your Honor.

(2) spoke to tenant-respondent's counsel in a disrespectful manner;

(3) when tenant-respondent testified that there were rats in her apartment, stated: "Now the difference between rats and mice, I don't know";

(4) in a loud and intemperate manner, engaged in the following improper colloquy:

Q. How much rent do you receive from the Department of Social Services?

MR. RAINES: I object to that.

THE COURT: Sustained. And I'm telling you now, I directed you earlier on not to raise this question. I directed you. I told you it was not a part of this case. And if you insist upon acting in this fashion, I'll have to take the appropriate steps, because I think to bring this before the jury is not appropriate, Miss.

MISS HILGEMAN: Well, then, I have no further questions.

THE COURT: Be seated. Now I'll have some conversation with you when this case is over.

(h) On November 30, 1977, in the jury room of Civil Court, New York County, Trial Term, Part 16, in the absence of the

jury, respondent, while granting landlord-petitioner's application to withdraw the petition without prejudice:

(1) ignored or denied the requests of tenant-respondent's attorneys for permission to clarify, correct or comment upon respondent's statements regarding the history of the case;

(2) stated that he had personally "looked at the building" where tenant-respondent resided and "found the conditions not to prevail"; that tenant-respondent's counsel had engaged in unethical conduct in preparing the Answer; and that he had found matters contained in the Answer which caused him to believe that one of tenant-respondent's major problems was "the inability to pay rent whatever the rent might be";

(3) made the following improper remarks:

> Now, I submit to you that if it is not the fault of this agency to protect the life and limbs of the parties who are involved, then I think we ought to have another agency there. That's my belief. And I have a great concern, and I take argument with the attitude that these people can be brought into this court and led to believe that they can just ignore their obligation as tenants.

(4) made the following improper remarks to tenant-respondent's counsel:

> And I'll tell you now, roaches don't kill people. And if you knew anything about the people that you serve, the black and the Puerto Ricans, you'll find that there is a broth made from roaches for colds; do you know that.

(5) stated that in his personal visit to the building, what he saw was "in no way" what was alleged by tenant-respondent

and that it was "a travesty on the Court"; and implied that tenant-respondent's counsel had failed in her duty to be honest and truthful in dealings with the Court;

(6) made the following improper remarks to tenant-respondent's counsel:

> And I would submit to you and I am speaking to the Administrative Judge, he suggested that perhaps you lack the expertise to do what you are about, and I sincerely believe that.

(7) implied that tenant-respondent's counsel was not "truly concerned" about her client's interests.

28. (a) On or about November 18, 1977, and November 30, 1977, in Civil Court, New York County, Trial Term, Part 52, throughout the non-jury trial of 52 East 19th Street Company v. Tesciuba, respondent, in open court:

(1) unduly restricted tenant-respondent's counsel from addressing the court;

(2) deprived tenant-respondent and his attorney of the opportunity to be heard fully; and

(3) was impatient, undignified, inconsiderate and discourteous to tenant-respondent and his attorney.

(b) On or about November 18, 1977, in the case of 52 East 19th Street Company v. Tesciuba, respondent, in open court:

(1) during the presentation of landlord-petitioner's case, stated, in an impatient manner, that the only issue was

whether or not the tenant-respondent had paid rent, while repeatedly interrupting the attempts of tenant-respondent's counsel to submit offers of proofs concerning the defenses raised by the pleadings;

(2) in a loud and intemperate manner, stated to tenant-respondent's counsel:

> And the next time you don't ask questions, I'm going to hold you in contempt. Now, try me. Ask your next question.

(3) engaged in the following improper colloquy:

> MR. CATALDO: I want to be sure that I'm offering to prove then that at the time of the visit --
>
> THE COURT: Sir, I told you before, if you don't ask questions, I'm going to hold you in contempt, because that's your only function at this time.
>
> MR. CATALDO: I also have a function of making an offer of proof.
>
> THE COURT: Sir, I have asked you four times for an offer of proof.
>
> MR. CATALSO: And you have never allowed me to make it.
>
> THE COURT: All right. You believe that then. All right. Next question.
>
> MR. CATALDO: I'll answer you now.
>
> THE COURT: Your next question, sir.
>
> MR. CATALDO: That's what you said before I said.
>
> THE COURT: I hold you in contempt. All right? Now, you can do what you want to do. You wish to get another lawyer, sir?

Because one of the things that you have done in this courtroom is try to bait the Court. Now, if you feel that is your function --

MR. CATALDO: You are -- you are mistaken. I'm not trying to bait the Court. Your Honor asked a question and then you don't permit me to answer it. Now, that's not baiting the Court.

THE COURT: Sir, you may continue with the case, but I hold you in contempt, and I tell you now, I will hold you in contempt again.

Your next question.

BY MR. CATALDO:

Q. Did you --

THE COURT: This case will be heard at 3:00 o'clock. That's the end of it, to be continued at 3:00 o'clock.

Q. Did you or did you not --

THE COURT: That's all, sir. You may do what you want to do, I'm sorry.

THE WITNESS: Your Honor, I can't --

THE COURT: You know, and I'll put this on the record, I have asked you on four separate occasions and, sir, if you don't know what an offer of proof is, that is your concern. And I would recommend, sir, that you speak to your attorney because I'm not going to waste the time here.

MR. CATALDO: Now, may I --

THE COURT: All right. That's the end of it.

MR. CATALDO: -- may I make a statement?

THE COURT: You will be here at 2:00 o'clock.

MR. CATALDO: -- in justification of my action?

THE COURT: Sir, you may do whatever you wish to do, but you're not going to waste --look at all these people who have been seated here.

MR. CATALDO: I didn't waste their time --

THE COURT: Sir, step aside.

MR. CATALDO: May I make my statement?

THE COURT: 2:00 o'clock.

MR. CATALDO: May I make my statement?

THE COURT: You may not, sir. 2:00 o'clock you may do whatever you wish to.

THE WITNESS: Your Honor --

THE COURT: All right. Let's have the next case, please.

THE WITNESS: I can't be here.

THE COURT: Well, then, we'll put it over.

MR. DAVIS: No, no.

THE COURT: Well, look, I have waited here for all of you. This is nonsense now. You want to play games, play games someplace else. I'm not going to play games in this courtroom.

2:00 o'clock.

(Whereupon, the trial was then recessed until 2:00 o'clock p.m.)

(4) stated on several occasions, that tenant-respondent's counsel was wasting the Court's time;

(5) after landlord-petitioner's attorney had removed an exhibit from the courtroom, engaged in the following improper colloquy:

THE COURT: All right. Ask your question, sir.

MR. CATALDO: I can't go on without the lease.

THE COURT: All right. This case is adjourned, continued until Monday at 9:30 in my chambers, room 448. Now, that's the end of it.

MR. CATALDO: I take exception to that.

THE COURT: Well, sir, you may do as you please. The Court is not here to be tampered with.

MR. CATALDO: I am not tampering with you and you must not penalize me and my time. I'm a lawyer, responsible --

THE COURT: And I'm a judge who's responsible.

MR. CATALDO: Yes, you are. Everyone recognizes that. I do, too, whether you think so or not. But being pushed around all week on this matter --

THE COURT: All right. Well, that's your business.

MR. CATALDO: It's not my business.

THE COURT: Here, did you have a copy of this, sir?

MR. DAVIS: I think he gave it to him.

THE COURT: That's at 9:30 in my chambers, room 448. You better write that down, sir, because I'll be there at 9:30 and we will move ahead expeditiously that day.

Where is Mr. Flam?

MR. DAVIS: I think he went to the men's room -- oh, here he is right now.

(Mr. Flam enters the courtroom.)

THE COURT: Do you have the lease, Mr. Flam?

MR. FLAM: Yes, your Honor.

THE COURT: Oh, come on.

MR. DAVIS: Give counsel a copy of the lease.

MR. FLAM: He has a copy.

MR. DAVIS: I know, but he prefers to use the one that's in evidence.

MR. FLAM: Oh, I'm sorry.

MR. DAVIS: I take it that your suggestion about adjournment has been rescinded?

THE COURT: No, well, I'm going to leave in a very few minutes because I think this is absolutely ridiculous.

Ask your question now, sir.

(6) engaged in the following improper colloquy:

MR. DAVIS: Now, how can he in God's name contest when he's attorned to the landlord?

THE COURT: I don't know, sir. But he says this is what he wishes to do, so we'll learn something in the hope that this matter will terminate soon.

MR. DAVIS: All right, sir.

THE COURT: All right. You may continue, sir.

BY MR. CATALDO:

Q. All right. Explain that portion of the premises.

MR. CATALDO: And, by the way, I don't subscribe to his --

THE COURT: Sir, why argue about it? I suggest to you --

MR. CATALDO: Well, I don't want --

THE COURT: -- at the very inception that what you should do is submit a memorandum of law supporting any positions that you may take in this case.

MR. CATALDO: I have submitted a memorandum of law.

THE COURT: Well, sir, all right. It's here. I have it, so ask questions.

MR. CATALDO: I know. But when a man makes a statement against my interests --

THE COURT: Well, sir, I'm not -- this matter is put over until Monday, 9:30. I'm not going to have that. That's the end of that.

MR. CATALDO: -- and you didn't permit me to explain my interests. 9:30 I was here.

MR. DAVIS: Could we put this --

THE COURT: That's what it's put over to, because I'm going to take care of something that concerns my family.

MR. CATALDO: Oh, I'm sorry.

THE COURT: All right. That's the end of it.

(c) On or about November 30, 1977, in the case of 52 East 19th Street Company v. Tesciuba, respondent, in open court:

(1) engaged in the following improper colloquy:

THE COURT: -- you told me that you have practiced law for God knows how long?

MR. CATALDO: Forty-five years.

THE COURT: And, sir, if this is the way you have practiced law, you have not acquitted yourself well.

(2) engaged in the following improper colloquy:

MR. CATALDO: I only have one or two questions, your Honor.

THE COURT: All right, sir. One.

MR. CATALDO: One?

## CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct, containing the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary law.

Lillemor T. Robb, Chairwoman
New York State Commission on
Judicial Conduct

Dated: January 18, 1980
Albany, New York