Judicial Bullying

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This paper was delivered on the 4 August 2017 at the Amora Hotel Jamison Sydney to the annual conference of New South Wales Magistrates under the auspices of the Judicial Commission of New South Wales.

Chief Justice Tom Bathurst, who has been President of the New South Wales Judicial Commission, stated:

> Courts, like any organisation, move with the times and there has been a recognition that bullying of any sort is highly undesirable.[1]

Psychological health in the workplace is well recognised as a desirable outcome across society. The topic of judicial bullying, that is, by and against judges, has been a topic of discussion over some years. There are differing views about it and how best to achieve a definitive answer to the problem.

Bullying in the courtroom is not just about judicial officers' behaviour.

Bad behaviour in the courtroom can involve a number of relationships – lawyer v lawyer; lawyer v client; lawyer v witness; lawyer v judge; and judge v any of the above.[2]

One can understand how judges can have their patience tried by rude litigants, ill-prepared or impunctual practitioners, or practitioners engaged in bullying behaviour themselves. Some lawyers can be infuriating. To set a better tone in the courtroom, cross-examination needs to be conducted in a more civilised manner than what has been the robust approach in the past. Cross-examiners who shout at or abuse witnesses should be stopped by the judicial officer acting as a true umpire. Many practitioners, once they set foot in the courtroom, seem to have a bad case of "white line fever" common in the sporting arena. Some regard cross-examination as the last of the legal blood sports.

Counsel who have high-conflict personalities may infect the whole process and in turn may become *judicial officers* with high-conflict personalities. One can understand that in a busy courtroom and in difficult cases tempers can get frayed. Stress in our work and in the courtroom is necessary and can assist to get the work done efficiently. However, one needs to learn and note the signs when stress turns to distress. Too much work with insufficient administrative assistance affects many in our profession. Many courts have been squeezed by governmental budget restraints. In many courts, more cases are tried by fewer judges. As judges and advocates we must, like everyone else, demand safer workplaces. We must treat each other better and with dignity. Litigation should not be another form of unarmed combat.[3]

The former High Court Justice and former President of the New South Wales Court of Appeal, Justice Michael Kirby, has been a long-term believer in better curial manners and psychologically-safer courtrooms.

In an address to the Supreme Court and Federal Court Judges' conference in Brisbane in January 1997, Kirby raised the idea of judicial stress. He asked whether it was a sign of a growing open-mindedness on the part of the Australian judiciary, that is, a willingness to tackle this formerly unmentionable topic. He gave a number of examples from the United States where judges had suffered nervous breakdowns, or worse, in connection with the stress of work they were performing.[4] He gave an example of a judge in Los Angeles who was severely and publicly censured by the Californian Judicial Commission:

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[1] *The Australian*, 7 June 2013.

[2] Jeffrey Phillips SC, "'White Line Fever' in the Courtroom" (2013) 4 WR 13.

[3] Phillips, n 2, 14–15.

[4] Michael Kirby, "Judicial Stress – An Update" (1997) 71 ALJ 774.

> [F]or temperament problems, including the arrest of people who have been whispering in his court room.

He also gave the example of the former Chief Justice of New York State, Sol Wachtler, who was convicted and imprisoned in 1992 for allegedly harassing his ex-lover, including by threatening to kidnap her daughter and demanding $20,000.00 and for sending a condom in the mail to the girl.

We have had our own problems in New South Wales in my career, with judicial shenanigans such as the District Court judge in the late 1980s found wandering incoherently in the Hospital Road court precinct, late at night, without his pants on, a Supreme Court judge who could not deliver a decision, and a Federal Court judge who swore a false statutory declaration about running a traffic light.

Kirby asked whether such egregious behaviour could be linked to an impact of stress upon members of an over-stressed profession?[5] His Honour noted that some of the stress involved in being a judge these days related to "crushing caseloads, novel and complex legal issues, increasing and critical, media scrutiny with relatively few voices lifted to defend Australia's judges".[6]

In addition to this, there are long hours at work, pressures to perform in public, and high expectations which now coincided with repeated attacks upon the judicial status which calls into question the idealism and the past perceptions of it still generally held by the holders of such office. The kinds of people who get appointed to judicial offices are, or tend to be, perfectionistic. They have high expectations of themselves and others; they are worriers – conscientious people who represent the classical profile of stress – prone individuals. They have to make decisions and cannot or should not delegate very many.[7]

Kirby also recounted bullying or poor behaviour of judge v judge. This was particularly so in the Sir John Latham High Court of which Sir Hayden Starke was a member. Kirby referred to what was stated by Justice Kim Santow of the NSW Supreme Court in an article entitled "Transition to the Bench". Santow recounted a passage from a biographical portrait of Sir Owen Dixon, written by Grant Anderson:

> Sir Hayden Starke was a rude and difficult man both to his brother judges in and out of the court and to counsel. Indeed he once referred to his brethren as "worms". Starke's misbehaviour prompted Dixon to remonstrate with him on more than one occasion. Dixon clearly disliked many aspects of Starke's personality. For example, after Starke had made some distasteful remark at Sir Frank Gavan Duffy's funeral, Dixon recorded that Starke was a "pitiless man".[8]

In fact at another funeral, of High Court Judge, Sir Isaac Isaacs, Sir Garfield Barwick recalled an open grave ceremony held on one of the hottest days that Melbourne could record. As his erstwhile brothers filed past the open grave, Starke leant forward to his colleague and octogenarian, Sir George Rich, and asked "George are you sure it's worth your while to go home."

Justice Kirby's article about the stressors experienced by judges, was not received kindly by some of his fellow judges. In an article in the same volume of the *Australian Law Journal*, Justice JB Thomas from the Supreme Court of Queensland took umbrage at judges appearing to regard themselves as victims and looking for sympathy. Justice Thomas's view was that judges should be able to look after themselves and should not tap into the stress bandwagon.[9] Justice Thomas said the whole nature of the job is stressful and there is a constant pressure to get things right. His view was "You need adrenaline, or pressure, to produce your best work."

Some of the reasons which stirred up judges, he said, were half-baked submissions from counsel, about which he said:

> These sometimes trigger an explosion. Well why not? For some bit of ranting lets some of the pressure out, and if the release is not too violent it might be good for all concerned. Such is life.

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[5] Kirby, n 4, 775.

[6] Kirby, n 4, 776.

[7] Kirby, n 4, 777.

[8] Kim Santow, "Transition to the Bench" (1997) 71 ALJ 294, 295.

[9] JB Thomas, "Get up off the Ground" (1997) 71 ALJ 785.

He also referred to the pressure to get out unreserved judgments. He said that it was better merely to ask for more time to handle current reserved judgments but the truth was that vanity stops people doing it.

Curiously, Justice Thomas said another reason for stress by judges was the thought of how much money counsel was making, especially when they are not doing a very good job. He said "You only hurt yourself when you think about it"[10] (envy is one of the seven deadly sins). Justice Thomas accepted that there was overload of work; however, the risk of job loss outside the judiciary is a grave additional stress factor from which judges were immune because of security of tenure and the conditions of their office.

Justice Thomas suggested that the examples given by Kirby of poor United States' judicial behaviour had more to do with character than stress, and he rejected the accepted dogma that judicial stress was some form of "black robe fever".[11] His suggestions as to how to overcome judicial stress were summed up as follows:

- Reduce the workload and let the backlogs find their true level.
- Count your blessings more than you do.
- Never think about how much money people make at the Bar.
- Never look for sympathy from outsiders.
- Get the subject off the agenda.
- Remember it might be worse still to retire.[12]

Justice Kirby exercised a right of reply to Justice Thomas denial of stress in judicial life.[13] He rejected the comment of Justice Thomas that judges who complained about stress were just nothing more than "whingers". He said he was inclined to agree with the comment made by Justice Handley (NSW) to the effect that when judges think about the lives of advocates they realise that in the stress business they are better off on the Bench.[14] It was also noted that when his paper was delivered there was an attempt to laugh it off, whereas some judges urged their colleagues to play more golf as relief, others recognised that some of the work imposed special burdens, such as sentencing convicted prisoners which was a very stressful aspect of judicial life. Justice Cohen (NSW) suggested that stress may be something we see in others but deny in ourselves. To this, Justice Kirby said:

> We can certainly retreat into denial. We can keep our anxieties and concerns strictly to ourselves. We can exclude non-lawyers with insight and expertise to offer. We can react by trying to laugh a subject away. Or we can bring time honoured judicial qualities to bear. Open-mindedness and new ideas. Honesty about newly perceived facts. Attention to people with relevant expertise and experience. Courage on our own part. Compassion and respect for fellow human beings.[15]

Some years later, the idea of judicial stress and judicial bullying was further advanced by Justice Kirby in a lecture he gave to the National Wellness for Law Forum, at Melbourne University Law School, on 21 February 2013. His paper was reproduced in the *Australian Law Journal*.[16] He stated this:

> Judicial officers are subject to particular risk of stress, depression and pressure. This is so, however some of them may deny that fact. Moreover, responding to the pressures exerted on them, some judicial officers become part of the problem. Some are bullies. Some misuse their power and create intolerable pressures for lawyers and others working in the law. Most are decent and polite. It is time that judges were added to the agenda of a national wellness forum. Particularly if they are the *cause* of unwellness in others, it is time for the law to provide appropriate responses.[17]

[10] Thomas, n 9, 787.

[11] Thomas, n 9, 788.

[12] Thomas, n 9, 789.

[13] Michael Kirby, "Judicial Stress – A Reply" (1997) 71 ALJ 791.

[14] Kirby, n 13, 792.

[15] Kirby, n 13, 793.

[16] Michael Kirby, "Judicial Stress and Judicial Bullying" (2013) 87 ALJ 516.

[17] Kirby, n 16, 517.

As it has already been stated here, the judiciary's work involves an inescapable component of stress. Urgent, complex matters, elements of high drama, long criminal trials, civil cases worth millions of dollars, people's livelihoods, cases involving access and custody of children and the like necessarily produce stress in all concerned. Justice Kirby acknowledged:

> [S]uch occasions test the capacity both of lawyers and of judges to act with efficiency, courtesy, restraint and mutual respect. Occasionally, the performances of each will leave something to be desired.[18]

He noted that by and large the legal profession gets to know judges who are unsuitable to judicial office either because of intellect, lack of judgment, or temperament.[19]

A similar comment was echoed in a paper given by Justice Glenn Martin of the Queensland Supreme Court at the National Judicial College Seminar, *Managing People in Court* conference in February 2013. He said this:

> Most judicial officers who engage in this type of behaviour are repeat offenders. They are known to the profession and, often, to the head of jurisdiction. With respect to one such person, I was encouraged to report any complaints because the head of that court was concerned and wanted to have a case to be put to the judge in question. Even if such a request is not made it is tactically better and more likely to reduce the likelihood of repercussions to individuals, to provide as many examples as possible. It is the same as mounting any sort of case. Detailed particulars and the use of only the strongest examples will be more likely to result in success.
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> ...
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> In my experience, Chief Justices, Chief Judges and Chief Magistrates are very receptive to a properly prepared case and will take it up with the particular judge or magistrate. But in most jurisdictions they can only engage in moral pressure.[20]

An alternative view was offered by the then-editor of the *Australian Law Journal*, Acting Justice Peter Young AO, who responded to the *Managing People in Court* conference papers. He stated:

> Of course there are cases where judges get stressed and exasperated, and may say things or behave in a way which is regrettable. However, this occurs sufficiently often that all persons admitted to the Bar will know it will happen every so often and are psychologically prepared for it. When I was at the Bar we considered part of the fee was "dirt money" to compensate us for it.[21]

He went on to say:

> However, a judge who is considered weak will be exploited by the Bar. When I was first appointed in 1985 I was speaking with a judge who had been appointed the previous year. He told me his problems at the Bar. I considered his problems were caused by him being too nice. I put in place a strategy to show I was not prepared to be trifled with. This succeeded in that I soon got a reputation expecting good work and being unsympathetic to those who fell short of proper standards.[22]

He resented barristers being paid thousands of dollars for a brief which showed very poor preparation. The editor then went on to quote the case of a senior clergyman. He said this:

> Some years ago Norman, a senior clergyman, stated that he had never become a bishop as he was "not a big enough bastard". In reply the Diocesan Bishop said: "Norman, sometimes you've got to be." It's the same with judges.[23]

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[18] Kirby, n 16, 520.

[19] Kirby, n 16, 521.

[20] Glenn Martin, "Bullying in the Courtroom" (2013) 4 WR 16, 17.

[21] Peter W Young, "Judicial Bullying" (2013) 87 ALJ 371, 371.

[22] Young, n 21, 371.

[23] Young, n 21, 371.

Justice Young was careful also to note there is a serious problem for 21st century advocates shown by the rates of suicide and mental breakdown, and the mental breakdown of lawyers. His dystopian response was:

> However, we must be careful not to class every factor which may have exacerbated the breakdown of fragile personalities bullying. Further it may be that the Barristers' Admission Boards should insist on a psychological assessment of candidates to weed out those who are unable to cope with critical comments from the judiciary.[24]

It may be that some people are robust and can cope with criticism, whereas others at a particular moment in their lives may not have that same resilience. Not every advocate is as resilient as Sir Robert Menzies as recorded in his memoirs when he was appearing in the High Court before Sir Hayden Starke:

> On this occasion he tore my poor argument to pieces, while I did my best to hold its tatters together. (Justice Gavan) Duffy came to the rescue by tossing a series of helpful arguments to me. Naturally, I seized on each of them in turn, and tried to put them, in my own words to the Bench.
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> At last, Starke could not take it any more, and said to me, "Mr Menzies, your argument is nonsense." Before I could say a word, Duffy, my protector, leaned forward and said to me "What was that my brother Starke said?" Playing for time, I replied that I thought that Mr Justice Starke had not looked with favour on my argument.
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> "Wasn't this an argument which I had suggested to you?" said Duffy, fairly bristling. All I could say is that I thought it was, but that I had no doubt conveyed it rather clumsily. But Duffy had girded his loins to the battle, and said, "That is not so. You conveyed it admirably."
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> Whereupon Starke said, in a grumbly sort of way, "I didn't realise this was an argument suggested by my brother Duffy. If I had, I wouldn't have spoken as I did. But treating it as counsel's argument, I thought it was nonsense, as indeed it is!" From Duffy came the final dart "I gather that my brother Starke is apologising. If so the apology is worthy of him, both in matter and manner!"[25]

Turning back to the paper given by Justice Glenn Martin at the *Managing People in Court* conference, Justice Martin referred to an event when he was the President of the Queensland Bar Association, where junior counsel was greeted with this comment by the judge, "You're an idiot. Does your client know you're an idiot?" The barrister came to see him. The junior barrister was anxious that the judge not become aware of his complaint because he appeared frequently in that jurisdiction. What could be done in such circumstances?[26]

In the same conference, Associate Professor Anthony Foley, with the Australian National University College of Law, recounted a project conducted by his colleagues which followed a group of young lawyers through their first 12 to 18 months of practice. They were asked how they fared in the first year. He said this:

> They did not tell us specifically that bullying was a problem, but they did tell us about their acute anxiety when they had to appear in court. Indeed, if there was any particular benchmark or hurdle they felt they had to get over in the first year of practice, the anxiety of going to court was the most distressing and taxing. It was not an exaggeration to say this anxiety had the potential to affect their mental health.[27]

Associate Professor Foley went on to say:

> Turning more specifically to the topic of bullying. Power is at the heart of bullying in the workplace, and for lawyers the workplace includes the courtroom. The relationship between the Bench and the lawyer

[24] Young, n 21, 371–372.

[25] Robert Menzies, *Measure of the Years* (Cassel, 1970) 263.

[26] Martin, n 20, 16.

[27] Tony Foley, "The Effect of Courtroom Behaviour on the Wellbeing of Lawyers New to Practice" (2013) 4 WR 19, 19.

> appearing in court is not an equal one. Judicial officers, if they are bullies, are no different from any other bully. They pick the weak and the vulnerable, and the young lawyer is perhaps their easiest target.[28]

I suggest that employers of legal practitioners have a responsibility to make sure that young lawyers are ready to go to court. That obligation requires that new lawyers are given sufficient training and support to appear in court with confidence and with mechanisms to overcome their natural anxiety. They should only be given court appearances commensurate with their experience and skill. The potential for the insidious nature of psychological illness and injury needs to be acknowledged. The legal test as to whether an event can cause psychological injury is undemanding. In *State Transit Authority of New South Wales v Chemler*,[29] Spigelman CJ said that employers take their employees as they find them. There is an "egg-shell psyche" principle which is equivalent to the "egg-shell skull" principle.[30]

In the same case, Justice Basten said that where events actually occurred in the workplace, if perceived by the victim as creating an offensive or hostile working environment, and psychological injury followed, it is open to conclude that causation is established.[31]

In recent years, there have been some unfortunate examples where causation between stress in the courtroom and psychological injury, including suicide, has been broadly established. Back in 2010, the *Sydney Morning Herald*[32] reported that the Western Australian Government was seeking legal advice about accusations that a young lawyer who was bullied by a magistrate committed suicide as a consequence. It was reported that:

> Dragana Nuic died in March this year after jumping off The Gap in Sydney's eastern suburbs. The WA Chief Magistrate has received a complaint that prior to Ms Nuic's suicide, the 22 year old Legal Aid lawyer was "berated" by a magistrate in court. A WA lawyer told AAP the magistrate had given Ms Nuic a dressing down in court a short time before she took her own life at The Gap.

The NSW Director of Public Prosecutions (DPP), in 2013, circulated a memo to all Crown prosecutors and solicitors warning them to stop bullying one another or face disciplinary action. This was in the context that in the previous six months two lawyers from the DPP had committed suicide.[33] The article reporting on the DPP memo noted what Kirby had said about judicial bullying at the National Wellness for Law Forum when he said this:

> In serious and repeated cases, bullying by judicial officers should be recognised as an abuse of public office warranting commencement of proceedings for the removal of the offender from judicial office.[34]

In the same article, Mark Tedeschi QC, Senior Crown Prosecutor, said that Kirby was absolutely right and that the belittling by judges was the greatest source of stress faced by advocates. He said this:

> I have had Crown prosecutors come back from court in tears or virtually in tears wondering how they're going to muster the strength to go back to court the next day.[35]

I know for a fact that in the last few years a number of barristers from the NSW Bar have committed suicide. Whether or not those suicides are linked to stress, it certainly is a reflection that the emotional health of members of the Bar is less than ideal, keeping in mind the small number of barristers compared to the greater population. The Bar Association has established BarCare which provides for confidential psychological counselling for barristers facing psychological illness. Also there is the Tristan Jepson

[28] Foley, n 27, 20–21.

[29] *State Transit Authority of New South Wales v Chemler* (2007) 5 DDCR 286; [2007] NSWCA 249.

[30] *State Transit Authority of New South Wales v Chemler* (2007) 5 DDCR 286, [40]; [2007] NSWCA 249.

[31] *State Transit Authority of New South Wales v Chemler* (2007) 5 DDCR 286, [69]; [2007] NSWCA 249.

[32] *Sydney Morning Herald*, 20 August 2010.

[33] *Sydney Morning Herald*, 23 March 2013.

[34] *Sydney Morning Herald*, 23 March 2013.

[35] *Sydney Morning Herald*, 23 March 2013.

Memorial Foundation established a few years ago, which provides wellbeing best practice guidelines for the legal profession.[36]

In a foreword to the guidelines, the former Chairperson of the Foundation, the Hon Keith Mason, said this:

> The Tristan Jepson Memorial Foundation honours the name and memory of a lawyer, actor and beloved son who took his own life. Our goals include raising awareness, disseminating research and medical information and bringing about necessary changes in how we respond to the issue in our legal profession. We acknowledge the great achievements that have been made in recent years in the profession. We also seek to respond to widespread demand for the effective tools to assist in moving beyond understanding to effective action.

The guidelines established by the Foundation are:

> For every organisation whether you are a law student, sole practitioner in a rural or regional setting, a barrister, a judge, solicitor in a full service commercial law firm or a boutique law firm, a government agency, legal marketer, human resource professional or non-legal staff involved in the practice and business of law. No one should be left behind when caring for the psychological health of people in our workplaces.[37]

Of course, judges themselves can be bullied by barristers. Judicial officers in such circumstances should be careful not to respond in kind to the contrived provocations of more flamboyant and aggressive members of the Bar. *Escobar v Spindaleri*[38] was a case which caused concern before the Court of Appeal. The short facts were that at the conclusion of the claimant's case in the Workers Compensation Court, the Court invited further evidence from counsel, who then declined to call any. When the Court then warned counsel that the claim might be dismissed, counsel told the judge "You can do what you like." The judge then dismissed the application.

In relation to that appeal, Justice Kirby said:

> This appeal illustrates the importance of courteous and vigilant behaviour in court on the part of counsel and temperate and painstaking conduct by judicial officers. Under the stimulus of contests which can enliven high emotions, it is all too easy to lapse in the observance of these rules. Under the pressure of busy court lists and concern for the rights of other litigants awaiting hearing, impatience can occasionally lead to error. Judicial officers and advocates exercise important responsibilities. The interest of justice to the litigants is at stake. But so too is the interests of the appearance of justice and the observance of the proper forms and procedures which have been developed over centuries to facilitate its attainment. It does not become counsel to lose his or her temper in court. Still less does it become a judicial officer to depart from proper procedures no matter how provocative may be the ill judged conduct of those before the court.[39]

Counsel's response was described as intemperate, discourteous, and ill-considered. Merely by using the formula of "Your Honour", it did not demonstrate courtesy to the office which the judicial officer was holding.[40] His Honour went on to say:

> Courage and resolution on the part of counsel does not stop at an assertion of the right to conduct the case as counsel thinks best. Courage is not exhibited by inviting a trial judge to do as he pleases. It is the duty of counsel to represent his client. In that representation, it is his obligation to ensure his client's case is presented and argued to the best of his skill and ability. In these circumstances, it is not for counsel to invite the judge to do as he pleases. It is a duty of counsel to endeavour to persuade the judge to do as his client's interests necessitate, to the extent to which those interests might lawfully be pressed. As has been

[36] <www.tjmf.org.au>.

[37] Guidelines, 9.

[38] *Escobar v Spindaleri* (1986) 7 NSWLR 51.

[39] *Escobar v Spindaleri* (1986) 7 NSWLR 51, 52.

[40] *Escobar v Spindaleri* (1986) 7 NSWLR 51, 54.

> said, in the atmosphere of the courtroom, emotions sometimes run high. But when they are indulged at the expense of the protection of the client's interests, they ill become counsel whose duty is to represent those interests.[41]

In another example, *Barakat v Goritsas (No 2)*[42] the judge had described senior counsel's submissions as somewhat tendentious, to which counsel replied:

> I don't particularly appreciate that, Your Honour. I have been at the Bar for 36 years. I am not used to being accused from the Bench of being tendentious. I have made a responsible submission your Honour. I have explained that I have not given this my meticulous attention.
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> His Honour: Please don't raise your voice.[43]

In dealing with the appeal point that there was a reasonable apprehension of bias, the Court of Appeal said:

> The language used does not readily suggest the kind of departure from neutrality that is relevant to the test of reasonable apprehension of bias. His Honour was, on occasion, given to using colourful language. Not long after the passage relied upon, the judge advised counsel for the respondents not to be "offensive". Further and significantly, after the statement of the contempt charge, and the passage reproduced at [36], the trial judge expressed a view that the affidavits which he had earlier read were "not strictly relevant". Many trials will be effectively unmanageable if the judge could not, from time-to-time, read and rule upon the admissibility of prejudicial material which, if rejected, would need to be disregarded in reaching a judgment. The fact that the judge had read affidavits containing such material, at a particular time and for a particular purpose, is, by itself, incapable of raising a reasonable apprehension of bias.[44]

Unfortunately, as recounted in the appeal decision, the trial then entered the twilight zone. A further more detailed account of the exchange between counsel and the judge is reproduced at [51] of the judgment. Suffice it to say, the judge asked counsel not to interrupt him. Counsel asked the judge not to raise his voice. The judge told counsel to sit down. Counsel refused and demanded procedural fairness. The judge said counsel was being impudent. The judge ordered counsel to leave the court. Counsel refused. The judge summoned the court officer. Counsel told his Honour that he had "gone far too far". The judge then asked counsel to apologise. He said he would apologise if he could make his submissions. The judge denied having said that. Counsel disagreed with him. The judge said he was not going to have an argument. The judge said this:

> There is a relationship between Bench and Bar, hopefully of mutual respect, but it requires counsel not to interrupt and not to berate a judge and I will not be berated and you will apologise.[45]

Counsel refused to apologise. The judge asked counsel to stop over-talking him. Counsel apologised for interrupting and then he said "May I renew my application?" to which the judge said "I will consider it in due course." Counsel thanked the judge for being "very generous". The judge replied "Nor do I appreciate your irony. Your conduct is disgraceful."[46] At that point, the sheriff's officers appeared in court and were asked to stay.

The Court said that in such instances, tendering of the transcript and the recording, and if necessary the closed circuit television recording of the hearing, would be of benefit in order to make up for the deficiencies which may not be immediately evident by reading the transcript.[47]

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[41] *Escobar v Spindaleri* (1986) 7 NSWLR 51, 54–55.

[42] *Barakat v Goritsas (No 2)* [2012] NSWCA 36.

[43] *Barakat v Goritsas (No 2)* [2012] NSWCA 36, [36].

[44] *Barakat v Goritsas (No 2)* [2012] NSWCA 36, [45].

[45] *Barakat v Goritsas (No 2)* [2012] NSWCA 36, [51].

[46] *Barakat v Goritsas (No 2)* [2012] NSWCA 36, [51].

[47] *Barakat v Goritsas (No 2)* [2012] NSWCA 36, [55].

These two examples of *Escobar v Spindaleri* and *Barakat v Goritsas (No 2)* show that in circumstances judges can be subject to bullying. In such circumstances, there needs to be mechanisms put in place to alleviate the stress, and to debrief a judicial officer from the shock of such behaviour by advocates in court.