

# Potential Strategies for Improving Public Trust and Confidence in the Courts

A Panel Discussion

*The third panel discussion at the National Conference on Public Trust and Confidence in the Justice System considered potential strategies for improving public trust and confidence. The discussion was led by Bruce Collins, executive vice president and general counsel for C-SPAN, the public affairs cable network. Panelists were Veronica Simmons McBeth, presiding judge of the Los Angeles Municipal Court; Seaborn Jones, president-elect of the National Conference of Bar Presidents; John Seigenthaler, founder of the First Amendment Center at Vanderbilt University; Diane Yu, associate general counsel for Monsanto Co.; and Lynn Hecht Schafran, director of the National Judicial Education Program, which is a project of the National Organization for Women's Legal Defense and Education Fund.*

**Bruce Collins:** It is true that I am from C-SPAN, a true, talking-head cable network. But have no fear. I'm not going to make a speech. My job is just to be the mechanism through which we get an idea of what each of our venerable panelists believe ought to be the strategies in response to the problems that we have identified through the process to date. And so that you can follow along, we are taking as our guide the list of 11 potential strategies in your materials and calling them the overarching strategies. They are in the book that was given you.\*

I'm going to ask each panelist to go through once and identify of that list what he or she thinks are the top two or three strategies based on — well, based on whatever it is that they tell us they are basing it on. And I think that as we go through that, we'll get an idea of where

we are and we will probably generate some further discussion.

So with that, let me just start. Judge McBeth, what is your idea as you look at that list of what we ought to start with in terms of responding to the problems as identified?



**Veronica Simmons McBeth:** I guess I would probably like, first of all, just to take judicial prerogative and not answer that question with what I prefer to answer. But I will — I will answer that of the list we had to vote from, that which referred to judicial leadership, judicial isolation from the community, I think is not the only strategy, but I think it is key to maintaining judicial independence and judicial accountability for how the system

works. I'll let it go at that.

**Mr. Collins:** All right, we have got one from the judge. Mr. Jones.

**Seaborn Jones:** You have to go all the way down [the list] to the next to the last [one] before we find one that truly makes me happy. I think that unless we address problems with flawed lawyering and flawed judging, we will have missed the mark. You have to get down to enforce court procedures and powers of superintendents before I see a strategy that makes me happy.

**Mr. Collins:** John Seigenthaler.

**John Seigenthaler:** Well, I think any strategy that is taken on must include as a priority improving media understanding of what the system is about. And after that, I don't have a second priority.

**Mr. Collins:** You people are being much more brief than I expected. Lynn Schafran.

**Lynn Hecht Schafran:** Well, my strategy isn't on the list, and I won't be so concise. By show of hands, how many of you come from a state where there was a gender bias task force?

**Mr. Collins:** Nearly a hundred percent.

**Ms. Schafran:** By show of hands, how many come from a state where there was a race and ethnic task bias force? Okay. I'm not going to ask you now if you have read the reports. What I am going to say is this: we know from the reports that the ABA and the National Center have given us that women of color, men of color and white women are less confident and trusting of the courts than are white men. The reports tell you why. The task force reports, that is, not the surveys. If you don't know it is bro-

\* These overarching national strategies, as ultimately ranked by the conference participants, are shown in a chart on page 5.

ken, you can't fix it.

The task force reports tell you chapter and verse, with specificity, what are the reasons that women and people of color do not trust the courts. Every one of those reports has extensive recommendations in it for every aspect of the justice system: judges, court administrators, lawyers, bar associations, law schools, you name it.

But the implementation of those recommendations has been very uneven. Some of you in this room are moving full steam ahead. And some of you, I regret to say, didn't even bother to appoint an implementation committee.

So my strategy is that you implement the recommendations of the task forces on gender and race bias in the courts and you do so in the context of a comprehensive plan that builds on the implementation successes that other states have had.

Last year, I sent every court administrator in this room a directory, and it looks like this, bright red — Implementation Resources Directory. [It includes] everything that the task force on gender bias in the courts has done that you can replicate or adapt.

And that's my overarching strategy, which does, you won't be surprised to know, highly improve education and training, and I hope to have a chance to speak to that, too.

**Mr. Collins:** Diane Yu.

**Diane Yu:** When I was asked to select a strategy, it reminded me of a question I asked my mother after she had had cataract surgery at age 73. I asked her, "Well, how are you feeling?"

She said, "Well, I'm kind of disappointed."

I said, "Why? It's not effective? Are you uncomfortable? Does it hurt?"

She said, "No, I can see better, but I just discovered all my friends are ugly."

My problem in trying to pick one is that, on one hand, they are all pointing out some very difficult, very painful, extremely stubborn problems. I certainly know throughout my legal career to date that I have been probably most passionate about strategies relating to eliminating racial and ethnic bias and gender bias. So I one hundred percent subscribe to Lynn's

comments about simply implementing what already exists, what already reflects years and thousands of hours of very, very solid thinking. So I one hundred percent agree with her.

And because, I guess, I'm the only panel member here from the business community, I would like to add another one, which I think is both a tool and a strategy, and that is figuring out a way that we, who care about the court system and justice system, can truly embrace information technology in a meaningful way that is going to save time, save money and get both information and training accomplished in very expeditious ways.

At my vantage point in my corporation, which has devoted millions and millions of dollars in information technology, this is what we need to do in the 21st



Century. My feelings about courts and law firms and legal institutions is that, when it came to the information technology revolution, we were kind of behind a lot of other industries and professions.

It's just like a sign I saw in the Virgin Islands advertising a boat that you could charter. The sign said, "Slow, but expensive." And that's partly, you know, the way I think we have been looking at our process.

So anyway, I would put that one into the mix because I think that as a tool as well as a strategy we ought to be able to capitalize on and exploit information technology far more successfully and achieve several of these strategies.

**Mr. Collins:** Well, no one can say that our panelists are not independent thinkers. By my calculations, fully forty percent of them added strategies that

were not on the list, which is all right as far as it goes, but our task is to get you to think about those things that are on the list because later on you are going to be asked to do exactly what our panelists are doing, which is to sort through them and make choices among them.

And with that, I invite any of our panelists — and self-selection is important and helpful here — as you look at the list and as you listen to your colleagues on the table, what would you critique about some of the other choices you have heard? And if there aren't any volunteers, I shall pick one.

**Ms. Schafran:** I'll volunteer since I was one of those that went astray and said that I wanted a second chance. Item B. on this list is improve education and training. Hardly a surprise that someone who directs something called the National Judicial Education Program would think this is important.

The reason I think it is important is not because I have a vested interest in the business, but because I know that when we don't provide judges with the specialized education that they need, we set them up to fail themselves and fail others. And I think that is a really important point, that we have got a system now where the public gets mad at judges for doing things that judges can't help

doing because we haven't provided them with the expertise not to do it.

And I'll give you two quick examples. Several years ago a judge told me that when he was first appointed to the bench, he had back-to-back incest cases involving 11-year-old girls from white, middle class families. He threw the cases out of court because he knew — that was his word to me — "I knew that that didn't happen in those kinds of families."

Now, the prosecutors were so upset that they gave him some reading material, and he had the grace to read it, which some judges wouldn't. And then he was appalled by his own ignorance in what he had done.

Last month I had a phone call from a state I won't name and an organization I won't name — very concerned because its members are going into family court.

They are expecting to find judges and court officers who really know something about family law issues. And instead, what they are finding are lawyers who are now judges but they used to be prosecutors or defense attorneys [or] land use lawyers. The court hearing officers are recent college graduates.

None of these people has had specialized education in child development, in domestic violence, in any of the issues that people are coming to the courts for resolution. And it creates a terrible feeling of disappointment and mistrust when people come to the courts and they find people who are basically not competent to do the jobs that they have been appointed to do, and not because they are malicious or indifferent but because we have a very peculiar professional paradigm.

It is as if we said to doctors, well, gee, you were a good dermatologist for about a decade or so, and now we are going to let you do gastroenterology and orthopedics and laser eye surgery, and you don't even have to take any specialized training, you can just go ahead and do it. You wouldn't put that dermatologist in an operating room to do open-heart surgery, but you will put a land use lawyer in the courtroom to handle domestic violence cases. And people's lives are just as much at stake in the courtroom as they are in the operating theater, so we need a better system.

**Mr. Collins:** Judge McBeth, as a judge, do you think that's true, and does it fall into the highest priority among the strategies you've achieved?

**Judge McBeth:** I think clearly that it is important, and I think not only what Lynn Schafran said but Seaborn Jones, but that all professionals in our system [should be] knowledgeable about the areas in which they work, and I concur with that.

But I would go even further. I think that one of the reasons — and base reasons, basically — that we have for a lack of public trust and confidence and the reason there is diminishing confidence in judges generally is because judges have isolated themselves from the communities we serve. We don't talk enough to lawyers to find out the issues that they face in attempting to represent their clients. We don't go out into the community and listen to what their concerns are.

We have already done a lot of work in that area, as both Lynn and Diane have said, about bias. But there are other areas in which we have done a lot of work, as well, and judges aren't informed about them. And so, we seem to be reinventing the wheel about those areas over and over.

I think one of the things about the survey that we did — and somebody asked, why are we doing another survey? The surveys are helpful. Often what they do is validate what we intuitively know from working in the system. But they also help us to measure when we try new things whether or not they have worked or not. They are an opportunity or an attempt to put some accountability into the money we get, the resources we get to conduct these classes, to structure our system the way that we do.

But the one thing we haven't done is to find a place in the system, or a person, a group, to hold accountable to make sure it works. When we talk about the trial court performance standards, for example, everybody decided, and we knew it intuitively, just as we found from the survey, that people want us to be more efficient, they want us to be effective, they want us to be more fair, they want us to be more just, and they want the system to be more accessible to everyone.

And in my view, if a judge — the job of the judge is to make sure those things are done. And there's a number of ways that we do that. And there is no conflict, therefore, to me between independence and accountability.

Judges are independent in all of their snapped-on robe decisions that we make. But in terms of the operation of the system, we are the ones who ought to be held accountable. We are the leaders. We are the most visible part. We are the ones who make the rules, and we are the ones to whom the people look and the people trust.

I had a phone call several years ago. Some of you have heard me talk about it, and I get teased about it pretty regularly. A citizen in the City of Los Angeles — and I was supervising criminal [judge] at that time — wrote me a letter and said, "Dear Judge McBeth, I have heard an awful lot about you, and, boy, it was all bad. I didn't like any of it." And she went on to describe problems that her neighborhood groups were having. And it had

to do with street-walking prostitution, and it had to do with the sale of drugs on the street. And it is one of the poorest socio-economic areas of our city, largely Latino and black.

And the first thing I did when I got her letter — she had her name and her phone number — is I called her, and I said, "Hello, this is Veronica McBeth. I got your letter, and I want to talk to you about it."

And she said, "Gosh, you just dispelled one of the rumors I had heard about you and those judges down there." She said, "All the prosecutors and the police who come to our neighborhood meetings said you guys are to blame for all our prostitution problems."

And I said, "How interesting." And I said, "Judges aren't at that meeting." So I said, "I would like to come to your next community meeting."

And judges across the country have been doing that, so I'm not the only one who does it. But when I went there, two important things happened. One, I had a chance to find out why they were mad at me. They thought the role of the supervising judge meant I could tell all the 52 judges who sit in criminal in the City of Los Angeles how to sentence, right? So they needed to be educated about something that, once I explained to them how important it is that judges are independent when they make their individual sentences, they all agreed and thought it was good.

So this education thing — and that's what we want to talk about, judges taking responsibility for educating the public. I don't mean PR. I don't mean fooling them and saying it's okay if it costs too much money or if one judge has certain rules in his court and another judge has different rules in hers and those things are okay or they're efficient. I mean educating them about the fundamental role of the judiciary in our society and our role in disposing of disputes in a fair and just manner.

They understood all of that, but the most important thing that happened at that meeting was I stayed and listened to all the problems that they were having. And because of what I learned there, I spent the next two months going to every community meeting in that area because I didn't know a lot about that area. It's socially and economically different from

where I was brought up, although racially it was similar. As I said, they are African-Americans and Latinos.

So when I talk about judges taking leadership and accountability for how the system works in the area of educating the public, educate them about what is essential, and that's our independence. But about everything else, we need to listen to them so that we can go back to the courthouse and we can standardize whatever rules and procedures that help to make the courts more effective and more efficient and more accessible so that we don't have the issues that Lynn and Diane were talking about. I'm going to stop right now, but judges are the ones who need to be held accountable for it.

**Mr. Collins:** Seaborn Jones, I don't know why I've got a feeling you want to say something.

**Mr. Jones:** Well, I appreciate that. And I was afraid you were going to ask me a different question as I had just prepared my answer to the one before. I'm pretty slow. You asked what we didn't like about what we saw on the overarching strategies on this orange sheet, and what I didn't like about it and what concerned me was that while, if you really sat down and thought carefully about these problems and what engenders or causes them, it didn't place the blame squarely, as I thought it should, on lawyers and judges.

I was comforted by Dr. Zemans's remark earlier today when she said that, as we all know, we can't place too much faith in surveys, number one. But number two, there are intersecting and coinciding causes, and those causes, for a heck of a lot of the problems on these lists, although we don't lay them on lawyers and judges' tables, are just those people, lawyers and judges.

And I think I have at least in mind two reasons why we don't, and that is that most of us in this room, 72 percent, as I recall the graphs, are either lawyers or judges or court administrators who work closely with the courts, lawyers and judges. And there is a natural aversion to point the finger directly at ourselves.

And number two, the second reason is that, if you are going to tackle basic, overarching problems with lawyers and judges — and I'm not talking now about the ones that are very important that apply specifically to gender and race — I'm talking about ones that cut across the entire jus-

tice system and the quality of justice we get from it. You have got to talk about what lawyers and judges are not doing or are doing, and we don't want to do that because that requires that we consider really tough, substantive reform.

We have got to talk about things like competence. We have got to talk about discipline. We have got to talk about things like money and other stuff that we don't want to talk about.

And there has been a failure of leadership in our bar associations. I come to you from the National Conference of Bar Presidents. I can't speak to what the judges do and don't do so well, although I think they are much more concerned about judging than they are about matters of the sort that bring us together today. They'd better be concerned about these matters. But I can tell you what the public doesn't like about lawyers. They think that we are greedy. They think we charge too much money. They think we put our own financial interests ahead of our clients or at least alongside. They think that we don't care all that much about truth and justice, that we care about winning and that we will say things that aren't so if we are paid to do it, which means that our credibility, lawyers' credibility, has gone down the drain.

They think that too many of us are outright dishonest and unethical. They think that we foster a system, a legal process, that is so long and so complicated and benefits really only lawyers. It doesn't benefit judges so much, but it benefits lawyers. That's what they think about us.

Now, are those perceptions of the public in fact valid? I say to you that it really doesn't make any difference. We have got to address them if they believe they are true. But I do believe there is substantial truth in each one of them.

I don't think that there are as many dishonest, unethical lawyers out there as the public does. So in terms of degree, the public may be off. But there are enough people out there practicing law, and judges, who are problems for the system so that we had better be concerned.

And if we aren't concerned — I can tell you, I'll bet you our bothers and sisters in the medical profession would love to turn back the clock ten years so that they could address their problems at the stage where we are now. We'd better do it because bad things are coming if we don't.

**Mr. Collins:** Diane Yu.

**Ms. Yu:** I spent nine years in my career defending and regulating lawyers as General Counsel to the State Bar of California, and probably the most frequently asked question I'd get from the public was why discipline rules didn't apply to incompetent lawyers in the same sense that they thought it would, because most of our discipline rules are, in fact, very technical — it's a very highly specialized, very segmented aspect of things.

And competence, although it is covered, is not usually addressed in the way many members of the public would like it to be covered ... in discipline rules.

But one thing I also found out, it was very interesting that most of the attacks on the judiciary — this was sort of hard to take when I first realized it — came from the bar. Most of the things that lots of members of the public heard that were so bad about the judicial system and judges and specific judges were things they heard from their lawyers who were either trying to explain why a result didn't go the way they hoped or explain why they didn't get into court that day, or explain why something got continued or whatever. And it was an incredible revelation.

I also served on the California Judicial Council's Racial and Ethnic Bias Committee, and it was interesting how many times the complaints about the judiciary were not just coming from lawyers and it wasn't just about perceived arrogance or male treatment or lack of respect, but it was also a bit troubling at how many minority lawyers didn't want to be concerned about the quality and integrity of the judiciary in the same sense that they felt they had to be because they really did feel that the judiciary, as a system institutionally, had it in for them and had it in for their minority clients.

So it was a very sobering set of revelations that, to a large extent, the problem does lie within the bar and the judiciary itself. It is easier to blame it on other things and to point to other aspects of our society that are contributing to it. It is easy to say, well, it is just a function of the adversarial system. You know, if only we didn't have this legal kind of scenario, we'd get along better.

But it is very interesting to think how many times you have been talking to a lawyer about a case, about something that went wrong and how many times that

lawyer criticizes the court, the court system or the judge.

**Mr. Collins:** John Seigenthaler, keeping in mind our charge to parse through these overarching strategies — and I pick on you because you are associated with the media — isn't it almost axiomatic that if we are trying to change perceptions, we have got to adopt strategy number or letter A, which is [to] involve the media, improve media relations and that sort of thing?

**Mr. Seigenthaler:** I think it is, Bruce, and that's why I listed it as my sole priority among the strategies listed. It was surprising to me a little while ago in the breakout session that our group went

has served [as the] prism through which the public looks to see how the system works — [it] has given us names that identify cases.

I mean, if I mention Eric and Lyle Menendez — parent killers; Susan Smith — baby killers; Dr. William Kennedy Smith, not Susan Smith's cousin. And it goes on through to Timothy McVeigh — Oklahoma City; Theodore Kaczynski — unabomber; Mary Kay Letourneau — raper of a 13-year-old student who impregnated her; Rodney King — police brutality. O. J. Simpson. And, of course, the super trial, Bill Clinton.

And that's one side of it. And I don't think anybody in this room doubts that

this culture is taking place because his culture hasn't changed. Media culture has changed substantially over the last dozen years, and Lyle, working for the *Baltimore Sun*, the old curmudgeon continues to do exactly what he was doing fifteen years ago. He's reporting the same way, and he has a paper that appreciates it.

And I daresay that the people of Baltimore benefit substantially from Lyle Denniston's coverage, and I think they do [as well from] Tony Mauro's coverage in *USA Today*. It's not as in-depth as Lyle's, but neither is it overheated.

It is not difficult to understand how those numbers and those two studies show great admiration and great respect

**I think that we lawyers get a bad rap in surveys because the things that we do that the public doesn't like are out there in the open. What judges are *not* doing is the problem. Theirs are sins of omission. And until they address them, our justice process is not going to improve as it should. And first on the list is that most judges are reluctant to control the lawyers who come under their supervision. And judges are the only people who can control lawyers. And if lawyers are out of control, I think it is not unfair to say that judges bear a fair amount of responsibility for that fact.**

— Seaborn Jones



through two and a half pages before anybody mentioned the media, either in a positive or a negative way. And when it finally got on the board, I brought it up and said I'm surprised that nobody had mentioned the media.

I think if you read the two studies that really are the basis for our conversations today, you come to the conclusion that the public has been educated. Judge McBeth is right. The public needs to be educated, but they have strong views about administration of justice.

I think the data also supports in those studies that it is not Judge Judy or Judge Wapner or Mills Lane or Ed Koch nearly so much as it has been an overheated, sensationalized media giving us seriatim, for about seven years now, high-profile trials and very little else about the system. And that's one aspect of how the media

the media's coverage of those cases in that way substantially influences how people answer the questions when pollsters go to them and ask them about it.

I submit that that branch of the media that focuses on those sensationalist trials have overheated public perceptions of it, and that's the part of the problem with the media.

And the other part of it is not overheating, it is chilled. Lyle Denniston — I really appreciate being the journalist on the last panel today because it means that Lyle Denniston doesn't get to attack me. But Lyle said something today that is true. I mean, how many of you — I don't want you to raise your hands because it is almost unanimous. How many of you live in communities where there is not a Lyle Denniston or a Tony Mauro?

I mean, Lyle doesn't acknowledge that

for the United States Supreme Court, because the United States Supreme Court is the most covered and the best covered of all the elements of the system. But I will tell you, whether you're talking about the state courts or the federal courts, the appellate level is the invisible court in the system. The media outside of the Supreme Court of the United States universally ignores us. And our studies show that there are no exceptions to that.

And then, beyond that, you have what Lyle described as the dumb police reporter who knows nothing about the system and winds up reporting on a daily basis.

Now, I say all that just to say this finally. I was an editor and publisher for 35 years. I can count on one hand the number of complaints, the number of gripes, the number of letters to the editor,

the number of volunteered op-ed pieces that I received from members of the bar.

One member of the judiciary, whose husband was a columnist on our paper ... would call me up and raise hell whenever she saw something. But aside from that one contact — and [including] my successor editor and publisher over the last six years, [we] have had none. I called just before I came here day before yesterday to ask. None.

I thought Governor Cuomo made the point. I mean, the First Amendment is there so that you can speak out and protect the Fourth, Fifth and Sixth [Amendments]. And it is for that reason I suggest to you that a media strategy must

I think it is very important that if we want judges to be community educators, if we want them to be in dialogue with the media, we have to give them the skills and tools to be able to do it effectively. There are some judges who don't want to do this because they feel it is not part of their job description. There are some judges who don't want to do it because they are afraid of crossing the code of judicial conduct, saying something that is inappropriate.

And there are some judges, probably many judges who feel: I'm not Mario Cuomo. I am not the greatest public speaker. I don't have the facility of going out into the community that Veronica

a good plug for some things that we're doing to educate the public.

And what Lynn says is true. A lot of judges feel real concerned about going out because, one, they think it might in some way cause people to think they are not fair and impartial; that somehow it undermines their impartiality by going out and talking to a community group. There are others who think that they are [in] violations of canons of ethics.

The ones who don't do real well at it, we always encourage them not to go out because sometimes they cause more problems for us than we need. But what we have done in California is to institutionalize this so judges don't have to rein-

Most of the complaints we get don't come from the courts in which they have representation from lawyers. They come from traffic court. They come from family law court. They come from small claims court. They come from landlord-tenant courts. And if they had good lawyers there representing them, they would leave feeling they had a fair shake, because most of the complaints, ... literally hundreds, don't have to do with the results. They know you have got to win or lose. .... But the fact of the matter is that almost every complaint that we receive has to do with the process. [An] earlier speaker thought the process wasn't important. It is almost everything. Complaints are about inefficiency or unfair treatment, and those are the things we have to change. As judges, we need to take a leadership role.

— Veronica Simmons McBeth



be part of any strategy that helps educate the public.

**Ms. Schafran:** This is the education and training footnote to the commentary on improving external communications. I was interested that, in the ABA study, it was a very strongly held view of the public that they would like more education and they would like judges to be the educators. This morning there was discussion of the fact that judges have a traditional reticence to speak publicly, the idea being that you speak through your opinions and not otherwise.

McBeth has. I'm not a natural teacher. I don't want to look foolish. And I would commend to you all the example of Oregon, where the judicial educator currently is putting together kits and scripts faculty development programs to assist her judges in becoming comfortable and effective community educators. And I told her I was going to mention this, and she is expecting your calls on Monday.

**Judge McBeth:** I want to add to that, as well. We have, in California — we get kicked around so much in the press about how our system runs, so I want to put in

vent the wheel every single time.

I chaired a task force on court community outreach that our visionary chief justice, Ron George, appointed — and I guess I use visionary he agrees with me. But we have this book called, "Dialogues: Courts Reaching Out to Their Communities. A Handbook for Creating and Enhancing Court and Community Collaboration."\* It has a discussion of the role of the courts and the judges in reaching out to the communities, one, to educate them, but secondly, as I said, to hear about their concerns so that we can

\* This book is available on the Web at <http://www.courtinfo.ca.gov/programs/community/handbook.htm>.

restructure and change the way courts operate so that we can be responsive to community needs.

We have samples of programs and projects that we have done, ... even down to the letters and the correspondence that you need, who you need to bring together, using your position of influence as a judge in your community to make this an effective program.

And then, even more importantly, we have 50 pages of commentary on ethical considerations that judges ought to look at. A lot of what's in there, the American Judicature Society has done.

We also looked at our canons of ethics and actually have suggested guidelines to give judges a comfort level. But the leadership came from our chief justice and the leadership of the Judicial Council of the State of California in establishing this task force.

And I want to tell you something real important about this task force. I agreed to chair it, but only if it wasn't a bunch of lawyers and judges sitting talking to each other, but that it composed people who make up our community. The League of Women Voters, the AARP, MALDAF, the NAACP, elected officials, state legislators absolutely need to be educated about the role of the court. And over two years, we did build a spirit of community, and we all learned a lot from each other. And we published this handbook, a manual that could be distributed so that everybody doesn't have to reinvent the wheel.

Somebody talked about Richard Frouin's book earlier that talks about justice programs on a shoestring. That's another good tool for you.

I want to tell you further, though, we did something else in terms of institutionalizing these programs because one of the things we found, they are effective in educating the public; they are effective in educating the judges and allowing us to be responsive in an ethical way to the needs of the community. But we find that they are so personality driven — like Lynn said, McBeth can get up and do that.

One, this book shows you that anybody can do it. But secondly, what we decided to do to institutionalize this kind of outreach and to let judges know it was okay was not only to give them the ethi-

cal guidelines, but we actually stated the rules of court and the standards of administration in the State of California. There is now a standard of administration in our state that recognizes community collaboration activities as official judicial functions, acknowledges that those functions should be performed consistent with the code of judicial ethics.

And look what it says judges ought to do: they ought to provide active leadership in identifying and resolving issues of access to justice; that they should develop local education programs. They should create ways to hear from members of their communities. They should be available to speak to community groups and take an active part in the life of the community so that we are not off in some ivory tower some place, but that we take off our robes, get out into the community, so that when the press decides to sensationalize some trial or if there is some isolated instance of judicial misconduct, they will know who we are and that that won't strain the fundamental belief in the court system and won't undermine the vitality of the trial courts. The judges have to do this.

**Mr. Collins:** Ladies and gentlemen, this fine videotape and book combination is not available in stores. If you call now, you will be one of the first to get an accompanying snap-on judicial robe.

My charge, ladies and gentlemen, is to keep us discussing whether or not any of these strategies are worthy of consideration at all, and I know, because I have taken note of all the panelists' comments, that there wasn't a lot of talk about what we've got.

Let's just hear about improving management and use of information technology of the courts. Can any of you or all of you or one of you speak to whether this merits this group's further consideration? Why didn't it make your list and, if my notes were bad, why did it? And we have the private sector corporate attorney, Diane.

**Ms. Yu:** Yes. Actually, I did mention this one because I think information technology is underutilized in the court system and could be a tremendous benefit to all of us. I mean, everything from the websites to get this kind of material read-

ily accessible to being able to communicate through Web sites to all of your members.

I know the Missouri Supreme Court has a very aggressive Web site,\* which is constantly expanding to include what the role of the courts is, what the role of the citizen is in the court system. I think we probably could use some marketing help to make sure that it is better known and better utilized, but it is definitely something that millions of people are turning to and will continue to turn to as one of your chief sources of information.

I also think that better technology, not necessarily information technology, but better technology is clearly something that many court systems still need just to run their courts, just to keep their dockets tracked beautifully, just to keep things accurate, keep things up to date; make sure that you can inform jurors exactly what is going to happen, whether or not they will be called or don't have to come in.

Things of that nature are relatively easy to do compared to some of the things we've talked about today, like changing people's attitudes about prejudice and bias. That's a lifelong endeavor. But some of the things — and one reason I picked IT, information technology, as one of the areas to focus on is, compared to some of these other strategies, it is a low-hanging fruit. It is something that could be done. With some money, with some creativity and with some determination, this one can get done. Some of these others are truly going to be labors of love and constant work, but this one can get done.

**Mr. Collins:** I don't want to gen up artificial opposition [like] the McLaughlin Group, but does anybody disagree with that? Apparently we have unanimity on the panel that IT is one of those overarching strategies that you would ignore at your peril. Is that a fair enough statement, Seaborn Jones?

**Mr. Jones:** I disagree with that, and if I could use this sort of slight trickery to fall back on what Judge McBeth was saying that our judges should be doing, which I think is more important. Technology is important. We will all deal with that one way or another or get left behind. But there are a number of things

\* The Missouri judiciary's site is found at <http://www.osca.state.mo.us/>.

lawyers should be doing in the community.

Some things that our judges should be doing which haven't been mentioned so much as I think they should be — I think we lawyers get a bad rap in surveys because the things that we do that the public doesn't like are out there in the open. What judges are not doing is the problem. Theirs are sins of omission. And until they address them, our justice process is not going to improve as it should.

And first on the list is that most judges are reluctant to control the lawyers who come under their supervision. And judges are the only people who can control lawyers. And if lawyers are out of control, I think it is not unfair to say that judges bear a fair amount of responsibility for that fact.

Second, judges, just because you snapped on that robe, it doesn't mean that judges are insulated from all the other human frailties that beset us. And so, there are judges out there who are prejudiced. There are judges out there who are lazy. There are judges out there who have health problems and are sick and can't judge effectively.

And yet, while I have talked to a lot of people in a lot of states who say their states have systems where judges police themselves in their own ranks, I really don't see too many instances of judges standing up and saying Judge A here in my circuit is not doing a very good job and should not be reelected. This just doesn't happen.

And I can tell you it is not going to happen from bar polls. It used to be that bar associations ran bar polls and they evaluated judges, and the media was happy to publish those bar poll results in the paper. Bar associations, many of ours, don't even bother anymore for two reasons. First of all, the media doesn't seem interested in publishing the results. And second, because our credibility has taken such a beating, we are afraid if we go out as lawyers and say that Judges A, B and C are not doing a good job, the public will have just the reverse reaction to that and think these people must really be doing a good jobs.

So there needs to be a system administered by the judges themselves for identifying judges who have problems, helping those judges remedy those problems and,

if those judges can't have their problems remedied, then finding ways to encourage those judges to move out of their positions or get them defeated at the next election.

And finally — and this is a big problem, but it never gets mentioned: inaccessibility of judges. Judges now are busily walling themselves off from lawyers. They want as little contact with us lawyers as they can possibly manage. And the reason for that is because they have let us get out of control and too many of us are unpleasant people.

And when you talk about the time and expense that it takes to push a case through our justice system, a lot of it is because you can't get a judge on the phone and say we have got a simple problem, the lawyer for the plaintiff and the lawyer for the defendant, and if you will give us ten minutes of your time, judge, we think we can work it out on the phone. No. Instead you file a motion. You write briefs. The other side writes briefs. You write more briefs. Then maybe you have argument, and then you sit for six months waiting for the judge's decision.

Tell me this doesn't extend the time that it takes to push a case through litigation and make it cost more.

**Mr. Collins:** Lynn Schafran.

**Ms. Schafran:** What I was thinking was the comment about the bar polls and judicial evaluation through bar polls. I have to tell you that the experience that I'm familiar with is that these bar polls reveal extreme bias on the part of white male lawyers. This is not intended to be about white male bashing, but I can tell you that in state after state what we see is that minority judges and female judges get marked down, even people whom we know — because we know them professionally and as our colleagues — are very good judges.

The woman who runs a tight courtroom — well, a man, he runs a tight ship, and a woman, she's a bitch. That's flatly what it is. And I can tell you that at the National Association of Women Judges, we have been talking for years about how we can design bar polls and judicial performance polls that will not reflect this kind of bias, but that will get at the real nub of judicial performance.

I know this is a concern in Colorado, as well, and I understand that in North Carolina there was some kind of a new

polling process, a new way of looking at this issue that was developed and is very action-focused, if you will. I mean, it's not like, you know, what do you think of this judge, it is, does this judge do A, B, C, D, E, F and G?

So here's a project for the National Conference of Bar Presidents, and that is, why don't you get together with the NAWJ and all of us who are interested in seeing some effective judicial evaluation instruments developed that will eliminate this bias problem and let's see if we can institute this again.

**Mr. Collins:** It has been said that Washington, D.C., is a city full of former student council presidents who drive Honda Accords. I stand before you now. I'm also the kid in high school who when, in the springtime, someone would suggest, let's have class outdoors, I always objected because I never wanted to sit on the grass. For that, I would rather build a chair than sit on the grass. And that's why I have been chosen to handle this panel today. I will stick to the agenda.

And in the five minutes remaining, I ask our panelists to look at that list, scan it, take a look, give us an idea as we run down, because your charge here today is with your thoughts to guide this group in how it might assess the list to tell them what you think — [and what] you don't think — is worth their time. I'm going to count to three, and we'll start at the end and work this way. I figure it is safer.

Diane Yu, what are we wasting our time on?

**Ms. Yu:** Well, I don't know. This is one of those — there was a telegram that Robert Benchley used to have on Algonquin Roundtable, sent while he was in Venice to a friend in New York, and he said the cable ran: "Streets flooded. Please advise." So we are a little bit at that level.

I think that the one strategy that seemed to me to be the most, I guess, unrealistic was hoping that we could simplify things because, frankly, I think the world is so much more complicated. Only if we could get a moratorium and have no laws passed for five years so we could figure out what the heck the laws are about.

But when they keep relentlessly changing the law, it will be incredibly difficult to hope to simplify things because — think of it. Everybody mentioned it this morning. The simplest procedure in the judicial process is probably traffic

court, and that is not the most popular. So I think that's one where it would be nice, but it's probably unrealistic.

**Mr. Collins:** Thank you. John Seigenthaler.

**Mr. Seigenthaler:** Well, I think since every block on the page has relevance, I guess if —

**Mr. Collins:** That isn't what we asked, John.

**Mr. Seigenthaler:** Well, I know. I know, Bruce, but let me just say something. Let me just make a comment about something that is not —

**Mr. Collins:** Here we go.

**Mr. Seigenthaler:** — on here that should be. And I'm sitting in this chair on

worked, and some of those sources spun those secrets.

But that's the new phenomenon. And I mention that new phenomenon not to say anything about what happened here, but to say if I were proposing a strategy, I would follow Judge McBeth out of the courtroom into the public, into as many newspaper newsrooms as I could to say, look out, somebody is going to propose this, some lawyer is going to spin, some prosecutor, some defendant, and you are going to get burned, and I can't stop it unless you are willing to understand why this runs counter to everything that has traditionally been sacred in the administration of justice.

huge profession of lawyers out there. There are a lot more lawyers than there are judges. There is a whole lot of lawyering that goes on that has absolutely nothing to do with the court system.

When we were doing the task force report survey, researchers thought that you could, you know, hit every tenth lawyer in the state and you would learn something about the courts. And I would have to explain to them that the vast majority of lawyers never even go into the courts.

So I think that if we mind our own house and concentrate on what one of the earlier speakers said, that if our focus is on who are the users of the courts, what do



[I]t was very interesting that most of the attacks on the judiciary — this was sort of hard to take when I first realized it — came from the bar. Most of the things that lots of members of the public heard that were so bad about the judicial system and judges and specific judges were things they heard from their lawyers, who were either trying to explain why a result didn't go the way they hoped or explain why they didn't get into court that day, or explain why something got continued or whatever. .... So it was a very sobering set of revelations that, to a large extent, the problem does lie within the bar and the judiciary itself. It is easier to blame it on other things and to point to other aspects of our society that are contributing to it. .... But it is interesting to think how many times you have been talking to a lawyer about a case, about something that went wrong and how many times that lawyer criticizes the court, the court system or the judge.

— Diane Yu

the grass, and I have got some — I would just like to add, because he is going to bang the gavel in just a moment — I would just like to make one other point.

It seems to me that most of these strategies are reactive. And I'll just close by making one point. As all of you sit here in this room from across the states, back in your hometowns there are newspaper editors and reporters who right now have been looking at Washington. And they are thinking what about the court system? They are thinking, can we get grand jury secrets out? You know, it's

So it is off the list, and Bruce didn't ask for it, but I think a more proactive posture as a strategy ... trying to move ahead on problems that are going to come, makes more sense than almost anything here.

**Mr. Collins:** Lynn Schafran.

**Ms. Schafran:** I suppose if I have to choose one that seems —

**Mr. Collins:** You do.

**Ms. Schafran:** Okay. I'll choose H., change the economics of courts and the legal profession, which seems to be aimed at having the courts somehow change the

the courts exist for — to serve the public — and clean up our own act, let the legal profession take care of itself.

**Mr. Collins:** Judge McBeth.

**Judge McBeth:** I have to tell you all that this panel had a couple telephone conference calls. We also met this morning. And the first — one of the first things — I won't say everybody met — we all decided we'd answer whatever we wanted to answer regardless of the questions that were posed to us, which has been very obvious throughout.

**Mr. Collins:** I wasn't there.

**Judge McBeth:** But I didn't mention bias at all because it came out number one, anyway, and I knew that Lynn would mention it. But clearly, that's something that we have to be concerned about. But I'll tell you something. Seaborn mentioned this earlier. Judges don't speak out against other judges because those things directly violate the canons of ethics in most states. We do have internal procedures, and maybe they need to be better. But I'll tell you one thing, as a presiding judge of a bench of 112 officers — and I'm an elected presiding judge — I am required by the statute to respond to complaints. We have a committee on judicial performance, but the first stop is the presiding judge. Most of the complaints we get don't come from the courts in which they have representation from lawyers. They come from traffic court. They come from family law court. They come from small claims court. They come from landlord-tenant courts.

And if they had good lawyers there representing them, they would leave feeling they had a fair shake because most of the complaints, you know, literally hundreds, don't have to do with the results. They know you have got to win or lose. And we all know in this system that the person that wins becomes the court's temporary friend, and the other is our permanent enemy. We know that's there.

But the fact of the matter is that almost every complaint that we receive has to do with the process. The earlier speaker thought the process wasn't important. It is almost everything. Complaints are about inefficiency or unfair treatment, and those are the things we have to change. As judges, we need to take a leadership role.

**Mr. Collins:** I just realized how fortunate it is that I'm not admitted to practice in California. Seaborn Jones.

**Mr. Jones:** Take heart, there are solutions to even the toughest problems about lawyers and judges if we put our minds to it and work together. There really are. Picking up on one of the things that John said about First Amendment rights and freedoms, ... why is there a need that lawyers be allowed to comment on pending litigation in which they are participating? What good does that do? Judges can issue bar orders or gag orders, rather. Why don't we explore whether the system might benefit from limiting com-

ments to the media by lawyers?

But at the same time, Mr. Denniston this morning said he wanted to see the results not shielded by confidentiality agreements, and I completely agree with him.

But there are all sorts of things that we can do in terms of discipline and constancy that we haven't done yet or that we are only now beginning to try. For instance, in discipline, let me ask, why is it that we can't do as our Department of Motor Vehicles? Governor Cuomo said something about this. He didn't mean what I'm about to say. But, you know, they assign points to you when you drive 30 miles over the speed limit. And why can't we empower our judges to award points to lawyers who mislead them in their courts and who commit other abuses which don't rise to the level of stuff that would go to the disciplinary arm of your state bar? But once those points accumulate, then you have got problems.

There are innovative things that we can do if we will sit down together and think and if we don't let our efforts die with this meeting today and tomorrow.

**Mr. Collins:** Well, that concludes our time with the panelists. And let me say to my colleagues on the dais here that I am properly chastised, having missed the morning meeting. But one thing you can say about me is I did not make a speech and take your time. Thank you all.

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