

Public Opinion of the Courts:

How It Has Been Formed and How We May Reshape It

A Panel Discussion

The first panel discussion at the National Conference on Public Trust and Confidence in the Justice System reacted to two national surveys exploring the public's current opinions of the judicial system. The discussion was led by Fox News network reporter Catherine Crier. Panelists were Tony Mauro, reporter for USA Today; Lawrence Dark, president and CEO of the Urban League of Portland, Oregon; Tom Tyler, professor of psychology at New York University; Stephen J. Parker, dean of law at Monash University in Melbourne, Australia; and Frank Bennack, Jr., president and CEO of the Hearst Corporation.

Catherine Crier: When I was thinking about a few opening remarks, I thought to myself, we get so involved in the minutia in this conversation that I want to step back just a bit.

Tocqueville, some 160 years ago, wrote in his work, *Democracy in America*, he said the greatest strength of this country was our willingness to come together in voluntary associations. Our weakness was our willingness — our egoism, literally — our willingness to live as strangers apart from the rest. He said we would give up our power as citizens, as individuals, to tyranny, one that was benevolent, provident and mild, but tyranny, nevertheless, in the form of government. And we would become a nation of timid and industrious sheep.

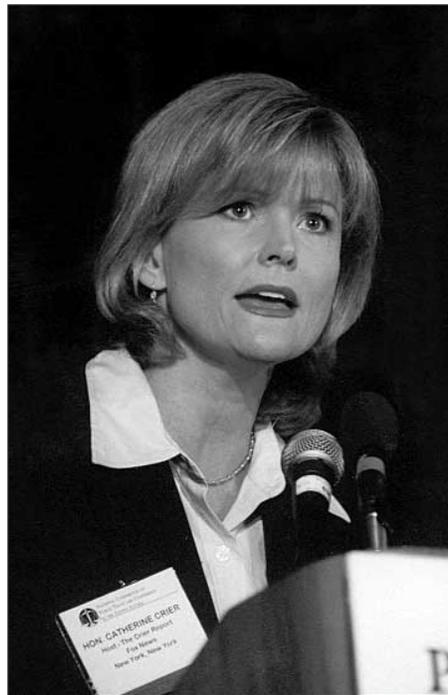
I would suggest that's just about where we are. And I would suggest a good part of that reason is because, in our faith and trust in the rule of law, we have become a nation ruled by laws. We no longer have independent judgment. We no longer allow responsibility on the part of our citizenry.

We are indeed a nation of victims, all of whom have a right that can and will be redressed by the court instead of actually having some government in our own lives; that, in fact, judicial activity has come to dominate and control our behavior as individuals in an insur-

mountable fashion. And ultimately, we all know the adage that he who makes the rules wins in this game.

We now have a government — lobbyists, lawyers, judiciary — that designs our lives from birth to the grave, and people have come to expect that kind of relief in everything they do.

A couple of years ago, the president of



PBS gave a speech. He called it, "The Culture of Chaos." In it, he said once upon a time our nation was united by fundamental ideals and principles set out in the Constitution and the Bill of Rights, those ideals that brought our Founding Fathers together to create this country when, in fact, that has been supplanted. It is no longer what is right and wrong, what draws us together in those remarkable documents, but rights and process. We have become a nation of process: whoever has the legal clout and the power, wins. It is not a misperception on the part of the public. If you have got the education, the money, the influence, the access, you win most of the time.

And I doubt seriously there is anyone in this room who would disagree with that statement. It is not a PR problem. It is a reality.

I would ask each and every one of us, in our daily lives in this marvelous profession, that you be individuals first, citizens first, and ask yourself as you behave, is it best for us as citizens — not lawyers, not judges, not lobbyists or officials — but as citizens of this remarkable country?

With those comments, let me turn to our illustrious panel, and let's get this discussion started. Tony Mauro.

Tony Mauro: Thank you, Catherine. I think our job is to react to the survey. Of course, the first thing that leaped out at me is the finding that the media, which I suppose I represent as a reporter for *USA Today*, enjoys a high level of the confidence with only about ten percent of the people, which is substantially lower than any of the legal constituencies represented here today.

So this is not just a case of the pot giving advice to the kettle, it is the pot wishing we could be a kettle. So you are bold to ask for advice from me.

Anyway, from that vantage point at the bottom of the barrel, to use up my metaphors, one point I've made to court groups like this before is that none of us entered the profession we're in — judging, lawyering or the media — expecting to win a popularity contest for doing our jobs well. A certain percentage of the public will not like us, and some of us will even hate us. It goes to the territory, and I don't think you ought to lose sleep over it.

But if we're not loved, I think we can still aspire to be understood, and that's the main point of the survey I wanted to react to. The Hearst Survey, unless I misunderstood, suggests that the more knowledge that people have about the court system, the less confidence they have in the courts, at least in their local courts. The ABA survey we've all looked at, on the other hand, says the opposite,

as do other surveys. They have concluded that, in general, the more knowledge people have about the courts, the better they liked them, the more confidence they have in them.*

One explanation may be that the kind of knowledge that the Hearst Survey was talking about I think is, perhaps, more personal knowledge as a participant in litigation. And that, of course, as the Chief Justice said, is likely to produce approximately a fifty percent dissatisfaction level because somebody loses. The ABA survey may have been talking about a broader kind of knowledge.

But anyway, I think this is an important point to sort out sometime today because I think this perception that familiarity breeds contempt has held back a lot of efforts in public outreach and bridging the gap between the judiciary and the public.

Certainly, at the Supreme Court, which I cover, there is this notion that if the court can appear as a rarely heard from voice from the clouds, that the aura and mystique will engender respect for the proceedings. I have always felt that is not right.

From my perspective, it has always seemed that every time the Supreme Court is in the spotlight, whether it's the release of the Thurgood Marshall papers or more recently when the Chief Justice presided over the impeachment trial, the Supreme Court emerges looking pretty good.

[ABA president] Phil Anderson has made this point, and I agree with him, that the simple act of turning cameras on at the Supreme Court oral arguments might have the effect of elevating the public's perception of the entire court system ... because I think the public would see a very fair and deliberate process.

But this notion of — and I don't want

to take too much time, but the familiarity breeds contempt notion has other problems, as I said, not only will the contempt never go away, but the familiarity won't go away, either. I think this survey also teaches us that there is a tremendous amount of knowledge and information from all sources about the court, and the simple fact is that the books, the Internet are not going away. There will only be more intense scrutiny, and I think we just have to recognize it and meet somewhere in the middle in a more efficient way.

Ms. Crier: Thank you, Tony Lawrence.

Lawrence Dark: Well, first, a few



disclaimers. Number one, I don't speak for all black people in America. I don't speak for all African-Americans in America. My perspective on the survey is only my perspective, my story and that of me, my family and my friends.

Secondly, I am pleased that the Hearst Corporation did do an oversampling to try to get more perspectives of African-Americans and Hispanics, but please know that not all African-Americans are monolithic in thought or action. All too often I think that people, particularly white people, will see these kinds of reports and think every black person, African-American in the world feels this way.

But what it does show you is that no matter where in the country, there are issues. Whether I'm living in Washington, D.C.; Prince William County, Maryland, or Montgomery County, Maryland; Richmond, Virginia; Baltimore, Maryland; Frostburg, Maryland; Columbia, South Carolina — where else have I been? — Portland, Oregon, somehow these issues always ring true with black folks and African-Americans, no matter what their income level or education is. And that is something we have to be concerned about.

I have a 10-year-old son, and I had to learn early on that it is not if he was going to experience discrimination or racism, but when. And I had to make sure that I gave him the coping mechanisms to deal with that. And I think that most of us who are African-American and black know that we have to prepare our families and kids, do know that most blacks that I know are law and order abiding and do believe in laws and regulations. They want them to work. But our experience has shown all too often they have not worked fairly.

Let me give you a short story. Back in the mid-'80s there was an African-American woman who was on the faculty of a law school. She had a commuter marriage, so she needed to find an apartment. She went looking, and the person asked her about the origin of her name. And she thought that was a strange question, but she answered it, anyway.

That was about 3 o'clock in the afternoon. Later that evening, about 10 o'clock, she got a call from a student, a law student — a first-year law student. Can you believe a first-year law student called a professor at home at 10 o'clock at night?

He called her and asked her, "Did you

* Editor's Note: For a more in-depth look at the survey data, there is a separate article in this issue by David Rottman and Alan Tomkins analyzing the results. The full report of the 1998 national survey taken by the National Center for State Courts and funded by the Hearst Corporation can be found on line at <http://www.ncsc.dni.us/ptc/results/nms4.htm>. The full report

of the American Bar Association's 1998 national survey can be found on line at <http://www.abanet.org/media/perception/home.html>. The results of the ABA survey were previously detailed in *Court Review*. See *An Interview with Phil Anderson and Marilyn Goldman*, *COURT REVIEW*, Winter 1998, at 8.

look at an apartment today?" And she was kind of surprised that he would know her business. And she said, well, yes.

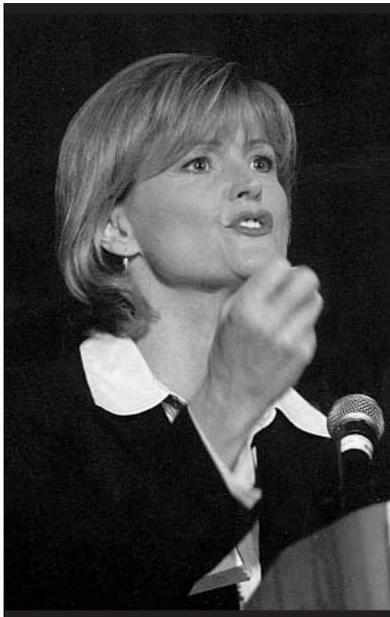
He says, "Well, the person who was showing the apartment, I looked at it, also, and she wanted to know your race."

And this woman became immobilized because, you know, she had done all the right things. She was a Christian. She graduated salutatorian from her high school. She graduated magna cum laude from college. She graduated with highest honors from law school. She entered the Justice Department's Antitrust Honors Program. She was a White House Fellow. What hasn't she done?

I think what the report says is we have work to do. We have always known we have work to do. I do not believe in a color-blind society. I want to see my color. And most blacks and African-Americans do, because to dismiss the color is to try to put this on a shelf.

We have to find ways that young people believe that the system works. But when they see what happened to my wife in the judicial system and people similar, they do not believe. We have our work to do as lawyers, as judges, as court personnel, and as citizens, because the court system must work for all people. Thank you.

Ms. Crier: Thank you, Lawrence.



There is no reward in ... virtually any system ... in taking time to help an individual: a clerk at the courthouse, the judge spending extra time to talk to someone so that we are actually building value into a system for taking time with people, actually promoting understanding and working with them, resolving their confusions or concerns.

- Catherine Crier

She passed the bar, the Pennsylvania and the New Jersey bar at the same time on the standardized portion only, the essays. You know, black people can't pass essays on the standardized tests, the myth says. She proved that wrong and passed both of them simultaneously just on those boards.

That was my wife. So for two years we had to deal with her being immobilized, someone who believed in the judicial system and rights.

Two things in the [subsequent] deposition troubled us because a lawyer asked, "You always bring these kinds of cases, don't you, because you want money?" But the most troubling was, "Aren't you used to discrimination by now?" Well, no one gets used to discrimination, or racism.

Tom.

Tom Tyler: Well, the Hearst survey is very important because it identifies many aspects of public dissatisfaction with the courts. They range broadly, from problems of access, timeliness, unfairness.

What I would like to do is to comment briefly on what research tells us about which of these factors is actually most important in shaping public dissatisfaction with the courts. The research I'll describe to you is also based upon interviews, wide-member surveys, and considers both the public in general and people who have personally gone to court.

My concern is with understanding which of the many kinds of concerns the public has expressed and actually drives negative feelings about the courts. And

I'll mention two potentially important kinds of reaction on the part of the public.

One is the feelings that the public has about the courts, and confidence is the way we often express that. That is the focus of the Hearst Survey.

A second focus in many other studies has also been on whether people obey the law. That is, do people accept the decision that courts make? Do people follow legal rules? Both of those are important elements in public feelings about the courts. But what is true about the impact of views about the courts on confidence and acceptance?

When we talk about public dissatisfaction, we often have a tendency to immediately think that it results from what we might call performance problems, issues of court costs being excessive, court delays being too long or even the inevitable fact that many people don't receive the outcomes that they feel they ought to receive. That is, many people lose their cases.

What is interesting about research on the public is how little these issues are important in shaping public confidence in the courts or public satisfaction with legal authorities. When we look at what people really care about, that is, what drives their confidence, what leads them to be willing to accept decisions, we usually find that the key factors are issues of process, what people experience in the manner in which their cases are resolved.

And I'll point to four factors that seem to be essential to people's reactions to their experiences in court, or to courts in the abstract. Most central, people judge the degree to which they believe that legal authorities are trustworthy. That is, people seem most centrally concerned with whether authorities have goodwill; that is, whether they care about the public's needs, problems and concerns. This is very similar to the concept in the Hearst study that people feel that court authorities are often out of touch.

Studies consistently find that the most important factor in determining whether people accept court decisions is whether they trust the authorities who made those decisions. And interestingly, this is equally true whether you are talking about a judge in traffic court or you

are talking about the justices of the United States Supreme Court. People evaluate those authorities by asking: do those people truly care about my needs, my problems, my concerns when they are making their decisions?

What leads authorities to be trusted? The key factor seems to be hearing some explanation or account for decisions that are made. Chief Justice Rehnquist, in his speech today, and Justice Kaye, in the videotape we saw, both emphasized the idea of making and justifying decisions in a way that makes them clear and understandable to the public.

This concept of plain, understandable language is very consistent with the findings of studies of the public. People are much more willing to accept decisions if they see those decisions as motivated by a sincere concern about them and their problems as articulated in an understandable count or rationale for the decision.

A second factor that emerges that is very important is participation. People are much more confident of the courts, much more satisfied with decisions when they feel the public can participate. This finding accounts for the widespread popularity of mediation, which allows for more participation.

What I think is central to understand about participation is that the public wants to be heard, that its participation means having the opportunity to state your case, have your arguments listened to and considered. It does not mean controlling the decision. And, in fact, we find if people think that they can state their case and that their arguments are considered, they are much more accepting of a decision made by a judge.

Third, people are very interested in receiving polite and dignified treatment from the courts, and courts have an opportunity to indicate to citizens that citizens have the respect of authorities. And this is very central to the way citizens react to their experiences when they go to court.

Finally, fourth, people focus on whether they receive neutral and unbiased treatment from authorities. One of the key findings of the Hearst survey is the widespread belief that there is unequal treatment in the courts. This unequal treatment undermines the argument that we heard from Justice

Kennedy that people look to the courts to be neutral, factual and unbiased. And this is a fact that we find constantly considered by members of the public when they evaluate and react to the courts.

All of these factors are important to us when we consider how the courts might respond to public dissatisfaction because they are all factors that are easily attackable, easily approachable within the framework of the current courts. More attention to public concerns, more attention to satisfying people seems to be the central issue that is raised in the various surveys that are done of members of the public.

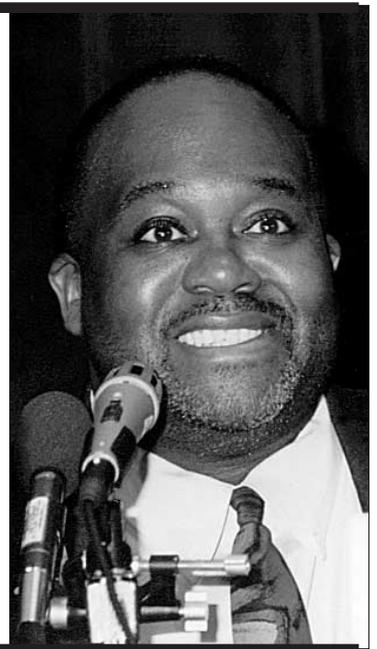
If the legal system expands its consid-

I am also the secretary of the Judicial Conference of Australia, which is the main association of Australian judges. So I'm closely involved in questions of the public education about the work of the courts.

The panel was asked to give immediate reactions to the findings and then perhaps come in later with some lessons or implications of the survey. My immediate reaction to these findings is to be struck by the apparent contradictions within them. And I certainly endorse the way that the concluding section of the report begins. It says, "Americans hold views about the courts in their communities that are in some respects reassur-

I have a 10-year-old son, and I had to learn early on that it is not if he was going to experience discrimination or racism, but when. And I had to make sure that I gave him the coping mechanisms to deal with that. [M]ost blacks that I know are law and order abiding and do believe in laws and regulations. They want them to work. But our experience has shown that all too often they have not worked fairly.

- Lawrence Dark



erations to also place more focus on the needs and desires of the public, there seems to be a fairly optimistic implication of these findings about the ability of the courts to increase public confidence, public acceptance of the law, even as judges continue to make difficult decisions that don't give all people what they want or feel they deserve.

Ms. Crier: Stephen.

Stephen Parker: Thank you. I have been asked to give my reactions of these findings from the perspective of an outsider. I'm an English legal scholar living and working in Australia. And I completed an empirical study last year in Australia called, "Courts and the Public," which dealt with similar issues to this survey.

ing and in other respects very troubling, and in still other respects contradictory."

These findings reinforce a conclusion that I drew from my own study, that by and large members of the public may not look at the justice system in the way that lawyers do or in the way that courts look at themselves. The public, I think, lives with paradoxes better than do lawyers and courts. And when it comes to the justice system, or perhaps public institutions generally, people can accommodate warring ideas simultaneously more comfortably than lawyers can. And to illustrate this, take the findings about political considerations. The vast majority of respondents, 81 percent, agreed with the proposition that judges' decisions are influenced by political considerations.

This view was held by all racial and ethnic groups, although most strongly by African-Americans.

Two-thirds of the public also agreed that when a person sues a corporation, the courts generally favor the corporation. Now, admittedly, you can interpret these findings in different ways. But it's hard, I think, for a lawyer to reconcile them with the generic finding that 79 percent agreed that judges are generally honest and fair in deciding cases.

To a lawyer, I think, if it were really the case that judges are regularly influenced by political considerations and generally favor corporations in the sense of being biased in their favor, I think it

home to their community, and he or she is great. It's the same sort of thing. If you are experiencing good luck in the court and you know a judge individually, you probably have a good opinion there. If your son or daughter is going to join the process, that's a positive thing. But the process in general is very difficult.

Let me throw out to the panel as a whole, was there anything that surprised you in the survey? Anybody? I was struck by the obviousness of all of these results. And the first question I had was, why is this a revelation to anybody? Is there any shock in any of us? I guess not.

Now, the next question, then. Come

approach the Year 2000 problem, that Europeans are not concerned with it because they have been through it. We haven't yet lived a millennium, and I think if you had this conversation about are there shocking revelations with the general public as contrasted to us, my experience is, both with the original survey and this, that there is a little more alarm and concern.

For example, some place in these findings, ... in this study and previously, something around a third of the people believes that the burden of proof is on the defendant. While that's not a majority, that's a pretty shocking state of affairs as we approach the Year 2000 in these



Certainly, at the Supreme Court, there is this notion that if the court can appear as a rarely heard from voice from the clouds, that the aura and mystique will engender respect for the proceedings. I have always felt that is not right. [ABA President] Phil Anderson has made this point, and I agree with him, that the simple act of turning cameras on at the Supreme Court oral arguments might have the effect of elevating the public's perception of the entire court system ... because I think the public would see a very fair and deliberative process.

– Tony Mauro

would be hard to hold the view that judges are generally honest and fair.

And you can find analogies with this split of the system in public opinion about other legal issues. For example, some people, to put it mildly, think that lawyers as a class are undesirable, but they may be happy for their son or daughter to become one.

So my first and my main reaction to the research is that it's further evidence that people can live with a certain, let's say, cognitive dissonance. They can accommodate conflicting opinions about the justice system in a way that lawyers and courts may not do.

Ms. Crier: Just a little comment on that. Surveys are interesting because when people talk about politics in general, they hate politicians, right? But if you ask them if they are going to re-elect their legislator, who's bringing things

on, Lawrence. Help me out here.

Mr. Dark: I guess I was shocked at how many Hispanics in the oversampling really had an excellent view of the judicial system.

Ms. Crier: A good view?

Mr. Dark: Yes.

Ms. Crier: Well, a conservative community on the whole believes in institutions. There is probably a conservative explanation for that. But actually, I agree with you. That was probably the only thing where I went, "Hmm."

So my second question is, if there was no revelation in here ..., what are we still doing going over the same ground? What's the problem?

Frank Bennack, Jr.: Catherine, let me comment on that because I agree with you that this group and this panel will find very few revelations or shocks. Someone said to me recently, as we all

United States.

So I think that we may be a little sophisticated and have a little more on our minds about all of this than is true of the general public. Having said that, I think the purpose of these surveys, obviously, the reason that the National Center for State Courts wanted to do yet another one, is to see if the dial is being moved and to point out once again what collectively we need to do better, even though we already knew it.

Ms. Crier: Any other comments? Tony.

Mr. Mauro: Well, I think in spite of that lack of knowledge about the Fifth Amendment, there was a great deal of knowledge about the fact that both civil and criminal proceedings can take place involving the same events, the O. J. effect.

But going back, one reason I'm not a

TV person is that I'm a little slow on the uptake, I guess, in reacting to questions. But I think what did surprise me is this question, this finding about the legal issues and the contempt issues and that kind of thing. A couple of us addressed this. But I wonder, Tom, maybe you could clear that up or flesh it out. Does this survey tell us that the more people know about courts, the less confidence they have in them? Or is that an anomaly or what?

Mr. Tyler: Well, I think that this study suggests a contrary conclusion. It does not suggest the more knowledgeable people are more dissatisfied.

Ms. Crier: Clarify your semantics here. More knowledgeable, less satisfied, or more experienced with the courts, which can be two different things?

Mr. Tyler: Well, they are separate.

Ms. Crier: Yes, and just clarify what you're referring to.

Mr. Tyler: In the earlier studies, people who know more were found to be more dissatisfied. And as I understood it, that is not replicated in this study.

Mr. Bennack: I think that it is. I think that there is a basis to maybe look at the individual questions and the conclusion that Tony made, which is that there is that somewhat disturbing indication. But again, I would relate that to the issue that we talked previously about, that you have the participant go away with other than the result they would like to have. I guess I'm not particularly impressed with that for the same reason Catherine pointed out. We have a low esteem for the legislature but [not for] our own legislators.

And, Catherine, [the media] was last on this list [of public trust]. I'm sure you are hoping that the media doesn't include Fox and the Hearst newspapers, and we all know that it does. But that same theory, I think, does apply. I think you will find a [negative] general media attitude and yet, as you survey people's attitudes about specific entities of the media, you often find a more favorable reaction.

Ms. Crier: And I also think some of it is, when you are talking about knowledge, that when you couple that with education, you oftentimes then couple that with wealth. Then you couple that with better experience in the court system. And it is not necessarily that

money, in and of itself, is going to buy results. But it is that education, combined with wealth, is going to buy access to those who can weave their way through the system in a much better, more efficient, more effective manner.

And if we are governed now by the minutia, then it is necessary to be able to acquire those who can lead us through the minutia. And those who don't couple knowledge, meaning education, [with experience, but have] only experience, oftentimes their feelings are in fact the reverse, that continued experience in the court may not always be pleasant.

So let me ask you about form over substance. I don't know about the audience, but does anyone on the panel feel concerned in that much of this conversation, that we are talking so much about perception? We want people to feel good. And if they feel good, all will be well with this institution.

Mr. Tyler: Well, I don't think that anybody has that simple a view of the situation. I don't think that we think that the judicial system should be based on public opinion. I think what should happen is that public opinion should be considered in the design of judicial institutions which are, after all, democratic institutions which are supposed to reflect the will of the people.

Ms. Crier: I'm glad you said "supposed to."

Mr. Tyler: I don't think we would expect, or even advocate, a media translation of public entities that were designed as public institutions. But what we do see here is striking levels of dissatisfaction — and I think all of our arguments are of that level — that suggest a need for the system to be more attuned to the concerns of the public.

Ms. Crier: Anyone else?

Mr. Dark: Well, I think that if we don't deal with perceptions and realities — and I think from what I see is, if something happens, white people tend to say that it's an isolated incident. That's offensive, especially when it's happened in 50 states.

So the reality is it is not an isolated incident. These are incidents that are happening to real people every day, and I did see the second striking thing in the report. I was stunned that so many white people said that they saw racial bias in the system. And if that is the case, if they

know that, why aren't they acting differently?

Ms. Crier: Good question. Let me throw something else out. I think in our society today you look at generic dissatisfactions, and much of it is that we are rewarded on how quickly we process, how much we put through the bottom line when you turn in your time sheets, how many callers some consumer service person can talk to within an hour period.

There is no reward in any system, virtually any system — this came up really with Columbine in talking about teachers — in taking time to help an individual: a clerk at the courthouse, the judge spending extra time to talk to someone so that we are actually building value into a system for taking time with people, actually promoting understanding and working with them, resolving their confusions or concerns.

It is a question of, here is the next docket number, call the case, let's resolve the case and move on oftentimes — in the courts where most people interact — your misdemeanor courts, your county courts and justice, JP courts, this sort of thing — and we are a process-oriented society. So to some extent, that form over substance, it really is relevant to talk about that.

Is there a solution? As we sort of wind the hour up, let's talk now more about directions to take the conversation.

Mr. Parker: Well, the way I read these findings is that we should work at two levels, both the reality level and the perception level; that by increasing the reality level, particularly by improving the respect and dignity that are accorded to people in court, that that will have a tremendous effect. And it seems to me from these findings that jurors are great ambassadors for courts — if jurors come away from courts thinking that this was a dignified and fair proceeding, that they will speak well on behalf of the court.

But I also think that there is an important perception issue here which I know other countries are thinking about, as well. It seems to me that the judicial leaders will have to go on the front foot about the justice system.

And this is a very controversial area in some societies. There are deeply ingrained traditions of judicial reticence

and belief that judges should not speak except through their judgments in court. But the way I read these findings, and many others that have been taken in our country, unless judicial leaders take the initiative and explain the work of the courts and try to clear up some of the most obvious misconceptions about the judicial system, then I think the public will live with these paradoxical views, which I don't really think is in anyone's interest.

So I would say it is an unsurprising conclusion, but [we need to] improve both the reality and the perception.

Ms. Crier: Anyone else?

Mr. Tyler: Well, I think the other

So there are two ways you can look at that. One is that the courts don't want this and that they should not be responsive to it. The other is that this is an opportunity for the court to actually increase their authority, increase their role in American society at a time when other institutions seem to be fighting it.

Mr. Dark: I think that we have to look at the issue that came out that most people believe that the courts are out of touch with reality, out of touch with what the communities feel are relevant.

I know my wife teaches a course in law school. She will ask the question — she will go through all the case theory, and she will say, well, what is the music

Mr. Mauro: Also, another aspect of that is the question of judges and court personnel looking like the people before them and that issue of diversity.

And in my little corner of things, last year I wrote some stories about the dearth of minorities as law clerks in the Supreme Court. And I was struck by the incredible depth of anger that I heard from minorities that the Supreme Court, the highest court of the land, has, for whatever reason — and there are a lot of reasons — had very few, fewer than two percent, African-Americans as law clerks. It really offends people that the people who are operating the courts and doing the heavy lifting just don't look like that.



When we talk about public dissatisfaction, we often have a tendency to immediately think that it results from what we might call performance problems, issues of court costs being excessive, court delays being too long or even the inevitable fact that many people don't receive the outcomes that they feel they ought to receive. That is, many people lose their cases. What is interesting ... is how little these issues are important in shaping public confidence in the courts or public satisfaction with legal authorities. When we look at what people really care about, that is, what drives their confidence, what leads them to be willing to accept decisions, we usually find that the key factors are issues of process, what people experience in the manner in which their cases are resolved.

– Tom Tyler

thing I would argue that these findings suggest is that the public is looking to the courts to take on a larger role than they have historically taken. We have heard the term, therapeutic justice, and the argument that the public is looking to court to be more responsive to public concerns than it has in the past, perhaps because the public has lost respect for other government institutions, perhaps because other social institutions are not fulfilling their roles.

For whatever reason, the public is coming to the courts expecting more out of court personnel, judges, than simple resolutions of narrowly defined legal issues; [they are] looking for a larger sense of responding to people's needs and concerns in a broader sense.

of the day? What is the portrait of the day? Who were the great thinkers of the day? We need to stop lying that somehow we are not influenced by what's happening around us.

If we don't deal with the reality of the situations within the community, you are going to have a judicial shroud, but that shroud, I think, sometimes gets you in trouble because you're not dealing with the fact that there are things happening to real people in the community that somehow the judicial doesn't weigh in at some point. Even though they have to be objective, people will somehow feel that somehow you are not really representing them, that you want to be off on a pedestal and don't want to really get your hands messy.

Ms. Crier: Any other comments? Any final thoughts as we sort of round out the hour? We sort of made our way now to some conclusions, but any final thoughts?

Mr. Dark: A couple of things. I think that when we look at this whole area, we need to look at all the things that are going on. We need to look at what's happening in law school admissions. We need to see what kind of opportunities people of color in particular have in law schools for clerkships, what kinds of bar activities they are involved in.

We also need to ask the question whether or not all of us see this as our issue, that this isn't just for blacks, Hispanics or Native Americans; that if the system does not reflect currently

what you want it to look like, for those people who are blessed to have the opportunity to serve to take their jobs seriously and be a little more inclusive in doing the work that they do.

Mr. Tyler: I think the crucial question to be addressed by this group, really, is what is it people want from the courts, what function they are trying to have the courts serve and how the courts can be responsive to those changing developing public concerns. I think that all of the research that we have heard about from the Hearst survey and the other surveys is really information to you about the nature of public grievances, and those tell you, basically, the unmet expectations and unmet needs that people feel when they go to the whole system.

Ms. Crier: On that note, Tom, you and I could have some interesting conversations because I would suggest the unmet needs have been generated in part by the willingness to try to fulfill any and all needs of our society.

There was a case in front of the Supreme Court not that long ago. Justice Scalia leaned over and asked the Solicitor General, as I understand it, is there any law the legislature could make that would — would — violate the constitution, and the Solicitor General couldn't come up with one. In other words, we have broadened our political and legal involvement in citizens' lives to the point that there is nothing the legislature can't move into to control our lives. There is nothing the law cannot and, therefore, people say, should not move into to control our lives.

But I would suggest on a very broad scale as a nation, a nation becoming a nation of victims — I mean, my goodness, our Supreme Court right now is reviewing the ADA to decide if near-sightedness is a disability.* Do you realize that we are virtually all disabled? Do you like feeling that way? Does that make you feel empowered?

I would suggest the law has an extra-

ordinary role to empower those without, to balance in society, but it should not castrate its citizens in their feelings of personal power and personal responsibilities. So, since I have the last word, let me finish with the notion that action is critical, but [you should] also learn where we should not act and make that an important consideration, as well.

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* For evidence that the discussion at the Washington conference on public trust and confidence was "no holds barred," see the response to this statement by Lyle Denniston at page 54 *infra*. For those who want to see what the Supreme Court actually said on the subject, a month after this exchange, see *Sutton v. United Air Lines, Inc.*, 119 S. Ct. 2139 (1999); and *Albertsons, Inc. v. Kirkingburg*, 119 S. Ct. 2162 (1999).