

Public Trust and Confidence in the Courts:

A National Conference and Beyond

Steve Leben

For two days in May 1999, 500 attendees representing the state and federal judiciary, the bar, the media and the public participated in the National Conference on Public Trust and Confidence in the Justice System, held in Washington, D.C. In this special issue of *Court Review*, we take you into – and beyond – the conference for an in-depth review of the current state of public trust and confidence in the courts and what may be done to improve it.

We find it hard to imagine a more important topic for judges to consider. As Justice Thurgood Marshall once said, “We must never forget that the only real source of power that we as judges can tap is the respect of the people.”

The conference drew an impressive array of attendees and sponsors. Teams attended from each state, with most of the state teams headed by the state’s chief justice. A number of federal judges participated as well. There were approximately equal numbers from four groups: judges, attorneys, court administrators and invited members of the public. Convened by the National Center for State Courts, the conference was formally sponsored by the Conference of Chief Justices, the Conference of State Court Administrators, the American Bar Association and the League of Women Voters.

In the year leading up to the conference, two national public opinion surveys were taken to measure public trust and confidence in the courts. One was sponsored by the American Bar Association; the other was commissioned by the National Center for State Courts and funded by the Hearst Corporation. We reviewed the ABA survey data in the Winter 1998 issue of *Court Review*, and the National Center’s survey is reviewed in detail later in this issue.

For those looking for positive numbers, they can, indeed, be found. In the ABA survey, 54% agreed or strongly agreed that most judges are extremely well qualified for their jobs; and the “justice system in general,” “state and local courts,” and “federal courts other than the U.S. Supreme Court” all ranked ahead of the public schools, the Congress, state legislators, the Executive Branch of the federal government and the media in terms of public confidence. The U.S. Supreme Court, with 50% expressing very high confidence in it, even ranked ahead of the medical profession, local police and organized religion (all of which were ranked ahead of the other court entities described above).

But, as David Rottman and Alan Tomkins detail in their article in this issue, there are a great many signs of trouble in the data as well. Foremost among those for this nation rich in diversity is a growing belief among the three largest racial

groups that minorities are not treated fairly in the courts. Sixty-eight percent of African-Americans said that African-Americans were treated worse in the court system than whites; 43% of whites and 42% of Hispanics agreed. It is no surprise that African-Americans expressed low levels of confidence in the courts in their community.

And while some measures of the opinion of judges were good, others were not: “courts in your community” ranked sixth out of eight public institutions in terms of public confidence when measured in the National Center’s survey. Although not a majority, more people thought court cases were handled in a “poor” manner than thought they were handled in an “excellent” manner.

In the National Center’s survey, taken in January and February 1999, the U.S. Supreme Court ranked a bit lower in public trust than it had in the ABA survey taken in August 1998, coming in below the local police and the medical profession. “Courts in your community” were ranked below the medical profession, public schools and the state governor’s office in the National Center survey, finishing ahead only of the state legislature and the media.

With these data in mind, the conference attendees heard from a variety of speakers and participated in extensive break-out group meetings. All of the major presentations – from Chief Justice William Rehnquist, Justice Sandra Day O’Connor, former New York Governor Mario Cuomo, and panel discussions led by Fox TV’s Catherine Crier, Harvard professor Charles Ogletree, Jr., and C-SPAN’s Bruce Collins – are included in this issue of *Court Review*. After hearing these presentations and discussion of the issues in both break-out groups and plenary sessions, the attendees cast votes that would be used in developing an overall, national plan for improving public trust and confidence in the courts.

Conference Participants Set the Agenda

The first task faced by conference participants was ranking a set of issues affecting public trust and confidence. Fifteen issues – identified in pre-conference planning sessions and during the first day’s break-out sessions – were considered. The result of voting among conference participants is shown in Table 1.

Reflecting the public opinion survey results, participants identified unequal treatment in the justice system as the most important issue affecting public trust and confidence. Two other issues followed close behind: the high cost of access to the justice system and lack of public understanding. As shown

**Table 1:
ISSUES AFFECTING PUBLIC TRUST & CONFIDENCE**

Issue	Ranking
Unequal treatment in the justice system	6.4
High cost of access to the justice system	6.2
Lack of public understanding	5.8
Unfair and inconsistent judicial process	4.5
Partisan versus merit selection of judges	4.5
Poor customer relations with public	4.0
Judicial isolation: lack of contact with and perspective about public	3.9
Lack of independence and sound interbranch relations	3.9
Role, compensation and behavior of bar in justice system	3.7
Inefficient processing of cases	3.6
Inadequate response to change	3.5
Poor use and treatment of jurors	3.5
Bias in personnel practices within justice system	3.4
Inability to participate effectively in justice system	2.9
Lack of accountability for public resources	2.2
Issues ranked in order of importance by attendees at the National Conference on Public Trust and Confidence in the Justice System, May 1999. Ranking system: 8.0 = critical and essential, one of the vital few that should make the short list; 4.0 = important enough to be included on the national agenda; 2.0 = important, but less so in comparison to other choices; 0.0 = not important, should not be on the short list of important issues.	

in Table 1, several other issues scored at or near the 4.0 level on the 8.0 voting scale used for the conference; as defined on that scale, any issue receiving a 4.0 or greater score was deemed important and worthy of being on the national agenda.

One problem issue – defined as “judicial isolation; lack of contact with and perspective about [the] public” – narrowly missed attaining the 4.0 level, but a review of the data suggests it may represent a significant issue, at least in the view of many conference participants. Two groups — court administrators and the public representatives — rated this issue as an important one, with scores of 4.4 and 4.3 respectively. However, judges were less likely to view their own isolation and lack of contact with the public as an important issue affecting public trust and confidence, giving it only a score of 3.3; lawyers rated it at 3.7.

I suspect that the court administrator and public respondents may have been more on the mark in this case. Lawyers are often a fairly insular group to begin with; when a lawyer becomes a judge, he or she becomes even more isolated. Even though it did not attain the magical “4.0” score in the overall survey of conference participants, it is an issue worthy of inclusion on any list of major issues to be addressed involving

the justice system. In an essay that will appear in the next issue of *Court Review*, psychologist Isaiah Zimmerman will document some of the causes and effects of judicial isolation, as well as suggesting some remedies.

The second task of survey participants was to rank the potential strategies for improving public trust and confidence. As shown in Table 2, six strategies received scores of 5.0 or better and nine received at least a 4.0 score, indicating they were important enough to be on the national agenda. Improving education and training for judges and court staff was the top

**Table 2:
STRATEGIES TO IMPROVE PUBLIC TRUST & CONFIDENCE**

Improve education and training	5.9
Make the courts more inclusive and outreaching	5.6
Improve external communication	5.6
Swift, fair justice; resolve cases with reasonable promptness/cost	5.4
Share programs and activities among the states that have been used to improve public trust and confidence	5.4
Implement recommendations of gender, race and ethnic bias task forces and replicate the successes in other jurisdictions	5.0
Make the courts more demographically representative of the community they serve	4.3
Improve management and use of information technology	4.1
Enforce court procedures and powers of superintendence	4.0
Evaluate judicial performance; gather data from litigants on courtroom experience	3.8
Simplify courts to make them more accessible to persons without an attorney	3.7
Improve practice of law to provide universal, affordable and competent legal services by lawyers	3.7
Change the economics of the courts and the legal profession	3.4
Strengthen and improve the relations of the judiciary with other branches and court-related agencies	3.3
Make changes in existing laws and rules governing court procedure	3.3
Make courts more adaptable to social change	3.3
Strategies ranked in order of importance by attendees at the National Conference on Public Trust and Confidence in the Justice System, May 1999. Ranking system: 8.0 = critical and essential, one of the vital few that should make the short list; 4.0 = important enough to be included on the national agenda; 2.0 = important, but less so in comparison to other choices; 0.0 = not important, should not be on the short list of important strategies.	

response. Two of the top six responses related to the concern about unequal treatment in the justice system: making the courts more inclusive and outreaching, and implementing recommendations previously made by various gender, race and ethnic bias task forces. Another highly suggested strategy was sharing programs and activities among the states that have been used to improve public trust and confidence.

The third task of survey participants was to rank specific national actions that could be taken, identifying those that had the greatest potential for improving public trust and confidence. As shown in Table 3, the top response was to develop and to disseminate model programs or best practices from around the country. The second highest response was examining the role of lawyers and their impact on public trust. Other top responses were engaging in public education at the national level and improving public access through information technology.

**Table 3:
KEY NATIONAL ACTIONS TO OVERCOME BARRIERS
TO INCREASED PUBLIC TRUST & CONFIDENCE**

Develop and/or disseminate models or best practices	6.1
Improve education and training	5.9
Examine the role of lawyers and their impact on public trust	5.5
Engage in public education at the national level	5.5
Improve public access through information technology	5.2
Foster and maintain network to sustain public trust	4.9
Provide national education programs for persons within the system	4.7
Develop standards and procedural reforms	4.7
Promote ongoing national dialogue on public trust	4.6
Provide specialized expertise	3.8
Act as liaison or take proactive stance with federal government	2.9
<small>Actions ranked in order of importance by attendees at the National Conference on Public Trust and Confidence in the Justice System, May 1999. Ranking system: 8.0 = critical and essential, one of the vital few that should make the short list; 4.0 = important enough to be included on the national agenda; 2.0 = important, but less so in comparison to other choices; 0.0 = not important, should not be on the short list of important actions</small>	

In this issue, we have tried to provide information that would give you additional background regarding the most important issues and action items identified in this survey of conference participants. Respondents clearly indicated that information regarding programs already in use and working, the “best practices” presently known, should be widely shared. We have aimed the focus of our Resource Page on public trust and confidence issues. While our list is somewhat tentative and certainly eclectic, we think that individual judges throughout the country will find it of use.

Respondents also indicated that the role of lawyers in the system and their impact on public trust needed to be examined. We start down the road toward that examination with an excellent article in this issue by Paula Hannaford, who discusses the National Action Plan on Lawyer Conduct, which was adopted by the Conference of Chief Justices earlier this year. As Hannaford explains, that plan contemplates a greater role for judges in improving professionalism in the legal system, which could have a positive effect on public trust and confidence.

A National Action Plan Emerges

One of the conference goals was the preparation of a national action plan for improving public trust and confidence in the courts. After the meeting, representatives of various organizations that had participated in the conference met to begin work on the preparation of that plan. As of the time this issue of *Court Review* went to press, the plan had been issued in draft form. That draft is available on the Web at <http://www.ncsc.dni.us/PTC/Ptc.htm>. When the plan is finalized, it will be available at that Web site and we’ll note its existence in a later *Court Review* issue as well.

The draft plan describes what can be done by national organizations to improve public trust and confidence. Accordingly, its focus is not on the individual judge or court, but on what can be done at the national level to assist individual judges, individual courts and state-level judicial systems in improving public trust and confidence. Among the actions identified in the draft plan were the development of a nationwide database of activities related to building trust and confidence; the establishment of a consortium of organizations to work together on these issues; and the creation of an electronic network that would keep those interested in this issue in contact with each other and with useful information.

Where Things Go from Here

At the national level, a great deal of work is in progress to build upon the efforts of the national conference. At a November 1999 joint meeting of the leaders of the Conference of Chief Justices, the Conference of State Court Administrators and the National Center for State Courts, those groups agreed to develop a plan to identify best practices from around the country, which was the top action item of conference attendees. In addition, several groups, including the National Center for State Courts and the American Bar Association, are working to foster continued national efforts to improve public trust and confidence in the courts.

“The whole philosophy of this is that improving public trust and confidence is a shared responsibility at the local level, the state level and the national level,” Pamela Casey, associate director of research at the National Center for State Courts, said. “What we’re trying to do here at the national level is to say, ‘What can we do to facilitate or coordinate the process of sharing?’”

If pending funding applications are approved, Casey said that the National Center plans to have a specific Web site devoted to resources that might be useful in addressing public trust and confidence issues up and running by the fall or winter of 2000. That site would include information on “best prac-

tices,” once a process for designating them is in place, and would also include information on “promising practices” as soon as possible.

Casey said that attempts would also be made to identify other national organizations, even ones not directly related to courts, that were interested in some of the same goals that are part of the public trust and confidence movement. The database on the Web will attempt to provide information on such organizations.

“A number of those organizations, surprisingly, do have issues that overlap (with ours),” she said. “A health organization might be involved in some of the efforts around improving drug courts, for instance, so there are a lot of organizations out there that might have information, resources, technical assistance, volunteers – and they might be interested in working with courts on various programs.”

At present, an individual court or judge wanting to consider working to improve public trust and confidence at the local court level would be well served by reviewing the Trial Court Performance Standards. These twenty-two performance standards, as Casey noted in an article in the Winter 1998 *Court Review*, articulate the fundamental purposes of courts and offer the court community a way of communicating with each other and their constituents about the work of courts. Three of the performance standards are specifically within the public trust and confidence area, but, in reality, a strong performance in each of the twenty-two performance standard areas would surely lead to increased public trust and confidence.

Eventually, it is likely that the public trust and confidence Web site will provide additional resources for implementing

the Trial Court Performance Standards.

“What I want to do is to look at promising practices to help you achieve or meet your goals within those performance standard areas,” Casey said, noting that the new public trust and confidence Web site and the Trial Court Performance Standards will go hand in hand.

“You decide to do the standards, you decide you need to help implement some initiatives regarding one or two of the standard areas, then you might be able to go to this public trust and confidence Web site and find out what some other folks have done in those areas already, rather than reinventing the wheel yourself. So it’s another tool to help you with the standards,” she said.

Thus, for courts that want to address public trust and confidence issues now, a dual starting point might be the materials in this issue along with the Trial Court Performance Standards (TCPS). For courts that have not previously undertaken to review their efforts and practices under the TCPS, that would be an excellent framework for addressing the desire to improve public trust and confidence. For courts that have already undertaken some sort of TCPS usage, we hope that the materials in this issue will be of use in considering which of the twenty-two performance standard areas might best be made the priorities in the near term.

We will keep you informed here in *Court Review* as further developments occur.

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