# Table of Contents

## Special Issue Overview

<table>
<thead>
<tr>
<th>Page</th>
<th>Title</th>
<th>Author</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Public Trust and Confidence in the Courts: A National Conference and Beyond</td>
<td>Steve Leben</td>
</tr>
</tbody>
</table>

## Remarks and Essay

<table>
<thead>
<tr>
<th>Page</th>
<th>Title</th>
<th>Author</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>On Doing the Right Thing and Giving Public Satisfaction</td>
<td>William H. Rehnquist</td>
</tr>
<tr>
<td>10</td>
<td>Public Trust as a Dimension of Equal Justice: Some Suggestions to Increase Public Trust</td>
<td>Sandra Day O'Connor</td>
</tr>
<tr>
<td>14</td>
<td>We Must Lead the Charge</td>
<td>Mario Cuomo</td>
</tr>
<tr>
<td>20</td>
<td>Public Involvement as the Key to Public Trust and Confidence: A View from the Outside</td>
<td>Margot Lindsay</td>
</tr>
</tbody>
</table>

## Articles

<table>
<thead>
<tr>
<th>Page</th>
<th>Title</th>
<th>Authors</th>
</tr>
</thead>
<tbody>
<tr>
<td>24</td>
<td>Public Trust and Confidence in the Courts: What Public Opinion Surveys Mean to Judges</td>
<td>David B. Rottman and Alan J. Tomkins</td>
</tr>
<tr>
<td>32</td>
<td>How Previous Court Experience Influences Evaluations of the Kansas State Court System</td>
<td>Joseph A. Aistrup and Shala Mills Bannister</td>
</tr>
<tr>
<td>36</td>
<td>The National Action Plan on Lawyer Conduct: A Role for the Judge in Improving Professionalism in the Legal System</td>
<td>Paula L. Hannaford</td>
</tr>
</tbody>
</table>

## Panel Discussions

<table>
<thead>
<tr>
<th>Page</th>
<th>Title</th>
<th>Moderator</th>
</tr>
</thead>
<tbody>
<tr>
<td>46</td>
<td>Public Opinion of the Courts: How It Has Been Formed and How We May Reshape It</td>
<td>Catherine Crier</td>
</tr>
<tr>
<td>54</td>
<td>Critical Issues Affecting Public Trust and Confidence in the Courts</td>
<td>Charles Ogletree, Jr.</td>
</tr>
<tr>
<td>63</td>
<td>Potential Strategies for Improving Public Trust and Confidence in the Courts</td>
<td>Bruce Collins</td>
</tr>
</tbody>
</table>

## Departments

<table>
<thead>
<tr>
<th>Page</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Editor’s Note</td>
</tr>
<tr>
<td>3</td>
<td>President’s Column</td>
</tr>
<tr>
<td>84</td>
<td>The Resource Page</td>
</tr>
</tbody>
</table>
In this issue, we bring you special coverage of one of the most important topics faced by the judicial branch of government: maintaining and enhancing the trust and confidence of the public in the courts. To do justice to this subject, this is the largest issue of Court Review ever to hit the streets and, we think, one of the best as well.

We begin with full coverage of the National Conference on Public Trust and Confidence in the Justice System, held May 14-15, 1999 in Washington, D.C. All of the major presentations made at that conference are here, including the remarks of Chief Justice William Rehnquist, Justice Sandra Day O'Connor and former New York Governor Mario Cuomo. (The titles placed on their remarks are ours; the rest of the words are theirs.) In addition, we have included the three panel discussions at which, in total, seventeen distinguished scholars, judges and leaders discussed public trust and confidence issues. In an overview at the start of this special issue, I have reviewed the conference itself in some detail, including results of voting among conference participants regarding which problems are the most important to address and which solutions bear the greatest promise.

In addition to coverage of the conference itself, we have also added some other articles and features to provide a more complete treatment of this subject. Our lead article, by David Rottman and Alan Tomkins, provides an in-depth review of the national public opinion survey first released at the conference. They conclude that there are significant warning signs in the data about public perceptions of the judiciary, but that judges can make a difference in how the courts are perceived. In a companion article, Joseph Aistrup and Shala Bannister look at a recent opinion survey in a single state, Kansas, and the relationship between court experience and confidence in the courts.

Our second major article, by Paula Hannaford, reviews the National Action Plan on Lawyer Conduct, adopted by the Conference of Chief Justices in 1999. Hannaford suggests that there is an appropriate and increased role for judges to play in improving the professionalism of lawyers, and that this can have its own positive effect on trust and confidence in the courts.

We also noted that the major addresses at the conference included only judges and politicians. While their comments are, indeed, noteworthy, we have added an essay by Margot Lindsay, an outsider with frequent contact with the courts, about some of her own experiences and the possibilities for greater public interaction with the courts.

Last, we have provided a detailed listing of resources, beginning at page 76, that may be of assistance to you in considering, or in working on areas that may affect, public trust and confidence in the courts. We hope you find this issue of Court Review to be of interest. If so, and if you don’t already receive Court Review as an AJA member or as a subscriber, we hope that you will take a moment either to join AJA or to subscribe to Court Review. – SL
President’s Column

Gerald T. Elliott

From time to time it is appropriate to discuss our association and to reaffirm its reasons for existence.

The American Judges Association is an independent organization: it is open, but limited, to all judicial officers regardless of training. The membership operates as a single body, without division by jurisdiction. These defining characteristics create an association with focus on the institutional issues common to all courts and judges.

The mission of the association, common to all members, is to promote the effective administration of justice. To carry out this mission, the association operates in three ways. First, it provides leadership and a voice for judges. Second, it works with other organizations, both private and governmental. Third, it seeks to communicate and to cooperate with the public whom judges and the courts exist to serve.

The institutional issues of judges and courts during the Twentieth Century have been largely internal, focusing on operation and procedure. Subjects have included court unification, court management and administration, judicial selection, judicial education, and pleading and discovery practices.

More recently, however, judicial elections, public outcry and riots, calls for judicial impeachment, proposals for judicial term limits, and public surveys have refocused institutional interest to include external issues. It is no longer sufficient to effectively manage a docket, know the rules of evidence, provide an opportunity to be heard, and afford the process that is due. Today the issues include not only how courts and judges operate and decide cases, but also for whom they operate and how they perform their responsibilities. Thus, as the Twenty-first Century approaches, the institutional issues and concerns have clearly shifted to include not only an internal, but also an external, focus.

The overarching and obvious examples of this external focus are public trust and confidence, and judicial independence. Included, and certainly no less important, are diversity and ethnic equality, the costs of and access to the legal system, pro se representation, court performance, judicial evaluations and selection, and judicial isolation and outreach.

Restated more broadly, but perhaps more precisely, the institutional issues, now and for the foreseeable future, for courts and judges, include the relationship of the courts and the public they serve. That, I hope, is exactly where the institutional focus of this association will be as well.

Other leadership has already stepped forward. The National Center for State Courts and American Bar Association have joined to lead an effort to develop a national agenda. The Conference of Chief Justices, Conference of State Court Administrators, National Association for Court Management and National Association of State Judicial Educators all have given it attention. Some state judicial systems, courts and judges also have begun notable efforts, but most judges and courts are notable for our failure to act.

The relationship of judges and courts with the public they exist to serve is an institutional issue that requires and deserves an institutional response. The American Judges Association is positioned to provide leadership for that effort.

Specifically, the association has advanced two new judicial leadership programs: Judicial Leadership for Diversity and Ethnic Equality, and the Judicial Leadership for Substance Abuse Reduction Strategy Initiative. The fundamental premise of each is the same: There are existing organizations with a substantial body of knowledge and practical court experience on the one hand, and, on the other hand, there are a great many judges and courts who can put this knowledge and experience to use. To date, however, there is little institutional leadership or commitment to disseminate and promote their use. The ultimate role of these programs is to do just that. Each program will endeavor to work with existing organizations to create a plan, acquire funding, develop a curriculum and promote and manage its distribution.

As the national agenda for public trust and confidence in the courts is finalized by the National Center and other groups, that agenda may also provide opportunities for comparable judicial leadership programs.

These issues are of concern to all judges and the membership of all judicial organizations, not just the American Judges Association. Judicial leadership must come from all judicial organizations if these efforts are to be truly credible and successful. To that end, the Judicial Division of the American Bar Association has been approached with the proposal for joint programs and has responded positively; similar initiatives will be extended to the National Association of Women Judges, to the Judicial Division of the National Bar Association, to the Judicial Division of the National Hispanic Lawyers Association, to the National Tribal Councils and to other judicial organizations with an interest in these issues.

These efforts to provide leadership and a voice for judges, by working with other like-minded organizations to communicate and cooperate with the public whom we all exist to serve, will carry out the mission of the American Judges Association, common to all judges, by promoting the effective administration of justice.
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 breakout 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**

<table>
<thead>
<tr>
<th>Issue</th>
<th>Ranking</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unequal treatment in the justice system</td>
<td>6.4</td>
</tr>
<tr>
<td>High cost of access to the justice system</td>
<td>6.2</td>
</tr>
<tr>
<td>Lack of public understanding</td>
<td>5.8</td>
</tr>
<tr>
<td>Unfair and inconsistent judicial process</td>
<td>4.5</td>
</tr>
<tr>
<td>Partisan versus merit selection of judges</td>
<td>4.5</td>
</tr>
<tr>
<td>Poor customer relations with public</td>
<td>4.0</td>
</tr>
<tr>
<td>Judicial isolation: lack of contact with and perspective about public</td>
<td>3.9</td>
</tr>
<tr>
<td>Lack of independence and sound interbranch relations</td>
<td>3.9</td>
</tr>
<tr>
<td>Role, compensation and behavior of bar in justice system</td>
<td>3.7</td>
</tr>
<tr>
<td>Inefficient processing of cases</td>
<td>3.6</td>
</tr>
<tr>
<td>Inadequate response to change</td>
<td>3.5</td>
</tr>
<tr>
<td>Poor use and treatment of jurors</td>
<td>3.5</td>
</tr>
<tr>
<td>Bias in personnel practices within justice system</td>
<td>3.4</td>
</tr>
<tr>
<td>Inability to participate effectively in justice system</td>
<td>2.9</td>
</tr>
<tr>
<td>Lack of accountability for public resources</td>
<td>2.2</td>
</tr>
</tbody>
</table>

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.

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

<table>
<thead>
<tr>
<th>Strategy</th>
<th>Ranking</th>
</tr>
</thead>
<tbody>
<tr>
<td>Improve education and training</td>
<td>5.9</td>
</tr>
<tr>
<td>Make the courts more inclusive and outreaching</td>
<td>5.6</td>
</tr>
<tr>
<td>Improve external communication</td>
<td>5.6</td>
</tr>
<tr>
<td>Swift, fair justice; resolve cases with reasonable promptness/cost</td>
<td>5.4</td>
</tr>
<tr>
<td>Share programs and activities among the states that have been used to improve public trust and confidence</td>
<td>5.4</td>
</tr>
<tr>
<td>Implement recommendations of gender, race and ethnic bias task forces and replicate the successes in other jurisdictions</td>
<td>5.0</td>
</tr>
<tr>
<td>Make the courts more demographically representative of the community they serve</td>
<td>4.3</td>
</tr>
<tr>
<td>Improve management and use of information technology</td>
<td>4.1</td>
</tr>
<tr>
<td>Enforce court procedures and powers of superintendence</td>
<td>4.0</td>
</tr>
<tr>
<td>Evaluate judicial performance; gather data from litigators on courtroom experience</td>
<td>3.8</td>
</tr>
<tr>
<td>Simplify courts to make them more accessible to persons without an attorney</td>
<td>3.7</td>
</tr>
<tr>
<td>Improve practice of law to provide universal, affordable and competent legal services by lawyers</td>
<td>3.7</td>
</tr>
<tr>
<td>Change the economics of the courts and the legal profession</td>
<td>3.4</td>
</tr>
<tr>
<td>Strengthen and improve the relations of the judiciary with other branches and court-related agencies</td>
<td>3.3</td>
</tr>
<tr>
<td>Make changes in existing laws and rules governing court procedure</td>
<td>3.3</td>
</tr>
<tr>
<td>Make courts more adaptable to social change</td>
<td>3.3</td>
</tr>
</tbody>
</table>

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.

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
response. Two of the top six responses related to the concern about unequal treatment in the justice system: making the courts more inclusive and outreach, 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.

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.

Steve Leben, a general jurisdiction state trial judge in Kansas, is the editor of Court Review.
I am honored to open the National Conference on Public Trust and Confidence in the Judicial System this morning. . . . The goal of this conference is a very important one: to maintain and build public trust in our system of justice.

On the federal side, recent survey results are encouraging. At the federal level, in the February 1999 survey by the Gallup poll, eighty percent of Americans said they had a great deal or a fair amount of trust in the judicial branch of the government, compared with sixty-four percent in the executive branch and fifty-seven percent in the legislative branch. And a February 1999 ABA comprehensive, nationwide survey on the U.S. justice system concluded that, at least conceptually, there is strong support for the justice system. The data indicated that eighty percent of all respondents either strongly agree or agree, based on a five-point scale, that in spite of its problems, the American justice system is still the best in the world. But the surveys also revealed areas in need of improvement and a variation of level of confidence for specific components of the system, and comparisons with the other branches of government and other judicial systems should not lead us simply to rest on our laurels.

How do we go about maintaining and building public confidence in our judicial system? If we were talking about the motor vehicle division get what they want — a renewal of a driver's license, a transfer of title — it is a relatively easy goal to accomplish. Even the rare individual who fails the eye examination will not blame the motor vehicle division. Prompt and courteous treatment of all applicants is all that is required.

With the courts, however, it is different. It is not so easy. In the prototypical lawsuit, one party will win, and one party will lose. Many of the losers will understandably be disappointed, and some may feel that they got a raw deal from the court. There is little that the judicial system can do to change this perception if it is based only on the fact that the litigant lost. But there will also be criticism of particular decisions of courts, not only by losing litigants, but by lawyers, laymen, editorial commentators and legal journals, which disagree with the doctrine which underlies a particular decision.

In a country such as ours, where both federal and state courts have the power of judicial review — that is, the power to declare an act of the legislature unconstitutional — there is bound to be such criticism. One would hope that the criticism would be informed and rational. But as Justice David Brewer of our Court said more than a century ago, “True, many criticisms may be like their authors — devoid of good taste. But better all sorts of criticism than no criticism at all.”

How, then, do the courts respond to such criticism? In the federal system, Article 3 of the Constitution and the failure of the efforts to remove Justice Samuel Chase of our Court in 1805 have meant that a federal judge is not removable for his judicial acts, however aberrant they may appear. This is the way we assure that we have a genuinely independent federal judiciary.

The protections in state judiciaries vary. I know, with retention elections in many states providing a lesser degree of protection of judges’ tenure than is provided in the federal system. But in the latter, at least, a judge, or the judges of a collegial court, will remain in office even though a large segment of the public may disagree with a particular decision they have rendered. This is the price we pay for an independent judiciary.

Now, of course, it is possible, in the name of building public trust and confi-
dence in the judicial system, to say that judges who have rendered an unpopular decision should reconsider it if major-ity of the public does not agree with it. But whatever such a practice might do to increase public trust and confidence in the judicial system — and I think it might be quite counterproductive — it would be quite contrary to the idea of an independent judiciary. Recall of judicial decisions by some sort of a popular mandate, endorsed by Theodore Roosevelt in his Bull Moose campaign for the presidency in 1912 — and notably, he did not get elected — is too high a price to pay for public approval.

This doesn't mean that public criticism of judicial decisions doesn't serve a useful purpose. Appellate judges who rendered a decision may later change their minds in response to criticism. And as judges of an appellate court resign, retire or die, public opinion through the appointing process, by which the political branches choose their successors, may change the judicial philosophy of a court. This is a slow process, but it is the only one consistent with the idea of an independent judiciary.

Whatever may be the merits or demerits of a poll-driven executive or a poll-driven legislature, the specter of a poll-driven judiciary is not an appealing one. So the search for greater public trust and confidence in the judiciary must be pursued consistently with the idea of judicial independence. This does not mean that there is not a great deal that can be done along that line. Improved juror utilization; arrangements by which jurors play a more active part in the deliberation of a court, such as are now being carried out in Arizona and some other states; [and] courts giving plain reasons for reaching a result are all useful steps in that direction. Particular attention should be paid to traffic court, where most people have their only personal contact with our judiciary system.

People today are far better educated and more aware of their rights than they were when this nation began more than two centuries ago. Yet the first Chief Justice of the Supreme Court of the United States, John Jay, said at that time, "Next to doing right, the great object in the administration of justice should be to give public satisfaction." Surely this remains a sound maxim to guide a conference such as this two centuries later.

Chief Justice William H. Rehnquist was appointed to the United States Supreme Court by President Nixon in 1971, taking his oath of office, following confirmation, on January 7, 1972. He became the nation's 16th Chief Justice in 1986 on appointment by President Reagan. A Stanford law graduate, he clerked for Justice Robert H. Jackson in 1952-53. Rehnquist practiced law in Phoenix and served as an Assistant U.S. Attorney General prior to his appointment to the Court.
I work in a building which bears a marble inscription over the entrance that says, “Equal Justice Under Law.” The subject of this conference shows an admirable awareness of the importance of public trust as a dimension of equal justice.

This is the first national conference on this subject, and it is very impressive that so many state chief justices and state court administrators are here. Also impressive is the imposing array of national court organizations, the American Bar Association, state bar associations, representatives of the federal judiciary, the League of Women Voters, the National Association of Women Judges and the many private citizens and citizen groups who are present here today. It is a most worthy and appropriate conference.

You know, as courts and as judges in courts, we do care first and foremost about how we serve the public. And our report cards in the last analysis come from the public that we serve. And nothing could be more important than to step back now and then and look at that. Sometimes in the pressure of doing what judges have to do and running a tight ship in the courtroom and deciding tough issues, we might forget that, in the last analysis, it is, after all, the public we serve and that we do care how the courts are perceived generally.

And when he invited me to speak today, Chief Justice Tom Zlaket [of Arizona] made it clear that he and his fellow chief justices are not here just to learn more about how we can build public trust in the justice system, but to become catalysts for action on the subject. And the measure of this conference will be what happens when you return home, what you do about the conclusions and ideas discussed here.

The 1999 national survey taken by the National Center for State Courts provides a fascinating glimpse into public attitudes about state courts. Together with the earlier survey conducted by the American Bar Association, the surveys reveal a fairly high level of public confidence in our courts. There is a widely held belief that, although not perfect, our justice system is one of the best in the world, and public confidence in our system has increased over the last twenty years, even as confidence in other public institutions has declined. Slightly over half of those surveyed had been called for jury service at some time in their lives. The American Bar Association survey reveals strong public support for the use of juries. But the surveys also showed substantial dissatisfaction in some areas and many opportunities for increasing public confidence and trust in the justice system.

You have explored public attitudes and examined your own experiences in the justice system. You have identified a number of critical issues. I have not had the opportunity to be with you for your discussions, and I will mention only a few areas relating to my own longtime concerns. And my failure to mention other issues that you may have discussed and zeroed in on is by no means an indication that I consider them unworthy of attention.

Now, among the ideas that have been discussed here and which will undoubtedly be part of your national action plan is the need to strengthen juvenile and family courts. As a former judge of the Superior Court in Maricopa County, Arizona, I have had the experience of dealing with family issues. Courts that hear family and juvenile cases touch the lives of many people, and they are often called upon to help mend social bonds and to try to keep the social fabric of the community intact. As the involvement of courts in the area of family and juvenile justice continues to grow with our population, it is likely that public perception of courts will be increasingly influenced by how well these family and juvenile courts function.
The public opinion survey conducted by the National Center for State Courts demonstrates that much improvement is needed in this area. The survey reported that a majority of Americans believe that court handling of family and juvenile cases is merely fair or poor. Only one-third of the public rates the courts as doing either an excellent or good job with juvenile cases. This rating was lower than that for the court handling of civil and criminal cases in general, and it indicates that there is considerable work to be done in the juvenile and family areas.

The low public confidence in these courts reflects in part the difficulty of the tasks these courts face. Family cases present special challenges for judges because the role of the judge in such cases is substantially different than in the run-of-the-mill civil and criminal case. Juvenile judges by necessity become more involved in practical problem solving. They may identify crucial needs for social services.

In child abuse cases, the courts try to provide a protective shield for children and are often called upon to make decisions that fall outside the normal scope of legal training and experience. Juvenile courts require specially skilled and often more expensive staff support to assist the judges handling these non-traditional roles. Consequently, the juvenile judge may spend considerable time overseeing the court staff, doing administrative duties.

Family and juvenile court judges function in a forum that's charged with human emotions. The only time I ever experienced danger in a courtroom was when I sat in a family matter involving the breakup of a marriage and a custody problem. Judges are called upon to make decisions that profoundly affect families. And perhaps nothing is more difficult than terminating parental rights. The emotional trauma of the family court is often exacerbated when litigants choose to represent themselves, as they do more and more often these days.

Indeed, judges working in this area have to operate in what is increasingly becoming a lawyerless environment. The situation is sometimes further complicated by linguistic problems. I don't know what all of you have seen, but certainly in my home county in Arizona, there was a large Spanish-speaking population, and sometimes just communication within the court was more difficult.

Another reason that public perception concerning the handling of juvenile cases is negative may be related to the next point I'm going to make in a few minutes, that there is a rather widespread belief that African-Americans are not treated as fairly as other groups. The statistics of the racial characteristics of juvenile offenders reflect that substantially more African-American young people are charged with delinquency or crime than their numbers in the general population would indicate. The reasons for the disparity need to be examined, and the process of the courts must be made as fair and as evenhanded as we can possibly make it.

The performance of family and juvenile courts is vitally important to society and, of course, to the individuals caught up in a disintegrating family situation. In the planning that follows this conference, I personally hope that a high priority will be given to this area and that judges, law schools, judicial educators and judicial planners will give family and juvenile justice the attention it deserves.

My second point deals with racial bias and court-community relations. And I think this is an issue that should be of concern to all of us, the belief that African-Americans have that our system of justice does not serve them well or well enough. The results of the public opinion survey for this conference illustrate the magnitude of this problem. Two-thirds of the African-Americans surveyed believe that courts are out of touch with the community and that African-Americans are treated somewhat or far worse than other racial groups. Moreover, the survey indicates that members of other racial groups agree that African-Americans are treated less fairly by the courts than other groups. Clearly, this is a problem that has to be addressed.

As we near the end of the Twentieth Century, I think we can look back and say we have made great strides towards the racial integration of our society and the pursuit of gender equality and the protection of fundamental rights and freedoms. But legal change is not always enough. The perception that African-Americans are not afforded equality before the law is pervasive, and it requires us to take action at every level of our legal system, especially at the local level.

The nature of such action will be determined by you and your colleagues. The fact that a conference such as this is taking place indicates that courts are interested in establishing closer relations and better communications with the minority communities that they serve. But concrete action must be taken to insure that court services do not operate in ways that perpetuate racial or gender bias.

The problem of perceptions is not confined to the African-American community. The pre-conference survey reveals that a majority of Hispanic-Americans and forty percent of Caucasians also feel that courts are out of touch with the community.

There are, of course, ethical and prudential limitations on the extent of interaction of judges with the public, but these constraints on judges may permit a more active role for judges in the community than has been the case in the past. As a result of this conference, I hope that states will begin to explore the permissible scope of court-community relations and examine the various ways in which the these relations can be strengthened.

Now, another point: juries. The survey revealed that close to twenty-five percent of those surveyed had been called for jury service. The American Bar Association's survey showed almost seventy percent of those surveyed consider the jury the most important component of the justice system. Most people who actually visit the courts do so when they are called for jury service. Juries usually do their job very well. On occasion they show extraordinary courage in delivering a verdict. But, at times, they can also disappoint us. One of this country's great observers of human nature, Mark Twain, once complained that juries had become "the most ingenious and infallible agency for defeating justice that human wisdom could contrive."

But we are going to continue to rely on juries in this country. Our federal Constitution and all of its state counterparts guarantee the right to trial by jury. It is fundamental to our system of justice. But there are serious problems with
our handling of juries today in many jurisdictions. Solving these problems can be assured if every state will consider some needed changes. Some states have already done so. My home state of Arizona has had a jury project successfully completed, and I think New York State, with Judith Kaye's help, has done the same. And others may be in process.

There are three aspects that I think need particular attention. First, the conditions of jury service. When citizens are called for jury service, they often view it as a burden rather than a privilege. Indeed, some don't show up at all, I'm told. And for good reason: when they arrive at the courthouse, they are frequently treated more like sheep than people, and the system can seem designed to disrupt their lives to the maximum possible degree.

Second is jury selection. The process of selecting a jury from the citizens called for jury service on a particular day has changed somewhat from a necessary safeguard against potentially biased jurors to a way, in many cases, for highly paid jury consultants to attempt to insure a jury favorable to the side paying their fees. And I think this is something that has to concern us with the jury system.

Third, the conduct of the trial itself. Too often, jurors are allowed to do nothing but listen passively to the testimony, without any idea of what the legal issues in the case are because they aren't told at the beginning of the case. They are not allowed to take notes in many jurisdictions or to participate in any way. And at the end of the case, they are finally read a virtually incomprehensible set of instructions and sent into the jury room to reach a verdict in a case they may not understand much better than they did before the trial began.

The jury system is not only central to our trial process, but it is the primary link between the courts and the community. If public attitudes are going to be of concern to us, they certainly are affected by how jurors perceive the system. The impressions jurors receive during their jury service can have a significant impact on public perception about the justice system.

At the very least, every state should reexamine and perhaps narrow the use of peremptory challenges in which jurors are excused with no reason given. Widespread use and abuse of peremptory challenges, I think, has contributed to the impression that some have of unrepresentative juries.

In Arizona, as I said, there have been a series of reforms to increase juror participation at trial and to increase the understanding and respect that citizens have for the system. The time jurors spend in jury service is perhaps our best opportunity to instill in them a sense of trust in the fairness and the competence of the justice system. For this reason, I urge every participating state to examine or re-examine the jury system in the state and to make any necessary changes to make them representative and more effective than has been the case in the past.

At the very least, every state should reexamine and perhaps narrow the use of peremptory challenges in which jurors are excused with no reason given. Widespread use and abuse of peremptory challenges, I think, has contributed to the impression that some have of unrepresentative juries. It has also given rise to so-called "scientific" jury selection which some say can be used to assure a particular verdict. Moreover, the use of unlimited "for cause" challenges to prospective jurors, coupled with extensive media coverage of some cases, leads some courts to search for the most ignorant and poorly informed citizens to serve as jurors in high profile cases because only those citizens are likely to have avoided forming any opinions.

With respect to jurors selected for service, they ought to be given a clear and understandable set of instructions on the law at the beginning of the case as well as at the end. They should be allowed to take notes, to let the judge know of questions they would like asked of witnesses. And some few states now permit the jurors to discuss aspects of the case before they are sent for final deliberations with each other. All these issues and more should be considered.

Finally, access to justice. The survey data developed for this conference also show that a great majority of people do not think justice is affordable, and they attribute this, in large part, to the cost of legal services. It also shows, perhaps not surprisingly, that confidence in the courts increases with income levels.

The Sixth Amendment to the United States Constitution guarantees the accused the right to assistance of counsel for his defense. The Supreme Court has held that this right includes the right to counsel without cost for all indigent defendants in danger of losing their liberty and on their first appeal of right. Congress has now enacted a statute that provides for the appointment of counsel to represent an indigent criminal capital defendant in federal post-conviction proceedings. The clarification and expansion of the constitutional right to legal representation in criminal cases has produced systems to provide counsel to indigent criminal defendants.

But these systems have not always proven to be sufficient. There has been increasing recognition that in capital cases, in particular, the availability and quality of representation is sometimes inadequate. Recognizing these shortfalls, some states have begun taking steps to improve the level of representation in death penalty cases.
Congress recently sought to speed up this process when it enacted the Antiterrorism and Effective Death Penalty Act in 1996. Congress required that states provide a mechanism for the appointment, compensation and payment of reasonable litigation expenses of competent counsel in state post-conviction proceedings brought by indigent prisoners whose capital convictions and sentences have been upheld on direct appeal in the state or have otherwise become final for state law purposes before they may take advantage of new time limits on the filing of federal habeas petitions by capital defendants. This new law, it is hoped, will provide an impetus to the provision of adequate representation to all indigent capital defendants. But the law has no effect, this new law passed by Congress, absent action on the part of states to carry out its provisions in a fair and a faithful manner. And, of course, it addresses but one small part of the broader problem of inadequate counsel for the poor.

The problem of adequate representation for the poor is not, of course, limited to criminal proceedings. Similar problems plague civil proceedings, as well. The economics of modern law practice excludes many people and small businesses from trying to seek civil justice through the courts. Many of the solutions developed for representation of indigent criminal defendants are not practical or appropriate in civil cases, but in our efforts to address the problems of inadequate representation we mustn’t forget that there also is a pressing need to provide access to representation in civil cases to those who can’t afford it.

In large part, because of the expense and difficulty of obtaining adequate representation, more people are resorting to self-representation in courts. This can be risky for the litigants, who often aren’t properly prepared to present their legal claims. It can be burdensome for the courts, which are forced to make decisions in poorly argued and presented cases. As you have learned, some communities are developing computer-aided assistance to pro se litigants in selected areas. Staffing in some jurisdictions is being provided to help people take advantage of these new processes.

These efforts are laudable, and I think we should experiment with an array of such programs. At the same time, we have to continue to encourage alternative dispute resolution at early stages of cases to resolve them before they reach the courtroom. Although the pre-conference survey did not address public levels of satisfaction with alternatives to courtroom litigation, previous surveys have shown significantly greater satisfaction when a dispute is mediated or negotiated as a means of resolving it [rather] than taking it to a court.

The conference has identified many possible ways in which you can work to broaden citizens’ understanding and trust of the justice system. And such understanding and trust is essential to our system of government. It’s a government of the people, and we want the people to understand and to care.

As judges, court administrators and attorneys, we all rely on public confidence and trust to give the courts’ decisions their force. We don’t have standing armies to enforce opinions, we rely on the confidence of the public in the correctness of those decisions. That’s why we have to be aware of public opinions and of attitudes toward our system of justice, and it is why we must try to keep and build that trust. We can do it by working to create a just society. The justice system must provide for the fair, prompt and proper resolution of the conflicts brought to it, and it must also work to help the public see what the system is doing and how it is being done.

You have taken a first step toward that goal by holding this meeting. And it is my hope that this conference has given you some ideas for actions you can take when you go home to put the goals of this conference into effect and make it the landmark event that its organizers hoped it would be. I wish you every success in your efforts on behalf of all of us.

Sandra Day O’Connor became the first woman to serve on the United States Supreme Court when she was appointed by President Reagan in 1981. She had her own law practice for a time in Arizona before she began a career in government service. Justice O’Connor served in all three branches of government in the State of Arizona, where she won three elections to the State Senate, serving as majority leader for two years; served as an Assistant Attorney General; and served as a judge, first on the Maricopa County Superior Court and then on the Arizona Court of Appeals.
Editor’s Note: As New York’s top state jurist, Chief Judge Judith Kaye, noted in her introduction, former New York Governor Mario Cuomo has a well-deserved reputation as one of the nation’s top public speakers. To give our readers the flavor of his speech, as well as the message, we reprint Gov. Cuomo’s remarks in their entirety, including his introductory remarks to the audience and most of the introduction of him by Judge Kaye.

JUDGE KAYE: Good afternoon, colleagues and friends. I’m Judith Kaye from the State of New York. It is a high honor and yet a formidable challenge to introduce Mario Cuomo. I, of course, have in mind the enormous difficulty of conveying in a brief time the greatness and the uniqueness of Governor Cuomo, as I would wish to do. But even beyond that, I know that I can never approach his magnificent introductions of me, first, when he appointed me directly from a New York City commercial trial practice to the state’s highest court and then, ten years later, when he named me Chief Judge of the State of New York, the first woman to hold either office.

But we all know right off the bat that Mario Cuomo is a person of truly incredible courage. The very mention of bats reminds me of our Chief Administrative Judge Jonathan Lippman’s observation that “although a serious blow to the head ended the baseball career of young Mario Cuomo, then playing outfield for the Pittsburgh Pirates farm team, it did not seem to impede his choice of New York State’s Chief Justice.” Judge Lippman adds that “it is best to leave for another day the issue of any causal connection between the two events.” Judge Lippman, who holds his office at the pleasure of the chief judge, obviously is also a person of true courage.

It was, I am sure, a loss for baseball that Lindy LaDuke, as the governor called himself back then, hung up his cleats. But what a gain for our country that Mario Cuomo chose law as his fallback occupation. After achieving top honors at St. John’s University School of Law, Governor Cuomo began his legal career by clerking for Judge Adrian Burke of the New York State Court of Appeals. He then entered private practice and also taught law at St. John’s.

In time, he would serve the State of New York as secretary of state, lieutenant governor and then for twelve years as governor of the State of New York. Today, he is a partner in the distinguished New York City law firm of Willkie, Farr and Gallagher, and he is, in addition, a renowned lecturer, radio commentator and grandfather of nine girls. Thus far.

As a person who has lived his life in the law and public service, as a person who has tussled with the issues of making government meaningful and accessible to the ordinary citizen, Governor Cuomo is an eminently qualified speaker on the issue of public trust and confidence in the justice system.

Just recently, one specific issue to which he turned his prodigious talents is the barrage of politically driven attacks on the federal and state courts. Working with Citizens for Independent Courts, a bipartisan group of scholars and public officials, he has spoken out against corrosive assaults on the judiciary, seeking to raise the general level of consciousness about the role of courts in protecting individual rights and liberties and the long-term implications of shortsighted attacks on the third branch.

Having myself been privileged to watch and hear and read many of Governor Cuomo’s speeches, I have concluded that his well-deserved reputation as one of the preeminent speakers of our time is not simply the consequence of his distinctive delivery and cadences, which are marvelous, or his powerful presence, which is undeniable, or even his towering intellect, which shines through so clearly. It is rather, I believe, because he thinks profoundly and he speaks from the heart.

That sense of struggle, of sympathy, of passion, whether for baseball or for government, or for the rule of law, lights a spark. It makes us feel. It helps us see. I know today will be no exception. Please join me in welcoming our speaker, Mario M. Cuomo.

Thank you. No one could possibly follow that introduction, and fortunately it is not a problem to beat the level of expectation that Judge Kaye has set because I’m not Mario Cuomo. He was not able to come. I’m Mario Cuomo’s younger brother, who failed speech three times.

I’m really honored to have been invited at all to address this distin-
guished group of jurists and lawyers and citizen supporters of our judicial system. And I mean that very sincerely, especially because, despite the chief's burnishing of my credentials — and, frankly, had I known she was capable of that kind of hyperbole, I would have thought twice about making her chief judge. But despite that, I'm not a judge, and I'm not even an elected official. And at the very best, I'm a former governor.

And as governor I learned, while I was such, it is not always regarded as honorific in its implications. There was a time, for example, not long ago, while I was governor, that I addressed a group upstate and was introduced by a judge — whose name I won't give you, but I will tell you it was a judge I had not appointed — before a gathering of judges who were extremely indignant with me and unhappy because the budget had just been released and they had not received the raise that they thought they were entitled to.

And this judge introduced me, having indicated he was going to be careful about it because of the implications of the occasion; that he would go to the dictionary for some help in the introduction. And he introduced me by saying, “The next speaker is Mario M. Cuomo. He is a governor. From Webster's dictionary: a device attached to a machine to see that it does not operate at maximum capacity.”

Your invitation to me helps soften the pain of that unhappy recollection. And so, I thank you, and I'll try to show my gratitude by keeping this relatively brief.

The work of this conference starts with one fundamental proposition: the public's express dissatisfaction with our judicial system impairs its effectiveness and demands amelioration by those of us most intimately involved with its work. That's the main challenge. And your principal thrust, as far as I can gather, has been to improve in every way possible the system's basic function, which is, of course, deciding cases and controversies.

You have gathered and discussed an array of reforms and remedies designed to improve efficiency and fairness while affording at the same time maximum accessibility, especially to those who are least able to reach the system on their own. I have read the extensive reports of your work. Indeed, I have studied some of them. And, frankly, I have nothing much to add to the work you have already done.

I can't think of a whole lot of things you have left out with respect to how to improve the day-to-day operations of the court. And I can, however, take credit for some of the ideas, maybe even a lot of them, by reminding you that I did indeed supply you with one of the nation's clearest and most compelling forces for intelligent reform of our justice system, a progressive trailblazer who extended reform into social service programs dealing with complex problems like drug addiction, child abuse, family dysfunction — problems that have inundated many of the courts in New York and elsewhere.

And, frankly, and in all seriousness, in twelve years as governor, through two recessions, with wonderful opportunities to do good things, I'm certain I never made a better decision than the one that made available to the state and to the nation the intelligence and wisdom, the inexhaustible competence of Chief Judge Judith Kaye.

You know, the temptation was in those years, when one ran for public office, to make a lot of promises. I refused in 1982, when I ran my own improbable race for governor — because no one thought I could win. But I refused to make any promises except one or two. But one of them was that, if at all possible, I would appoint the first woman to the court of appeals and the first African-American.

Believe it or not, the great bastion of liberalism and progressivism, New York, hadn't ever appointed an African-American to a full term after 200 years. And I was, as a matter of fact, the first Italian-American ever elected governor after 200 years.

And I said I'll try to do that, but it is not going to be easy because, as I see it, it would be wrong to appoint a woman or an African-American who wasn't at least as good as the other available candidates. That would be unfair to the women, and it would be unfair to the African-Americans. So I'm going to have to have situations where they are at least as good. You know, I would prefer if they are obviously better than the other candidates. And that's what Judith Kaye was.

Now, it took some looking and searching because they didn't make it easy. They tried to hide her, frankly, because they thought, the politicians, that they had a better woman for me, and it was someone that they knew better. It was someone who was politically involved, and a good candidate. And so, they disqualified her at the Women's Bar Association. Did you know that? They said this woman, Judith Kaye from Sullivan County, wasn't qualified.

Well, that's all you had to say to a guy with a name like Mario Cuomo — wasn't qualified.

And so, I looked and I saw and I studied and I interviewed her, and I compared her, and I made phone calls all over the State of New York, to the Women's Bar, to some of the other candidates, to everybody, and decided.

And I remember my counsel saying after one discussion about the possible choices: “Do you think,” the counsel said, “that Judith Kaye would make a good court of appeals judge?” I said, “No, she will make a great court of appeals judge.”

And I was right. She did. And that's why she was made chief judge of the court of appeals. And that was true, also, of our choice of the first African-American.

Now, the work that Chief Judge Kaye and all of you are doing to improve the day-to-day performance of the system, that work is necessary and valuable even if the improvements were never noticed by the public. You should be doing that, anyway, even if you never told anyone about it. But that work is considerably more valuable because eventually it will be noticed, and it will enhance trust and confidence in the courts. When people know that the courts are accessible, when they know that they are fair, when they know that they will get justice and they will get it efficiently, that will improve the confidence and trust.

It is also, however, a regrettable reality that you should focus on that that will not happen quickly, even with all your most energetic efforts at communication of real reforms excellently accomplished, because it is difficult to communicate to this country of 270 million people anything unless it is a very simple message. And then you need extensive media and great repetition.

That's why people need millions of
dollars to run for office, so they can get experts to design a very simple message and then hit you over the head with it in your living room night after night on television. It is very difficult to do that. Trying to communicate dozens of discrete changes about thousands of courts in hundreds of cities in scores of states in a way that will make a significant difference in the overall perception of people is, to put it mildly, a daunting, although achievable, task.

This process of public enlightenment about systemic change, fragment by fragment, from place to place, will be more like the accretion of sand against the shore. It will be gradual and virtually imperceptible as it is occurring. That's the way accretion is, visible only after a long period, and then only with the benefit of historic perspective.

Even then, after all the changes are made and their salutary effect on the image of the courts is accomplished, there will be another and perhaps more serious challenge to credibility that will persist unless we do something more about it now, and that is the growing perception that the courts are, like the rest of the government, the Congress and the presidency, sharing the distasteful aspect of what is loosely called politics.

From what I have observed, it doesn't appear that this particular aspect of our challenge has been as intensely considered as have the broad questions of day-to-day inefficiency of the courts, and I am convinced that it is an insidious problem that deserves more attention than it is currently receiving. And so, I concentrate on it in this opportunity you give me this afternoon. And it is a subject I have been thinking about since the beginning of my own political experience some two decades ago, and it started with my mother and father.

My parents were immigrants from Italy who arrived just before the Great Depression began, uneducated — they never went to school a day in Italy, nor did they ever get to go to school a day here, actually. Poor. Hopeful. My father was a ditch-digger. They had modest aspirations for their children, just a life with their kids that was easier than the one that they were able to achieve with their very limited opportunities.

I was their youngest child. And when I became the first in the family to get a college degree, they were thrilled beyond imagination. Until I got to be a lawyer — and then they were ecstatic.

But some years after that, when I announced that I was entering politics, they were shaken. All they knew about politics and politicians was that, except for Franklin Delano Roosevelt, politicians weren't worth much, couldn't be trusted; would say whatever they had to go get elected, then ignore everyone but the really powerful until the next time they needed your vote, when they would lie to you again.

Trying to find a way to soothe my parents, I told them, “Don’t feel bad, Mom. Don’t feel bad, Pop. I’m going to be a politician because this is the way you get to be a judge.” That relieved them considerably. Papa says, “Now, you are making sense.”

Why? Because to my mother and father, being a judge was a whole other thing. The judge was respected. The judge did what was right, or at least there wasn't any hard evidence to the contrary because it was very difficult to refute the judge. They didn't know exactly how the judge went about doing justice. They couldn't read a book. But it did seem that most of the time it was more or less the right thing that resulted when you got to the judge.

The judge was special. That's why the judge wore a robe, but politicians just wore suits. In those days, my parents weren't far from the dominant view of other Americans about their judiciary. Most believed there was indeed something special about the people in robes and the work they did.

The truth, of course, is that the intelligent design of our government had given the judiciary that special quality since the very beginning. They were different. They were to be special. A government of two parts: a political side consisting of the Congress and the presidency, to which voters would elect people they expected would reflect their ideas and desires on a day-to-day basis. But there were plenty of governments like that, representatives governments, that were, presumably, to do the will of the people.

And then the difference. To anchor and stabilize this new experience in representative government, they designed a special, second part, a federal judicial system to protect people from the deprivation of rights that were deemed so basic in the Constitution that no majority should ever be strong enough to deny them, no matter how large a majority, no matter how strong, no matter how loud.

My mother and father never changed how they felt about judges, but in recent years, many other Americans appear to have. Television is probably one of the reasons, although I don't understand television well enough. I'm not sure any of us do. I'm not sure any of us have even studied enough the implications of television. But in thousands of hours of programs, television has torn away the veil, even disrobed some of the judges, creating a different image of them. It's made them less distant, more prosaically present, tangible and fallible than they used to be.

[I]t is difficult to communicate to this country of 270 million people anything unless it is a very simple message. And then you need extensive media and great repetition.
Even the recent live coverage, which I admit to having advocated as governor, has created distortions because viewers seldom witness an entire proceeding, and most of them lack the familiarity with the law necessary for a full understanding of what’s happening in the nightly glimpses on the screen. The O. J. Simpson episode is a good example.

For many viewers, the O. J. trial was the most they had ever seen of the law at work and proved to be a devastating blow to the favorable image that the courts had preserved for so many years. Surveys — I saw three of them — indicated that millions of Americans who watched the trial had lost respect for both the system and the judge. Only a small number said that it enhanced their opinion.

Now, that was not because the system did not work in the O. J. trial — it worked. It is because the people didn’t understand how the system works.

In fact, the whole wide world of explosive technology has dramatically changed how both our political and judicial systems are regarded and how they are being treated.

Thanks to television, movies, radio and computers, we have been saturated with information about everything imaginable, from the mating habits of tsetse flies to the possibility of life on other planets, often without adequate interpretation.

And there must be interpretation.

That’s why Mom and Pop, in the old days, when we lived in one room behind the store, would chase us out of the back room. If they wanted to say something about someone having been stabbed in the neighborhood or some woman having had a child without being married, something that our young ears weren’t ready to hear, our young minds not able to absorb, then they would chase us away. Why? Because they couldn’t impart that information to us without the danger of distortion and misunderstanding because they weren’t competent to explain it to us. So they excluded us.

Nobody gets excluded from television. Nobody gets excluded from the violence, from the mystery of it. And everybody is required to make their own judgments, ready or not, mature or immature, distorted or straight. And so, that is having a huge effect on this population, and on our court system.

As a result of this exposure in our Internet, too, I think we have become better at facts than at philosophy, more knowledgeable without becoming wiser, certainly more self-assured and less willing to accept opinions or decisions from experts or established authorities.

We think we know it all. Why? Because no one has ever known as much as we do.

This generation of children that is growing up now, they know infinitely more than I did when I was in their stage. And because they know so much, they think they understand everything.

At the same time as television came along, the startling growth in violence and crime, which was made so terribly vivid by the electronic media and movies, frightened and outraged us as a people, so much so that we had little tolerance for labored explanations from the judge as to why apparently technical errors or insufficiencies should allow someone we were all sure was guilty to go free.

We didn’t understand that. We were outraged by that, a lot of people.

An angry public demands something be done. In one survey, eighty percent of the people said we should get rid of that darned constitutional presumption of innocence — that’s absurd, to say we have to prove he did it when a grand jury says you ought to try him. Make him prove he’s innocent. That appealed to a lot of sensible people, eighty percent in the poll I saw.

And poll-watching politicians responded with Pavlovian assurance. They touched every button, satisfied the public, and I thought what happened, and I thought what happened, and I thought what happened. And more recently, Robert Bork — and this is my favorite, because I always liked Judge Bork. I remember when he was sitting, and I thought what happened, frankly, in his appointment process was devastating, a disaster. Whether you liked him or didn’t, whether you liked his positions or not, I thought it was an awful way to handle the appointment process.

But then he wrote the book, Slouching Toward Gomorrah. I read it because I read just about everything I could that he had written. I couldn’t believe what he proposed in that book. So I read it again. I put it down, actually, one night and I said, no, I’m tired, I’m not reading it. Then I got up very early and read it again. Judge Bork suggested that the courts were so wildly out of control that there be a constitutional amendment making any federal or state court decision subject to being overruled by a majority vote of each house of Congress. Now, that was an alarming proposal. But even more alarming was the fact that the public seemed totally untroubled by it.

I remember talking to Ted Koppel about it. He said, “There is no outrage anywhere, Mario.” Nobody. They like it, he said, the public. And they probably did.
There are proposals to do it right now in Congress. Did you know that? Get rid of judicial review. Forget about Marbury against Madison. It was a mistake.

The Founding Fathers chose a better way than the one that Judge Bork suggests when they made the Bill of Rights a part of the Constitution and asked the Supreme Court to enforce it openly. And I’m sure most of us here understand that. And I’m just as sure that most of the public at large does not. And because they do not, our judicial system is vulnerable.

The American people need to be educated to this truth. They need to appreciate how well the system has worked, how it helped rescue us from the Great Depression, insured us of the right of free speech, protecting the immigrants and the poor, the disadvantaged, the different, set aside racial segregation; how, with this judicial system — with this judicial system — how, with this judicial system — like it or not, understand it or not, we have become the strongest, richest, freest nation in world history when all the other representative governments that they tried without our kind of judicial system failed — or at least failed to achieve our kind of greatness.

We must be sure that the nation understands these good things happened because courts were protected from the uncertain and patently unfair impact of current public opinion. We ought to be doing everything we can to insure that the growing sanctification of popularity, which is what is happening politically, doesn’t threaten more seriously that protection by impairing our judicial system.

And you and I know all of this. That is why we are here, because we understand these truths and we cherish them. But we privileged insiders — and that’s what we are, understand that — we privileged insiders can’t treat these truths like personal jewelry. We can’t lock them away for our private reveries at happy gatherings like this one to be brought out and discussed and exalted in. These gifts will shrink unless given the bright light of broad public awareness.

We must share this gift with all the people by helping to educate them, using our own strong voices, the voices that we are using to talk to one another here today every way that we can, using all the power of the Information Age — using radio and television and the Internet to reach the whole public.

We must explain to the public in language they all understand that the judicial system is different from the political branches of our government and that difference makes all the difference to our strength and glory as a democracy. It is the reason we are so great.

We must tell them that, while the politicians reveal what is popular, our judges protect the constitutional rights of all our people, even the despised: the accused, the prisoner, the immigrant, the poor, the disabled, the children, the people who can’t vote, the people who don’t vote. We represent them all by giving them the benefit of the Constitution.

We must remind our public that if justice were available only to those in the majority, many of us would not have thrived here. There never would have been an American dream if the majority had its way every time it spoke.

We must tell them to keep that dream, judges must remain independent of the politicians, even independent of the ones who appoint them and confirm their appointment. And that’s why a lot of us don’t like to see judges running for office — and I know many do — the way politicians do because they can be compromised. At the very least, they can be perceived as being compromised by having to take vital campaign funds from special interests who expect something more than justice in return. And they do expect something more than justice.

We should tell people that it is in order to protect against the intrusion of politics and to insure the ethics of the court that candidates to the bench of the Supreme Court or any other position should never be asked in advance of a case how they are going to vote on a controversial question. What an absurdity to ask me whether I’m going to vote for or against the death penalty or anything else. It is as absurd as asking an umpire how he or she is going to call a close pitch before it is even thrown.

Judges aren’t politicians who can make the policy you want prospectively. We don’t work prospectively, we work retroactively. We decide cases and controversies on the basis of occurrences that have already transpired and on the basis of evidence that is produced for us. We don’t draw from the Koran or the Talmud or the Bible or our own wisdom to decide what is right. Politicians do that. We draw from the record and from the precedent after the event and limited to the event.

And after reviewing what has transpired, then we judges will tell you what the law requires without respect to popular opinion. Judges are different from politicians, and it makes all the difference.

That’s the message we have to convey. And we should be delivering it everywhere — on radio, talk shows, the Larry King Show, Rivera, public service television. We should write it in op-ed pieces. We should speak it in commencement addresses, visit schools that teach civics, conduct conferences like this one.

And it doesn’t take a whole lot of imagination to find out that opportunities are plentiful. This moment in time is especially opportune because you are about to have a new presidential election campaign.

More than that, on the verge of the new millennium — until recently, nobody knew what a millennium was, and nobody cared; now, nineteen percent of the people know what a millennium is — the Year 2000 presidential race means the appointment of Supreme Court justices will be a focus, and so will the problem inherent in political campaigning. There will be plenty of free television and air time available for outspoken people. It will be a perfect time to be talking about the differences between judges and politicians.

There are going to be plenty of opportunities. The only question is, are you going to avail yourself of it?

Let me conclude with one final, fundamental observation. Maybe I’m wrong. Maybe I’m just getting old. But isn’t America searching for something? Don’t you have a feeling that, despite all the wealth and grandness that is so apparent, there is a feeling that something is missing?

The feeling, I think, was described cogently in a nice line in a memorable song that has become a commentary on the current focus: "Where have you gone, Joe DiMaggio? A nation turns it lonely eyes to you. What’s that you say, Mrs. Robinson? Joe has died and gone away."

No more Joe DiMaggio. They killed John Kennedy. Then they killed Martin Luther King, Jr. Then they killed Robert Kennedy. There is no hero. No hero. No
great cause. No soaring ideology. We are riddled with political answers that seem too shallow, too shortsighted, too exploitative, too hard. We are demeaned with pandering attempts to protect the public by victimizing the weakest and most vulnerable Americans.

We are tempted to see ourselves as a nation of 270 million individuals struggling for survival and dominance in a dog-eat-dog, free-market world instead of as a fully integrated society, interconnected, interdependent, growing stronger together. That's discouraging.

We desperately, it seems to me, need something real to believe in, to hold onto, something deeper, stronger, grander that can help us deal with our problems by making us better than we are instead of meaner; that can lift our aspirations instead of lowering them; something sensible enough for everybody to understand; something sweet enough to be inspiring.

We need that desperately — something larger than ourselves; something more nourishing to our economy, to our souls than the satisfaction of knowing we have kept poor people in their place or even that we have made a lot more rich people in America. We need something sweeter than the taste of a political victory.

Now, I think it would take more than the time we have now and perhaps more than the wisdom that resides even here today in this august assembly to do that, to find and describe a total solution to this profound discomfort. But I also think that there is one thing we lawyers and students of the judicial system know will help the uns sureness that troubles us, and that is our lady of the law.

Our 200-year-old legacy of law and justice is a magnificent monument to the best we have been able to accomplish as a people. We must not allow it to be torn down nor even defaced by a political system whose claim to morality is the latest urge of the American people, however distracted, however misled we may be.

For two hundred years, our lady of the law has proven stronger than the sins of her acolytes and has made us better than we could have been without her. Now she must be lifted above the political melee and confusion before her bright, guiding light is doomed. That, I believe, is the kind of message we need.

And we can get experts to teach us exactly how to say it, to design clever phrases and memorable metaphors. We can urge the schools and the media to help in the effort, and we should. But they are not the best people to deliver our message. The burden of persuasion rests with us, the people in this room today, and the people like us. We — the judges, the lawyers, the citizen supporters of the justice system — we must lead the charge; we, who understand these truths the best; we, who feel them most deeply; and we, who owe them the greatest loyalty.

Public Involvement as the Key to Public Trust and Confidence: A View from the Outside

Margot Lindsay

The Hearst survey conducted for the recent National Conference on Public Trust and Confidence discovered that the public’s trust in the courts was driven mainly by its confidence in the jury system. Sixty-nine percent of the 1,000 people surveyed considered the jury to be the most important component of the justice system. I’m not surprised. From my experience in the jury pool, I’d gladly trust my fate to those with whom I served.

I don’t know whether judges appreciate just how compelling the jury experience is for those of us for whom a court is unknown and somewhat forbidding territory. It can be riveting in itself, regardless of the case. So much so that more could perhaps be made of it to benefit both court and public.

I still remember my own one experience vividly, even though it was some time ago. When my summons arrived, I was a volunteer lobbyist on prison bills (the outgrowth of helping organize a sheriff’s election) and a consultant on issues of public involvement with government. What better combination of these two pursuits than jury duty? I was thrilled to get my notice.

Although our state now has a one-day, one-case system, back then jury duty lasted thirty days. Many of us were so immersed in the process that we made daily notes. To show how compelling the experience can be, here are a few of mine:

This morning we are checked in and given a number. Mine is #149. We are 265, a veritable want-ad list of occupations: sales clerk, city manager, student, housewife, subway operator, water inspector, unemployed barber, retired cook, self-employed artist, chemist, curator, bank messenger, telephone repairman, stock boy, engineer.

The three court officers assigned to us introduce themselves as our “baby-sitters,” an incongruous term. The judge who has charge of our jury session comes to welcome us. The judge talks about the details of dress and formalities of court procedures. I am disappointed. I had expected words about the awesomeness of our role. Instead the judge tells the men to wear coats and ties, and we are all told to heed the instruction of court officers. The smart looking lady judge with “our boss” says nothing. No one speaks of the importance of the courts, of justice, nor of our role.

#149 is called for the second case of the morning. Sixty of us, cards in hand, file behind a court officer. As we near the courtroom our forced, nervous chatter dies away. We file into the pews at the back of the court, brushing as we go by two men, white, Irish-looking, already seated.

The judge appears. The defendants are told to stand while the charge is read. To my consternation they are the two men whom we had brushed by while coming in. My knees go to jelly. The full impact of sitting in judgment reaches out and hits hard in the middle of the stomach. I had been told by those who had gone through it that jury duty was interesting; no one had mentioned the emotional wallop. I am totally unnerved. I can hardly bring myself to look at the defendants.

The judge gives us the gist of the accusation. It is an unpleasant and sordid affair, not the kind of thing I had thought of as I thought of jury duty. I am called, challenged, dismissed, and feel relieved. Still unnerved by the idea of jury duty now that it has been made flesh and blood, I want some time to get used to it. And back on the fifth floor, I discover others are unnerved too....

Jurors come to tell me about their cases because I never make it beyond the [introductory] story, thrown off each time either by the prosecution or the defense. They are extremely serious about their job, even the most seemingly light-hearted: the ladies who play Boggle incessantly or the young swingers with their penny ante games. Never do I hear any discussion in the elevators, rarely in the corridors, and then never with others around....

We are finished. Our judge comes to thank us for our service and bid us goodbye. He urges us to tell our friends what a “good time” we had had so that they will respond positively should they get summoned. “Good time” seems jarring. It is not a phrase many of us would have used to describe our month together. “Good time” we often have. Jury duty was too important to us, too serious, too unique, to be called “a good time.”

The judge tell me about the needs of the public come together during jury duty, and perhaps more could be done to benefit both sides. The public needs to see that justice is obtainable, and jury duty allows it to do just that. For its part, the court needs members of the
public to better understand both its workings and the infrastructure needed to support the courtroom, an infrastructure for which resources are never sufficient. And while on jury duty, a cross-section of the community eager to absorb that knowledge gives the court its undivided attention. Therefore, perhaps:

- a tour of the courthouse could be offered either during the down time or at the end of the day. This would allow outsiders to gain a sense of the scope of the court's work, of how many different functions take place within a courthouse. The tour could be conducted by a court officer or by a knowledgeable volunteer, similar to a docent in a museum.
- the jury could be asked for feedback on the immediate experience, or for its feelings about the court system in general. The jury pool is the only grouping in the country today that cuts across socio-economic and occupational lines - a ready-made focus group. The court in Sacramento, California, has conducted three-hour discussions with small numbers of jurors with useful results. New York State provides a written survey for jurors to complete when they are dismissed.
- an advisory group to the jury manager, composed of a handful of veteran jurors, could be created to ensure that the jury experience is as comfortable, positive, and instructive as possible. Such a group would create a channel of communication to the public for ongoing feedback to the court, and would introduce public involvement in a non-threatening way.
- a court could provide box lunches to the jurors, with a judge to answer questions on the morning's experience. Since public funds always are in short supply, this may be an unrealistic thought, but one that would express the value given the jury process and make an indelible impression.

I know judges have constraints placed on their interactions with the public, but I doubt any of these activities would prejudice the jury or compromise the court.

And if it's the presence of the jury, of fellow members of the public that gives the public confidence in the courts, perhaps it's reasonable to suppose that providing more means to involve the public could only increase that confidence. Many courts, either for this reason or for others, such as access to resources or creating constituencies, have moved in this direction. Some examples:

- New Jersey's courts have had a long tradition of using volunteers in a variety of capacities, including child placement reviewers, mediators, and juvenile conferencees, to name a few, all intrinsic to the justice process itself.
- Alabama's courts, following New Jersey's models, have recently instituted volunteer mediation and juvenile conference committees in several jurisdictions. Wisconsin, too, is increasing its use of volunteers.
- California's courts involve members of the public in their annual planning. The Sacramento court conducts focus groups not only with jurors, but also with other community groups, seeking their views on the role and mission of the court system, and the effectiveness of their particular court in carrying them out. Another court has enlisted academics and the business community to help modernize their record keeping.
- Some state courts with responsibility for probation have created advisory councils to state and local probation offices; these councils help bring community resources and public understanding to bear on programs, allow public acceptance to be gauged and policies and procedures to be fine-tuned in response to public concerns.
- New York City's community court works closely with the local community to identify problems, maintains collaborative relationships with community agencies, and uses a Community Advisory Board to find community work sites and maintain a continuing dialogue with the public served by the court. Other courts in New York State have advisory councils to help them improve their “customer relations.”
- Hawaii has long included citizens in its judicial councils.

In creating bridges to the public, the courts are following the same path as other parts of the justice system. Community corrections and community policing have been followed by community prosecution and community justice. Some excellent publications that provide more information about models and critical elements of these and other successful outreach efforts are listed in this issue. For those interested in taking a more comprehensive look at community involvement in the criminal justice system, Partnerships in Corrections: Six Perspectives, recently published by the Center for Community Corrections in Washington, D.C., provides an excellent review.

J udges may worry that involvement with their communities will jeopardize their judicial independence. None of the existing models appear to do that. The judges always retain the final authority. And let me say, on behalf of the public, we want it that way. In Vermont, for instance, so-called reparative boards of community members, sent adjudicated cases by the court, devise sentences tailored to the crime, the criminal, and the victim, but subject to the judge’s approval.

There are two reasons why bridges to the community are particularly critical today. First, judges increasingly are being asked to take on a raft of problems that used to be the community’s to solve. Communities should not expect the courts to deal with them alone if the community has resources that could be put to collaborative use in partnership with the courts.

Second, in these days of alienation and tight resources, a constituency of disinterested citizens outside the system is not only invaluable, but absolutely necessary to show support for needed resources. Most state agencies dealing with mental health and mental retardation, the environment or children have constituencies - groups of knowledgeable individuals who:

- understand and can explain to others outsiders the work of an
agency, what it can and cannot do;
• provide links to community agencies and volunteers;
• help identify and resolve problems involving both the agency and the community; and, above all,
• serve as advocates for the resources needed to fulfill the agency’s mission.

Beyond the lawyers, few courts today have such constituencies. But they can be easily developed from citizens involved in the sorts of ongoing relationships discussed earlier.

The initiative for involving citizens in these relationships must come from the court itself. The public is hesitant to intrude. In fact, it probably wouldn’t occur to the public that the courts would want their involvement.

The public’s trust and confidence in the courts can only grow the more outsiders become conversant with its workings. The Hearst survey reports that respondents who reported a higher knowledge about the courts expressed lower confidence in courts in their community, other things being equal.” This needn’t be the case. In my work I find that individuals working with their courts in the types of activities cited above become committed to their court and to helping it achieve its goals.

The first steps toward public involvement can be made on a trial basis, until its value is proven and a sufficient comfort level is achieved. But the opportunities are there. The models are tested. And the public will gladly respond.

Margot Lindsay works with courts, correctional agencies and state and local governments to promote a closer relationship between the justice system and the public it serves. A former political organizer (Republican), she is co-founder of the National Center for Citizen Participation in the Administration of Justice. She has served on many civic and national boards, and on advisory committees of the National Center for State Courts. In 1997, the National Center gave her its Distinguished Service Award.

---

**AJA Membership Application**

If your membership has expired, please use this form to rejoin. Or, if your membership is current, please use this form to urge a colleague to join.

Name: __________________________________________________

Title: ____________________________________________________

Name of Court: ___________________________________________

Mailing Address: __________________________________________

Billing Address: ___________________________________________

Telephone (   ) __________________________ (work)
             (   ) __________________________ (fax)

Type of Jurisdiction: _______________________________________

Elected_________ Appointed_________

Length of Term ___________________________________________

Term Expires_____________________________________________

Are you a member of a bar?   Yes _____ No _____

If so, date admitted________________________________________

State____________________________________________________

Annual Dues   -   $90* (group rates available)
Retired Judges - $25
Payment enclosed _________ Please bill ________

Spouse’s Name____________________________________________

Referred by ______________________________________________

(not necessary for membership approval)

_________________________ Signature

* dues waived the first year for all judges who are not present or former members of the American Judges Association

Mail to: American Judges Association, P. O. Box 8798, Williamsburg, VA 23187-8798.
Public Trust and Confidence in the Courts: What Public Opinion Surveys Mean to Judges

David B. Rottman and Alan J. Tomkins

In December, 1800, U.S. Supreme Court Chief Justice Oliver Ellsworth, an appointee of President George Washington who had served five years in the position, fell ill. President John Adams turned to John Jay, asking him to return to the position (Jay having served as the nation’s first Chief Justice). Jay refused the appointment. He explained to Adams his reasons for declining the position: The Court, wrote Jay, labored “under a [judicial] system so defective” that, amongst its other problems, it did not possess “the public confidence and respect which, as the last resort of the justice of the nation, it should....”

Thus, almost since the inception of our system of government, and certainly since Chief Justice Marshall in Marbury v. Madison asserted the supremacy of the judiciary over the President or the Congress as the branch of government responsible for ultimately resolving legal disputes, it has been clear that the courts require the public’s trust and confidence. For as equally long a period, the public has expressed its reservations about the judiciary. A court that does not have the trust or confidence of the public cannot expect to function for long as an effective resolver of disputes, a respected issuer of punishments, or a valued deliberative body. This is true regardless of whether we are talking about a trial court or the supreme appellate court.

For most of our nation’s history, perceptions of, and public trust and confidence in, the U.S. Supreme Court have served as the bellwether of the public’s attitudes toward the judiciary. Indeed, people’s opinions about the U.S. Supreme Court seemed to dictate the general attitude toward the judiciary. Perhaps the low point occurred in the wake of the Supreme Court’s decision in the Dred Scott case, holding the Missouri Compromise to be unconstitutional and thereby giving legal sanction to the practice of slavery. Shortly after the Supreme Court’s judgment in Dred Scott was rendered, a commentator (accurately) predicted, “The country will feel the consequences of the decision more deeply and more permanently, in the loss of confidence in the sound judicial integrity and strictly legal character of their tribunals.” Even Supreme Court decisions from recent times – for example, in such cases as Brown v. Board of Education and Roe v. Wade – have been beacons of the public’s support and the public’s scorn for the judiciary.

In the past decades, however, there has been a realization that the day-to-day lives of more people are influenced by their state courts than by the U.S. Supreme Court. State courts’ decisions are rendered about our communities, and sometimes even our neighbors or us. Moreover, we seem to have moved into an era in which state court outcomes – such as the trial court verdicts in the Rodney King and O.J. Simpson cases – seemingly have as much impact on the nation as do most U.S. Supreme Court determinations.

Over twenty years ago, the National Center for State Courts commissioned the first national study of the public’s trust and confidence in the states’ courts. In that survey, “The Public Image of the Courts,” some 1,900 American adults expressed their opinion about the state courts, including the perceived need and prospect for court reform. Many of the same survey questions were asked of 300 judges. The public survey revealed people were poorly informed about the legal system, had a middling level of confidence in the courts, displayed a general if not wholehearted respect for judges, and were eager for court reform (but not necessarily willing to pay for it or aware that it had taken place). The judges surveyed, however, tended to be...
very satisfied with the status quo. Few judges saw any urgency
to court reform generally or indicated any specific areas in
which courts needed to improve.

Beginning with a 1978 survey in Utah, twenty-six state-level
surveys were commissioned to provide a general source of
information for the state court and bar leadership or to inform
the work of commissions investigating bias or anticipating the
future of the judicial branch. The pace of such state survey
work has picked up in recent years; ten of the twenty-six state
surveys were conducted during the last four years.\textsuperscript{11}

In August 1998 another comprehensive national survey
added further to the growing mass of information on how the
public perceives the state courts. The “Perceptions of the U.S.
Justice System,”\textsuperscript{12} commissioned by the American Bar
Association, relied on telephone interviews of 1,000 American
adults selected at random. The respondents were asked for their
opinions about “the justice system,” lawyers, judges, law
enforcement and the courts. The findings from the ABA survey
were optimistic relative to most of the previous surveys. Public
confidence in the courts relative to other major institutions
seemed higher, and experience with courts appeared to pro-
mote higher rather than lower levels of confidence. For the
most part, however, there was more continuity than change in
the 1998 survey. The public retained rather stereotypical views
of how courts and judges work.

Over twenty years of surveys, the same negative and positive
images of the judiciary recurred with varying degrees of force-
fulness across all of the national and state surveys.\textsuperscript{13} The nega-
tive images centered on perceived inaccessibility, unfairness in
the treatment of racial and ethnic minorities, leniency toward
criminals, and a lack of concern about the problems of ordinary
people. There was concern that the courts are biased in favor of
the wealthy and corporations. Indeed, the perception of eco-

11. A national survey was sponsored by the Hearst Corporation: THE
AMERICAN PUBLIC, THE MEDIA AND THE JUDICIAL SYSTEM: A
NATIONAL SURVEY OF PUBLIC AWARENESS AND PERSON EXPERIENCE
(1983), and a “National Opinion Survey on Crime and Justice”
was carried out in 1995, the findings of which can be found in
AMERICANS VIEW CRIME AND JUSTICE (Timothy Flanagan & Dennis
Longmire eds., 1996).

12. AMERICAN BAR ASSOCIATION, PERCEPTIONS OF THE U.S. JUSTICE
SYSTEM (1999).

13. For a recent summary of the positive and negative images of
courts, see David B. Rottman, On Public Trust and Confidence:
Does Experience with the Courts Promote or Diminish It? COURT

14. NATIONAL CENTER FOR STATE COURTS, HOW THE PUBLIC VIEWS THE
National Survey”). The 1999 National Survey was a true nation-
wide, collaborative effort. The survey was commissioned by the
Hearst Corporation and coordinated by the National Center for
State Courts. The survey instrument itself was jointly developed
by the National Center for State Courts, the University of
Nebraska Public Policy Center, the University of Nebraska-
Lincoln’s Law/Psychology Program and Scientific Resources for
the Law (SRL), and the Indiana University Public Opinion
Laboratory pursuant to input from more than forty legal profes-
sionals, academics, and citizens. See text following note 15, infra.
Researchers from the Indiana University Public Opinion
Laboratory collected all data between January 13 and February
15, 1999. 1999 National Survey at 11. Researchers from SRL and
the UNL Law/Psychology Program analyzed the survey data, with
assistance from the National Center for State Courts. Researchers
from SRL, the UNL Law/Psychology Program, the NU Public
Policy Center, and the National Center for State Courts, collabo-
rated on the writing of the report. Specific thanks are extended to
Pam Casey, Mathille Pathak, Marc Patry, Steven Penrod, Robert
Ray, and Brian Vargus. Dr. Pathak and Mr. Ray wrote substantial
portions of the report of the 1999 National Survey report, with
considerable input from the National Center for State Courts and
the Hearst Corporation. We acknowledge their significant contribu-
tions. Frank A. Bennack, Jr., president and CEO of the Hearst
Corp., first presented the survey data in Washington, D.C., at the
National Conference on Public Trust and Confidence in the
Hispanic-Americans. Thus, the total sample of 1,826 provides the usual representation of Whites/Non-Hispanics; in addition, however, it adequately represents the perspectives of African-Americans and Hispanic-Americans. To our knowledge, this is the first time that African-Americans and Hispanic-Americans were so well represented in a national survey.15

The selection of survey questions also was a result of a unique approach. Although some questions were selected in order to allow comparisons from this study to other studies, a group of Nebraskans consisting of judges, lawyers, academics, and ordinary citizens identified other questions. These individuals provided both written input as well as input as part of a face-to-face gathering sponsored by the University of Nebraska Public Policy Center and the National Center for State Courts. Minority input was purposefully solicited in order to ensure the questions to be asked as part of the survey interviews would include questions designed to solicit the concerns of African-Americans and Hispanic-Americans.

Group Differences in Public Trust and Confidence in the Courts

Previous surveys suggested that the general public, but not the judiciary, believes that minority groups are treated differently by the courts than are White/Non-Hispanics. Much has been written and reported in the popular press about the skepticism with which minority group members view the judiciary. Are African-Americans really so mistrustful of the courts, or is this media hyperbole? Do Hispanic-Americans harbor suspicions about the courts? Do Whites believe that members of minority groups are treated unfairly by the courts? Prior to the 1999 National Survey there was no systematic body of evidence that could document the extent to which and the ways in which perceptions of the court differ across social groups. We believe one of the most important contributions made by the 1999 National Survey was its documentation of differences across groups.

The survey findings reveal stark differences in how African-Americans view the judicial system. African-Americans consistently display a more negative view of the courts and less trust and confidence in the judicial system than do White/Non-Hispanics or Hispanics.

As a general matter, African-Americans express low levels of confidence in the courts in their community, lower than other groups.16 It is understandable why. African-Americans perceive themselves as treated worse by the judicial system than White/Non-Hispanics or Hispanics. Almost 70% of African American respondents think that African-Americans, as a group, get “Somewhat Worse” or “Far Worse” treatment from the courts than the other two groups, and approximately 40% of respondents from the other groups agree (see Figure 1).17

Responses to questions about specific aspects of court performance also point to pattern of African-American disenchantment with the courts. Nearly 21% of African-Americans strongly disagree that “Court personnel are helpful and courteous,” but only 13% of Hispanics and 12% of White/Non-Hispanics strongly disagree.18 Over 30% of African-Americans strongly agree that “Most juries are not representative of the community,” whereas only around 20% of Hispanics and White/Non-Hispanics believe that (see Figure 2).19 Upwards of 20% of African-Americans strongly disagree with the statement “Courts make reasonable efforts to ensure that individuals have adequate attorney representation,” but only around 10% of Hispanics and White/Non-Hispanics disagree.20

More specifically, one-third of African-American respondents feel “Courts are ‘out-of-touch’ with what’s going on in their communities” compared to 21% of Hispanics and less than 15% of White/Non-Hispanics (see Figure 3).21 Fewer African-Americans (18%) strongly agree that “Judges are generally honest and fair in deciding cases” than Hispanics (29%) or White/Non-Hispanics (34%).22 More African-Americans (approximately 50%) strongly believe “Judges’ decisions are influenced by political considerations” in contrast to Hispanics (42%) or White/Non-Hispanics (35%).23 Finally, African-Americans feel “wealthy people” receive “better treatment” from the courts, and they feel this way at a rate that is different than the other groups.24

---

15. Because of the oversampling procedure, statistical analyses conducted weighted all groups “according to population statistics for African-Americans (12.1%), Hispanics (13.4%), and Whites/Non-Hispanics (72.4%) to ensure that each group was represented in the same proportion as in American society.” Id. at 11. The margin of error for findings is +/-2.3%. Id.
16. See id. at 13.
17. See id. at 38.
18. See id. at 26.
19. See id. at 29.
20. See id. at 24.
21. See id. at 40.
22. See id. at 30.
23. See id. at 41.
24. See id. at 37.
25. See id. at 38.
26. For example, 44% of African-Americans believe “Elected judges” are influenced by having to raise campaign funds, but so do 42% of Hispanics and 31% of White/Non-Hispanics. Id. at 42.
27. See, for example, Michael Tonry, MALIGN NEGLECT, RACE, CRIME, AND PUNISHMENT IN AMERICA (1996).
29. See id. at 32.
30. See id. at 26. But see text supra at note 18 (21% of African-Americans strongly disagree).

There is evidence, however, that Hispanics are more likely than Whites to perceive unfair treatment of African-Americans by the courts. When asked what kind of treatment African-Americans receive from the courts, 9% of whites perceived “far worse” treatment. African-Americans and Hispanics, however, thought very differently. In both groups, about 30% (31% for African-Americans and 28% for Hispanics) perceived “far worse” treatment for African-Americans. Similarly, African-Americans were far more likely than Whites to perceive non-English speaking people as being treated “far worse” by the courts. African-Americans and Hispanic-Americans differ in their overall confidence in, and satisfaction with, the courts. But both groups are very attuned to the ways in which minority group members experience the courts differently than do Whites. Whites, on the other hand, either simply do not understand or discount the perceptions of minority group members about the fairness of court processes.

It is not as if African-Americans perceive themselves on the short end of every stick. A review of the 1999 National Survey will show that there are instances in which Hispanics or even White/Non-Hispanics feel worse about the system than do African-Americans. But the trend is clear, we believe, and the data, taken together, plainly signal that something ought to be done to address the concerns clearly and strongly indicated by African-Americans. If the system is indeed treating African-Americans poorly, the system needs to be fixed. If the system is, in fact, not treating African-Americans poorly, the fact of equal treatment across Americans needs to be documented and communicated. It will be important to educate society about the fact of equal treatment, and objective research documenting or refuting whether Americans are being treated equally in the courts will be of great societal and judicial value. Studies in sentencing and other criminal justice decision points do suggest African-Americans are treated worse than other Americans. It is reasonable for African-Americans to presume they are not being treated as well as others and to be inclined to extend that perception to the treatment of minority groups generally.

Perceptions of Judges

Ignoring group differences, we find the public’s view of judges is not good, although there are some inconsistencies. On the one hand, almost 80% of the respondents are in agreement that “Judges are generally honest and fair in deciding cases.” Eighty-five percent of Americans agree, “Courts protect defendants’ constitutional rights.” And virtually three-quarters of the respondents agree, “Court personnel are helpful and courteous.” Such findings are reasons to feel good about the public’s confidence in judges.

On the other hand, there are some ominous signals. For example, the amount of general trust/confidence in the “courts in your community” is low compared to other public institu-
tions (see Table 1).31 Indeed, only 23% of participants in the survey report holding a great deal of trust/confidence in the “courts in your community,” and courts rank only sixth out of the eight institutions examined. The position of the courts appears in a better light if the focus is on the proportion of the public with either “a great deal” or “some” confidence in the courts. For example, about three-quarters of the respondents indicated either a great deal or some trust/confidence in the courts. That level of confidence closely approximates that shown in the other institutions (except the local police and medical profession, which received over 80% positive reactions, and the media, which received positive reactions from only half the sample).

A most distressing finding was that more people thought the courts handle legal cases in a poor manner than thought courts handle cases in an excellent manner (see Table 2).32 Family relations cases and juvenile delinquency cases fare worst, with well over half the respondents indicating these cases are handled in a fair or poor manner. As we suggested in the 1999 National Survey Report, these results are especially distressing in light of the fact that public trust and confidence in the courts is likely to be the best defense there is against the emotional reaction of losing a legal case.

Eighty percent of the respondents agree that “Cases are not resolved in a timely manner,”34 Over half agree that “Judges do not give adequate time and attention to each individual case,”35 and that “Courts do not make sure their orders are enforced,”36 Approximately 40% of Americans do not feel “court rulings are understood by the people involved in the cases”37 or that courts are “in-touch” with their communities.38 Perhaps some of the basis for citizen antipathy to judges is the perception that politics play a strong role: Approximately 80% of the respondents indicate they agree that “Judges decisions are influenced by political considerations”39 (see Figure 4) and “Elected judges are influenced by having to raise campaign funds”40 (see Figure 5).

<table>
<thead>
<tr>
<th>Institution</th>
<th>Amount of Trust/Confidence</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Great Deal</td>
</tr>
<tr>
<td>Medical Profession</td>
<td>45.4%</td>
</tr>
<tr>
<td>Local Police</td>
<td>42.6%</td>
</tr>
<tr>
<td>U.S. Supreme Court</td>
<td>31.8%</td>
</tr>
<tr>
<td>Office of the Governor</td>
<td>30.4%</td>
</tr>
<tr>
<td>Public Schools</td>
<td>26.0%</td>
</tr>
<tr>
<td>Courts in Your Community</td>
<td>23.2%</td>
</tr>
<tr>
<td>States Legislature</td>
<td>17.5%</td>
</tr>
<tr>
<td>Media</td>
<td>10.4%</td>
</tr>
</tbody>
</table>

Table 2:

<table>
<thead>
<tr>
<th>Case Type</th>
<th>Excellent Manner</th>
<th>Good Manner</th>
<th>Fair Manner</th>
<th>Poor Manner</th>
</tr>
</thead>
<tbody>
<tr>
<td>Civil</td>
<td>7.1%</td>
<td>45.9%</td>
<td>36.3%</td>
<td>10.6%</td>
</tr>
<tr>
<td>Criminal</td>
<td>10.7%</td>
<td>39.8%</td>
<td>29.8%</td>
<td>19.7%</td>
</tr>
<tr>
<td>Small Claims</td>
<td>7.7%</td>
<td>44.1%</td>
<td>36.9%</td>
<td>11.3%</td>
</tr>
<tr>
<td>Family Relations</td>
<td>7.3%</td>
<td>35.6%</td>
<td>35.7%</td>
<td>21.4%</td>
</tr>
<tr>
<td>Juvenile Delinquency</td>
<td>6.2%</td>
<td>28.9%</td>
<td>36.2%</td>
<td>28.7%</td>
</tr>
</tbody>
</table>

Eighty percent of the respondents agree that “Cases are not resolved in a timely manner,”34 Over half agree that “Judges do not give adequate time and attention to each individual case,”35 and that “Courts do not make sure their orders are enforced,”36 Approximately 40% of Americans do not feel “court rulings are understood by the people involved in the cases”37 or that courts are “in-touch” with their communities.38 Perhaps some of the basis for citizen antipathy to judges is the perception that politics play a strong role: Approximately 80% of the respondents indicate they agree that “Judges decisions are influenced by political considerations”39 (see Figure 4) and “Elected judges are influenced by having to raise campaign funds”40 (see Figure 5).

32. See id. at 14.  
33. See id. at 26.  
34. See id. at 28.  
35. See id. at 31.  
36. See id. at 35.  
37. See id. at 34.  
38. See id. at 40.  
39. See id. at 41.  
40. See id. at 42.
The data about judges, like the data about African-Americans, signal that something is not quite in kilter. Efforts should be undertaken to address the concerns about judges. We think the 1999 National Survey findings should be, at a minimum, a call for more data to more precisely determine the extent to which there is justification in the American public’s apparent extensive, and surprising, dissatisfaction with judges. If the public’s concerns are warranted, the system should be fixed. If the problems seem blown beyond reality, the data reported here should nonetheless serve as a wake up call that something needs to be done to change perceptions. Whatever the reality, the public’s lack of trust and confidence in judges is of great concern.

The Economics of Court Access

The perception that money matters in the treatment one receives from the courts is an important component of the court’s public image. There is particular concern about the costs of going to court and over the belief that financial resources play a role in determining case outcomes.

The 1999 National Survey suggests that the public may discern a variety of factors that contribute to how much it costs to go to court. Only one-third of respondents agreed with the statement, “It is affordable to bring a case to court” (see Figure 6).41 Racial and ethnic groups shared that belief to varying degrees. African-American (40%) and Hispanic respondents (39%) were more likely than White/Non-Hispanics (29%) to see the courts as affordable. Analysis of the 1999 National Survey data has yet to test alternative explanations for why such group differences might arise. The survey does, however, allow us to obtain a better grasp of what the public means when it says that it costs too much to go to court.

Although the public clearly believes that going to court is not affordable, it is not clear that, in the public mind, the judiciary is fully or even primarily responsible for that situation. The 1999 National Survey asked a series of questions designed to establish where the public places responsibility for the high costs of going to court. Nearly all respondents (87%) believed that having a lawyer contributed “a lot” to the cost. The public did not limit the blame to the legal profession. More than one-half of the respondents believed that the slow pace of justice, the complexity of the law, and the expenditure of personal time (e.g., missing work) each contributed “a lot” to the cost of going to court. Court fees were viewed as the least significant factor underlying the high costs of using the courts.42

<table>
<thead>
<tr>
<th></th>
<th>All Respondents</th>
<th>Whitest</th>
<th>African-Americans</th>
<th>Hispanics</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly Agree</td>
<td>34.4%</td>
<td>34.8%</td>
<td>34.3%</td>
<td>34.0%</td>
</tr>
<tr>
<td>Somewhat Agree</td>
<td>43.9%</td>
<td>44.1%</td>
<td>43.4%</td>
<td>43.6%</td>
</tr>
<tr>
<td>Somewhat Disagree</td>
<td>15.1%</td>
<td>15.0%</td>
<td>15.1%</td>
<td>15.4%</td>
</tr>
<tr>
<td>Strongly Disagree</td>
<td>6.6%</td>
<td>6.2%</td>
<td>6.8%</td>
<td>7.0%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>All Respondents</th>
<th>Whitest</th>
<th>African-Americans</th>
<th>Hispanics</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly Agree</td>
<td>8.3%</td>
<td>9.5%</td>
<td>7.9%</td>
<td>8.7%</td>
</tr>
<tr>
<td>Somewhat Agree</td>
<td>23.7%</td>
<td>26.0%</td>
<td>23.4%</td>
<td>23.9%</td>
</tr>
<tr>
<td>Somewhat Disagree</td>
<td>30.3%</td>
<td>29.3%</td>
<td>31.3%</td>
<td>29.1%</td>
</tr>
<tr>
<td>Strongly Disagree</td>
<td>37.7%</td>
<td>32.5%</td>
<td>36.4%</td>
<td>39.5%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>All Respondents</th>
<th>Whitest</th>
<th>African-Americans</th>
<th>Hispanics</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly Agree</td>
<td>27.8%</td>
<td>30.1%</td>
<td>25.9%</td>
<td>25.5%</td>
</tr>
<tr>
<td>Somewhat Agree</td>
<td>25.9%</td>
<td>27.0%</td>
<td>28.6%</td>
<td>28.2%</td>
</tr>
<tr>
<td>Somewhat Disagree</td>
<td>15.5%</td>
<td>16.0%</td>
<td>14.7%</td>
<td>16.0%</td>
</tr>
<tr>
<td>Strongly Disagree</td>
<td>19%</td>
<td>18.4%</td>
<td>19.2%</td>
<td>18.8%</td>
</tr>
</tbody>
</table>

41. See id. at 22.
42. See id. at 23.
The 1999 National Survey suggests that many people combine frustration with the inaccessibility of legal representation with confidence that they can go it alone. Nearly six out of ten respondents agree with the statement that “It would be possible for me to present myself in court if I wanted to” (see Figure 7). The statement to which people agreed was free-floating, not being associated with a particular kind of case. We therefore do not know if confidence in one’s ability to represent oneself is in areas traditionally free of pro se litigants or remains limited to the traditional arenas in which pro se litigants have appeared. Disenchantment with lawyers and a growing sense that one can or should be able to appear in court without an attorney poses some challenges for the courts. It is unclear whether improving support for “do it yourself” litigants will suffice to meet the public’s expectations or whether the complexity of existing procedures are an insurmountable bar to prudent self-representation. In this regard, it is interesting to note that regular viewers of “television judges” were somewhat less likely than other respondents to agree that they could represent themselves in court should they want to do so.

A judge can, of course, respond to these and other perceptions that members of the public vastly overestimate the role of the courts. The dictates of the adversarial process and neutrality limit what the judiciary can do even when cases are before the courts. Furthermore, there is good reason for judicial skepticism when the public provides opinions about “the courts” (although it is harder to be dismissive when questions specifically refer to judges). Focus group research indicates that the public lacks a clear concept of what comprises “the court.” In one study, it was found “most individuals indicated the court is ‘the system’ or ‘the procedure,’ or that the court begins with law enforcement and continues all the way through the Dept. of Corrections.”

Does the Public Still Care about Court Delay?

Late in the interviews, survey respondents were invited to express their views in their own words. They were asked to tell the interviewer either the most important thing that the courts in their community were doing well or poorly. One-half of the interviews asked what the courts were doing well and the other half what they were doing poorly. The “open-ended” question came after the respondents had been asked about their experience in courts and their satisfaction level with various specific aspects of court performance. Interviewers recorded their remarks and staff from the Indiana Public Opinion Laboratory categorized the responses once all of the interviews were completed.

The answers offer a test of what image or images of the court – positive or negative – are uppermost in the minds of the public. It is striking that one respondent out of five spontaneously mentioned that courts do not handle cases quickly enough when asked what the courts in their community are doing poorly. The next most common complaint was that sentences are too lenient, offered by one out of twenty respondents. There was more direct evidence that courts continue to be perceived as slow. Survey respondents were asked to agree or disagree with the statement “Cases are not resolved in a timely manner.” Forty-six percent of respondents strongly agreed and another 34% somewhat agreed with the statement (see Figure 8). Only 20% of the survey respondents disagreed. Perhaps not all of the blame for delay is placed on the judiciary. The respondents were also asked whether “Courts adequately monitor the progress of cases.” Respondents were equally split in agreeing or disagreeing with that statement. Judges appear to share the blame for court delay with others, such as the legal profession.

<table>
<thead>
<tr>
<th>Statement</th>
<th>Strongly Agree</th>
<th>Somewhat Agree</th>
<th>Strongly Disagree</th>
<th>Somewhat Disagree</th>
<th>All Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases are not resolved in a timely manner</td>
<td>6.7%</td>
<td>11.6%</td>
<td>35.1%</td>
<td>46.7%</td>
<td>45.7%</td>
</tr>
<tr>
<td>Whites</td>
<td>35.1%</td>
<td>49.3%</td>
<td>11.6%</td>
<td>36.1%</td>
<td></td>
</tr>
<tr>
<td>African-Americans</td>
<td>36.1%</td>
<td>35.1%</td>
<td>12.3%</td>
<td>11%</td>
<td>34.4%</td>
</tr>
<tr>
<td>Hispanics</td>
<td>6.7%</td>
<td>11.6%</td>
<td>35.1%</td>
<td>46.7%</td>
<td></td>
</tr>
</tbody>
</table>

When asked to agree or disagree with other statements about court performance, the public showed as much or more concern with fairness toward minority groups and the intrusion of politics into the courts as they did over timeliness. Yet, the persistent, almost reflex, association with “the courts” appears to be “slow.” It is difficult to blame the mass media for attaching the label of “slow” to the courts. Cases move from arrest, to preliminary hearings, and on to trial within a one-hour time-frame in TV dramas. Justice is swift when rendered by a TV judge.

The persistence of negative images like court delay may represent a roadblock that makes it difficult for even demonstrable court improvements to become translated into higher levels of public confidence. Many state trial courts have taken major

43. See id. at 25.
44. See id. at 25.
46. On the other hand, when asked what the courts were doing well, 6% gave a response that can be broadly classified as “courts handle cases in a timely manner.”
47. See id. at 28.
48. See id. at 27.
strides toward faster disposition of cases over recent years, but the improvements do not seem to have registered with the public. The pace at which courts process cases is difficult to gauge even for individuals with regular court contact. Reductions in average disposition times by weeks or even months will not naturally percolate down by word of mouth to become a part of common knowledge. Courts may need to tackle the image of delay as a part of a general package of changes that make the courts more accessible and less complicated.

Conclusion

Some judges may dismiss the survey-based evidence we have presented as dealing in perceptions, perceptions that are driven only partly by experience before the courts. Perceptions, however, matter in their own right. Perceptions influence, even shape, behavior. The judiciary clearly must overcome some formidable barriers of mistrust in speaking credibly to members of minority groups.

It can also be argued, on the other hand, that what we have reported is not news. Many judges may feel that their experiences in the courtroom or in legal practice before they joined the bench give them a realistic view of how courts treat and are perceived to treat minority group members. However, the general public and the judiciary hold views of the courts so divergent as almost to be mirror images. While the public tends to be lukewarm or hostile in its assessment of court performance, judges tend to be sanguine about the status quo. Judges tend to perceive courts that are accessible, timely, fair, and independent. Lawyers and court employees tend to make assessments of court performance that stand somewhere in between the judicial-public divide. It does no good, we believe, for judges and others in the judicial system to bury their heads in the sand and pretend as if the deep dissatisfaction we have documented in the African-American community does not exist. It is incumbent on the courts either to change or to show there is no reason to change.

Public opinion surveys can play an educational role in alerting judges to the sharp difference between how the courts look to the insiders and to the public at-large. The general public may not be very well informed about the courts, but they are opinionated nevertheless. Surveys are one form of “attentive listening” on the part of the judiciary, to use Roger Warren’s phrase, to the concerns, expectations, and preferences of the public. A carefully prepared survey provides insight into the sources of public dissatisfaction. Research on public opinion about the courts suggests that the public is aware that the judiciary on its own can neither be blamed nor expected to solve problems such as unfairness or delay. Courts are viewed as treating members of minority groups unfairly, but there is also recognition that unfairness is rooted in society at large and can only be partly countered by changes to court procedure or judicial selection.

We would argue that the appropriate judicial response to the message from public opinion surveys should be guarded optimism mingled with tough realism. Judges can make a difference in how they and their courts are perceived. As another recent study of opinion on the courts concluded: “Local courts need not be passive with respect to the support they receive from the public. While certainly some of the influences on support are beyond their control, others are not—especially people’s perceptions of the fairness they experience in court.”

51. See Olson & Huth, supra note 4, at 57.
How Previous Court Experience Influences Evaluations of the Kansas State Court System

Joseph A. Aistrup and Shala Mills Bannister

How do previous court experiences shape citizen evaluations of the court system? Since the unveiling of The Public Image of Courts in 1977, the prevailing wisdom has been that a citizen’s previous experience with the court system tends to have a negative influence on his or her confidence toward state and local courts. However, in recent years this wisdom has come into question. For example, Kritzer and Voelker found that citizens who had recent contact with the courts in Wisconsin had more positive evaluations of the court system. In re-examining the findings from the landmark study in 1977, David Rottman has noted that the original conclusion that differences in citizen confidence levels varied by their previous experiences had been exaggerated. While those with previous experiences with state and local courts were slightly more likely to be less confident in state courts, he has argued that the results lack statistical significance. Moreover, in a review of state level public opinion surveys conducted over the past fifteen years, Rottman concluded that there was “no confidence gap between those with and without court experiences.”

The findings from recent national surveys also cast doubt on the original conclusion. In February 1998 the American Bar Association sponsored a national survey of 1,000 respondents. The report, Perceptions of the U.S. Justice System, found that a respondent’s positive or negative evaluation of his or her experience with the court system affected confidence in state and local courts. While 28% of all respondents indicated that their previous experiences with state and local courts were slightly more likely to be less confident in state courts, he has argued that the results lack statistical significance. Moreover, in a review of state level public opinion surveys conducted over the past fifteen years, Rottman concluded that there was “no confidence gap between those with and without court experiences.”

The findings from recent national surveys also cast doubt on the original conclusion. In February 1998 the American Bar Association sponsored a national survey of 1,000 respondents. The report, Perceptions of the U.S. Justice System, found that a respondent’s positive or negative evaluation of his or her experience with the court system affected confidence in state and local courts. While 28% of all respondents indicated that their previous experiences with state and local courts were slightly more likely to be less confident in state courts, he has argued that the results lack statistical significance. Moreover, in a review of state level public opinion surveys conducted over the past fifteen years, Rottman concluded that there was “no confidence gap between those with and without court experiences.”

The findings from recent national surveys also cast doubt on the original conclusion. In February 1998 the American Bar Association sponsored a national survey of 1,000 respondents. The report, Perceptions of the U.S. Justice System, found that a respondent’s positive or negative evaluation of his or her experience with the court system affected confidence in state and local courts. While 28% of all respondents indicated that their previous experiences with state and local courts were slightly more likely to be less confident in state courts, he has argued that the results lack statistical significance. Moreover, in a review of state level public opinion surveys conducted over the past fifteen years, Rottman concluded that there was “no confidence gap between those with and without court experiences.”

The findings from recent national surveys also cast doubt on the original conclusion. In February 1998 the American Bar Association sponsored a national survey of 1,000 respondents. The report, Perceptions of the U.S. Justice System, found that a respondent’s positive or negative evaluation of his or her experience with the court system affected confidence in state and local courts. While 28% of all respondents indicated that their previous experiences with state and local courts were slightly more likely to be less confident in state courts, he has argued that the results lack statistical significance. Moreover, in a review of state level public opinion surveys conducted over the past fifteen years, Rottman concluded that there was “no confidence gap between those with and without court experiences.”

The findings from recent national surveys also cast doubt on the original conclusion. In February 1998 the American Bar Association sponsored a national survey of 1,000 respondents. The report, Perceptions of the U.S. Justice System, found that a respondent’s positive or negative evaluation of his or her experience with the court system affected confidence in state and local courts. While 28% of all respondents indicated that their previous experiences with state and local courts were slightly more likely to be less confident in state courts, he has argued that the results lack statistical significance. Moreover, in a review of state level public opinion surveys conducted over the past fifteen years, Rottman concluded that there was “no confidence gap between those with and without court experiences.”

The findings from recent national surveys also cast doubt on the original conclusion. In February 1998 the American Bar Association sponsored a national survey of 1,000 respondents. The report, Perceptions of the U.S. Justice System, found that a respondent’s positive or negative evaluation of his or her experience with the court system affected confidence in state and local courts. While 28% of all respondents indicated that their previous experiences with state and local courts were slightly more likely to be less confident in state courts, he has argued that the results lack statistical significance. Moreover, in a review of state level public opinion surveys conducted over the past fifteen years, Rottman concluded that there was “no confidence gap between those with and without court experiences.”

The findings from recent national surveys also cast doubt on the original conclusion. In February 1998 the American Bar Association sponsored a national survey of 1,000 respondents. The report, Perceptions of the U.S. Justice System, found that a respondent’s positive or negative evaluation of his or her experience with the court system affected confidence in state and local courts. While 28% of all respondents indicated that their previous experiences with state and local courts were slightly more likely to be less confident in state courts, he has argued that the results lack statistical significance. Moreover, in a review of state level public opinion surveys conducted over the past fifteen years, Rottman concluded that there was “no confidence gap between those with and without court experiences.”

The findings from recent national surveys also cast doubt on the original conclusion. In February 1998 the American Bar Association sponsored a national survey of 1,000 respondents. The report, Perceptions of the U.S. Justice System, found that a respondent’s positive or negative evaluation of his or her experience with the court system affected confidence in state and local courts. While 28% of all respondents indicated that their previous experiences with state and local courts were slightly more likely to be less confident in state courts, he has argued that the results lack statistical significance. Moreover, in a review of state level public opinion surveys conducted over the past fifteen years, Rottman concluded that there was “no confidence gap between those with and without court experiences.”
First, previous research suggests that experience with some aspect of the court system may have some influence on respondents’ opinions. These studies tend to distinguish among those who have had no experience, those who have served on juries, and those who have had direct experience through being an active participant (witness, traffic court, civil suit, criminal case). Second, findings from some state surveys show that public evaluations may be influenced by the type of experience with the court system. For example, in Louisiana, those who had been in traffic court, witnesses, or jurors tended to have the higher evaluations of the court system than those who were litigants or victims. Third, evaluations may be a function of whether the respondent evaluated his or her experience with the court system as positive or negative. These studies have shown that those with positive experiences with the court system will evaluate it more positively.

Table 1 shows the relationship between respondent evaluations of the Kansas court system and general experiences with the court system.

<table>
<thead>
<tr>
<th>Level of Experience</th>
<th>Poor Treated Same as Rich</th>
<th>Victim Concerns Are Addressed</th>
<th>Jury Verdicts Are Fair</th>
<th>Judges Are Fair</th>
</tr>
</thead>
<tbody>
<tr>
<td>No prior experience with court system</td>
<td>64%</td>
<td>32%</td>
<td>15%</td>
<td>14%</td>
</tr>
<tr>
<td>Served on a jury within past five years</td>
<td>64%</td>
<td>36%</td>
<td>8%</td>
<td>15%</td>
</tr>
<tr>
<td>Ever had any court experience other than service on jury</td>
<td>74%</td>
<td>46%</td>
<td>21%</td>
<td>30%</td>
</tr>
<tr>
<td>All Respondents</td>
<td>69%</td>
<td>39%</td>
<td>17%</td>
<td>22%</td>
</tr>
</tbody>
</table>

The table shows some support for the idea that Kansans who have had some experiences with the court system tend to be more negative in some of their opinions. For example, 74% of those with prior court experience disagreed that those with less money are treated the same as those with more money, compared to 64% of those who had served on juries or had no experience. About 30% of those with experience with the court system disagreed with the statement that judges are fair, compared to 15% of those who had been jurors or had no experience. These findings for Kansas tend to support the basic findings resulting from The Public Image of Courts survey in 1977.

Table 2 continues this analysis by examining the relationship between evaluations of the Kansas court system and type of court experience.

<table>
<thead>
<tr>
<th>Type of Experience</th>
<th>Poor Treated Same as Rich</th>
<th>Victim Concerns Are Addressed</th>
<th>Jury Verdicts Are Fair</th>
<th>Judges Are Fair</th>
</tr>
</thead>
<tbody>
<tr>
<td>No prior experience with court system</td>
<td>64% (N=466)</td>
<td>33% (N=434)</td>
<td>15% (N=423)</td>
<td>14% (N=417)</td>
</tr>
<tr>
<td>Served on a jury within past five years</td>
<td>64% (N=82)</td>
<td>36% (N=77)</td>
<td>8% (N=84)</td>
<td>15% (N=79)</td>
</tr>
<tr>
<td>Ever been a party in a small claims matter</td>
<td>73% (N=35)</td>
<td>38% (N=31)</td>
<td>13% (N=28)</td>
<td>31% (N=30)</td>
</tr>
<tr>
<td>Ever been a party in a civil case</td>
<td>73% (N=121)</td>
<td>38% (N=112)</td>
<td>13% (N=106)</td>
<td>31% (N=110)</td>
</tr>
<tr>
<td>Ever been a party in a traffic case</td>
<td>72% (N=234)</td>
<td>46% (N=218)</td>
<td>21% (N=199)</td>
<td>31% (N=206)</td>
</tr>
<tr>
<td>Ever been a witness or a litigant in any type of case</td>
<td>73% (N=177)</td>
<td>44% (N=165)</td>
<td>21% (N=167)</td>
<td>25% (N=172)</td>
</tr>
<tr>
<td>All Respondents</td>
<td>69% (N=1116)</td>
<td>40% (N=1036)</td>
<td>18% (N=1006)</td>
<td>23% (N=1014)</td>
</tr>
</tbody>
</table>

Compared to those with no experience and those who had served on juries, respondents who had been involved in the court system as a participant tended to be more negative, i.e., more likely to disagree with each of these positive statements about the courts. Significantly, compared to all other types of experiences, those who had been involved with civil litigation tended to be the most likely to disagree with each of the statements. This should not be surprising, given that civil litigants tend to be involved in divorces, other domestic disputes, contract disputes, property claims, and the like — all of which represent cases that tend to be highly personal in nature and ones in which winning the case may be as important to the litigant as recovery of any monetary damages. Of course, criminal defendants may also perceive their situations as highly personal. However, few of the Kansas respondents had been criminal defendants and, thus, our data are limited.

The findings shown in both tables 1 and 2 do not control for the respondent’s evaluation of the outcome of his or her own court experience. Given that court proceedings are adversar-
ial, it may be that those who judge the outcome of their experience in a negative way tend to evaluate the courts in a more negative fashion when compared to those who experienced positive outcomes. For those respondents whose experiences with the court system were less than five years ago, the survey asked questions relating to their level of satisfaction with the outcome. Table 3 compares the evaluations of those who had bad or unsatisfactory experiences with those who had experiences more than five years ago, those who had good or satisfactory experiences as an active participant, those who had good experiences as a juror, and those who had no experiences with the court system.

Table 3: Disagreement with Various Statements by Satisfaction with Court Outcome

<table>
<thead>
<tr>
<th>Type of Experience</th>
<th>Poor Treated Same as Rich</th>
<th>Victim Concerns Are Addressed</th>
<th>Jury Verdicts Are Fair</th>
<th>Judges Are Fair</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unsatisfactory experience within five years</td>
<td>70% N=124</td>
<td>45% N=114</td>
<td>24% N=98</td>
<td>37% N=110</td>
</tr>
<tr>
<td>Any court experience more than five years ago</td>
<td>74% N=330</td>
<td>48% N=307</td>
<td>21% N=303</td>
<td>28% N=301</td>
</tr>
<tr>
<td>Satisfactory experience within five years (not including service on jury)</td>
<td>77% N=118</td>
<td>42% N=108</td>
<td>16% N=101</td>
<td>29% N=111</td>
</tr>
<tr>
<td>Satisfactory experience serving as a juror within five years</td>
<td>64% N=78</td>
<td>33% N=73</td>
<td>8% N=91</td>
<td>12% N=75</td>
</tr>
<tr>
<td>No prior experience with court system</td>
<td>64% N=466</td>
<td>33% N=434</td>
<td>15% N=423</td>
<td>14% N=417</td>
</tr>
<tr>
<td>All Respondents</td>
<td>69% N=1116</td>
<td>40% N=1036</td>
<td>18% N=1006</td>
<td>23% N=1014</td>
</tr>
</tbody>
</table>

Table 3 shows that those who had experiences more than five years ago were more likely to disagree on two of the four items (poor treated same as rich and victim concerns addressed) than even those respondents who had bad experiences within the past five years. Surprisingly, 77% of those who had good experiences within the past five years disagreed with the statement that those with less money are treated the same as those with more money. Only 70% of those who had bad experiences disagreed with this statement. Those who had a good jury experience have evaluations that were similar to those with no experiences with the court system. Finally, those who had been active participants and had good court system experiences had levels of disagreement that were similar to those respondents with bad experiences.

**Conclusion**

These data from the Kansas study suggest that a satisfactory outcome does not substantially improve the likelihood that a respondent will have a more positive evaluation of the Kansas court system. Thus, our conclusions could be interpreted as adding to the trail of mixed findings. Anytime a researcher obtains different findings with survey questions that do not replicate the wording of the previous studies, it is possible that the disparity in findings is a function of the different question wording. It is our opinion that this is not the case here. While asking questions about whether judges and juries are “fair” is different than asking about respondents’ “confidence” in the court system, at least in theory, fairness and levels of confidence would seem to be tapping the same types of attitudes.

Another possibility is that even though these bivariate relationships are statistically significant, multivariate statistical techniques could uncover interesting and significant results that render these bivariate relationships spurious. We did do some exploratory multivariate analyses that go beyond the scope of this article. We found that the relationships noted above remained significant. Taken together, we do not feel that methodological considerations explain the differences in findings. However, there is another possible explanation.

The differences in findings between states like Kansas and Wisconsin suggest that distinct states, with their individual court institutions and culture, may engender contrasting public evaluations of the court system based on experiences. If this is the case, this picture may not be so much confused as complex. Further comparative state court systems research is needed to explore the relationship between institutional arrangements and public evaluations based on court experiences. This research can then be used to determine which institutional arrangements do the most to enhance the public’s perceptions.

Joseph A. Aistrup is an associate professor of political science and justice studies at Fort Hays State University, located in Hays, Kansas. He is also the director of the Docking Institute of Public Affairs, which is located there. Aistrup directed the efforts of the Docking Institute in conducting the 1998 Kansas opinion survey discussed in this article. He is the author of The Southern Strategy Revisited: Republican Top-Down Advancement in the South (1996). Aistrup received his Ph.D. from Indiana University in 1989.

Shala Mills Bannister is an assistant professor of political science and justice studies at Fort Hays State University. She was also involved in the 1998 Kansas opinion survey, including primary responsibility for a separate survey of Kansas judges and lawyers. She received a B.A. in history from Baylor University and a J.D. from the University of Kansas, where she was a member of the Kansas Law Review. Bannister is the advisor for pre-law students at Fort Hays State University.
For the past several years, professionalism and legal ethics have emerged as high priority items on the policy agendas of the legal community at virtually every level of organization. The impetus for this attention stemmed from sources both internal and external to the justice system. Judges complained about an apparent increase in the number of lawyers who routinely missed filing deadlines, arrived late or even failed to appear at all for scheduled court hearings, and often were inadequately prepared to proceed. Within the legal profession, increasing numbers of lawyers expressed dissatisfaction with the levels of civility and even outright hostility, that seemed to pervade much of contemporary legal practice. At the same time, public contempt with the legal profession seemed to grow over such issues as unresponsive business practices and high costs for substandard work, as well as mistrust of the profession’s ability to police itself.

In response to these concerns, state and local bar organizations have led the way in the development of innovative programs to bolster professionalism and legal ethics by their respective members. These initiatives have employed a variety of approaches. Professionalism requirements have been introduced in CLE curricula, including intensive “bridge-the-gap” and mentoring programs for newly admitted lawyers. Educational and lawyer support programs have been developed on such diverse topics as law office management, and substance abuse and mental health issues. A number of bar organizations have developed civility codes - statements of aspirational conduct to which lawyers pledge to comply. Disciplinary procedures have been streamlined to improve efficiency and alternatives to discipline created to address complaints that do not rise to the level of sanctionable misconduct. Among academicians, the topics of professionalism and legal ethics have become significant topics of scholarly interest and debate, generating numerous articles in prestigious law journals and several national conferences.

A number of courts and individual judges have taken steps to deal with issues of lawyer professionalism and competence. In addition to court-instituted commissions, standards and other professionalism programs, some state appellate courts have declared incivility unacceptable and some trial judges have begun to closely regulate lawyer conduct in the courtroom. But many of these efforts have been relatively isolated.

* The National Action Plan on Lawyer Conduct and Professionalism was developed by the Conference of Chief Justices (CCJ) with technical assistance from the National Center for State Courts (NCSC) and the American Bar Association Center for Professional Responsibility and funding by the State Justice Institute (SJI Grant No. SJI-97-N-243). The points of view expressed are those of the author and do not necessarily represent the official position or policies of the SJI, the CCJ, or the NCSC.

Footnotes


2. See, e.g., Catherine T. Clarke, Missed Manners in Courtroom Decorum, 50 Mo. L. Rev. 945 (1991).


5. The Texas Lawyer’s Creed is a frequent model for these types of civility codes. The full text of the Creed can be accessed at http://www.txethics.org/creed.htm.


initiatives undertaken by charismatic and highly motivated trial and appellate judges. The more common level of involvement by the judiciary has been modest participation by individual judges on educational programs and planning boards. Institutional involvement has tended to consist of tacit judicial approval for professionalism activities in the form of enabling rules or procedures for bar-sponsored programs. That level of judicial involvement is likely to increase significantly, however, with the Conference of Chief Justices’ unanimous adoption of its National Action Plan on Lawyer Conduct and Professionalism on January 21, 1999.

Content and Development of the National Action Plan

The CCJ National Action Plan, which culminates over two years of study and debate on these topics, is a blueprint for state supreme courts to provide appropriate leadership and support to bolster professional and ethical conduct by lawyers. A major impetus for the plan was growing recognition by CCJ that the perceived decline in lawyer professionalism was taking a tremendous toll not only on public trust in the legal profession, but also public confidence in the entire justice system. The CCJ came to realize that judicial efforts to improve public trust and confidence in the courts could not be achieved without simultaneously addressing public trust and confidence in the legal profession. And that would require more judicial leadership, coordination and daily involvement to achieve significant improvements in lawyer professionalism and ethical conduct.

In keeping with this broad view, the CCJ intentionally defined the term “professionalism” to encompass not only civility among members of the bench and bar, but also competence, integrity, respect for the rule of law, and participation in pro bono and community service. The plan contains thirty-one recommendations pertaining to judicial leadership, continuing legal education, law school education and bar admission, lawyer regulation, lawyer support programs, public outreach, in-court conduct, and interstate initiatives.

The National Action Plan was developed under the leadership of Delaware Chief Justice E. Norman Veasey as a study project of the CCJ Committee on Professionalism and Competence of the Bar. With technical assistance from the National Center for State Courts and the ABA Center for Professional Responsibility, and funding by the State Justice Institute, the committee appointed a thirty-member working group of trial and appellate judges, lawyers, and scholars to examine professionalism initiatives from across the country and to recommend successful programs and approaches for inclusion in the National Action Plan. For reasons of efficiency, the working group was organized into six subcommittees, which focused on programs and initiatives relevant to continuing legal education (CLE), lawyer support programs, lawyer discipline, public outreach, law school education and bar admissions, and litigation reform. The working group surveyed judges and court staff, bar leadership, lawyer regulation staff, and law school deans to identify successful programs and areas that needed more attention, and to solicit the respondents’ views about the appropriate role of state supreme courts in efforts to improve professionalism.

In a series of teleconferences in 1997 and 1998, the working group subcommittees considered the survey responses and prepared recommendations for the National Action Plan. The subcommittee chairs later met via teleconference to present the recommendations to the other subcommittees. This two-stage process helped ensure that the plan’s recommendations were sufficiently comprehensive to address all of the issues in the study as well as internally consistent.

A draft of the plan was disseminated for public comment in August 1998. The reaction was overwhelmingly positive. Along with substantive comments, leaders of bar organizations and other law-related associations uniformly praised the comprehensiveness of the plan and its content, and welcomed the involvement of the judiciary in promoting professionalism in the legal community. After making some minor adjustments to the plan based on the comments received, the CCJ passed a resolution at its 1999 midyear meeting approving the plan and urging its members to present it to their respective courts for implementation.

Recurring Themes of the National Action Plan

Underlying each of the plan’s specific recommendations are three recurring themes. The first of these is that any appreciable improvement in lawyer conduct and professionalism will only be achieved through sustained commitment from and coordination by all segments of the legal community - the bench, the bar, and the law schools. As a result, much of the plan focuses on the need for state supreme courts to assume a greater leadership and coordination role in state and local professionalism initiatives.

Institutionalizing Leadership and Coordination

The National Action Plan specifically recommends that the state supreme courts establish a commission or other permanent body that is directly accountable to the court. This organization is intended to provide an avenue for the courts to be apprised of the nature and scope of professionalism programs within their respective jurisdictions and a forum through which the bench, the bar, and the law school communities can share information and coordinate their activities. By
Social institutions can adjust the minimally acceptable standards (up or down) and these adjustments can have a significant impact....

The second theme is that professionalism is a personal characteristic that, ideally, every judge and lawyer should demonstrate. Institutionally, however, the bench and bar have an obligation to ensure that the infrastructure of the legal community provides an environment in which professionalism can flourish. This distinction between the individual responsibilities of judges, lawyers and law school faculty and the institutional responsibilities of the bench, the bar and law schools is one that is frequently glossed over in contemporary discussions of professionalism.

Critics of professionalism programs are quick to point out that many of the tenets of professionalism are aspirational in nature and should not be enforced through coercive measures. At best, social institutions should only establish minimally acceptable standards and sanction those individuals who fail to live up to those standards. These critics are, in large part, correct. But they also overlook a key point: that social institutions can adjust the minimally acceptable standards (up or down) and that these adjustments can have a significant impact both on individual conduct and on societal attitudes concerning that conduct. This holds as true for professional norms within the legal community as it does, for example, for societal attitudes about drunk drivers.

A significant factor in the ultimate success or failure to affect such a change in the culture of the legal profession is the willingness of the legal community, again by all its segments, to allocate the resources necessary to effectuate these changes. All of the recommendations in the National Action Plan make it clear that the bench, the bar, and the law schools will have to put their money where their mouths are if they really intend to make a difference in the level of professionalism demonstrated by the legal community.

At a minimum, this means that each state's system of lawyer regulation must have the necessary staff and expertise to enforce the state's ethical rules. Moreover, those enforcement mechanisms should consist of more than just punitive sanctions for lawyers who engage in misconduct. They should also include remedial alternatives to discipline for lawyers who engage in "minor misconduct," preventive measures in the form of continuing legal education and mentoring programs, and creating rules and procedures that facilitate, rather than undermine, the ability of lawyers to comply with professional norms. The expectations of the public can also be brought to bear as a positive force in these efforts by increasing the level of public participation, and thus public accountability, in the state's professionalism and lawyer regulation programs.

Judicial Responsibilities: Modeling Professionalism and Enforcing Appropriate Standards

Establishing the institutional infrastructure necessary to encourage a culture of professionalism and ethical conduct is, of course, only half the equation. Individually, judges, lawyers, and law school faculty must be willing and able to demonstrate the personal characteristics of professionalism in their daily activities and to insist that others do likewise. This is the third recurring theme of the National Action Plan and the one that ultimately will have the most impact on the bench. In effect, the National Action Plan places two responsibilities in the hands of judges.

The first responsibility is to be an exemplar of professionalism to the legal community. As the National Action Plan explains, "judges are the natural role models for lawyers; lawyers look to judges for cues about how to conduct themselves both in and out of court." Appropriate judicial demeanor extends beyond mere civility to the lawyers who appear in court, but also to interactions with judicial colleagues, court staff, litigants, jurors, witnesses, and the public. Only those judges who conduct themselves in a professional manner will have the credibility and respect to insist that others do likewise, which is the second responsibility of individual judges.

Judges who insist that lawyers treat others (e.g., opposing counsel, witnesses, clients) with the same respect and courtesy that they expect for themselves typically experience far fewer problems with unprofessional behavior than judges who contend that it is not their job to make lawyers adhere to ethical or professional norms. Yet many judges are reluctant to exert any more control over the lawyers who appear before them than is necessary to maintain order in the courtroom. In some cases, this reluctance is a consequence of heavy judicial workloads; few judges have the luxury to give substantial amounts of time and attention to the conduct of lawyers outside the scope of the courtroom. Political considerations also play a

11. Id.
12. See generally id. at 3-8.
13. Id.
15. NATIONAL ACTION PLAN at 19-20.
16. Id. at 10-11, 13-15.
17. Id. at 29-32.
18. Id. at 23, 26.
19. Id. at 4.
part in some jurisdictions where an unwritten policy of non-interference with each other's domain serves as a form of turf protection between the bench and the bar.

In spite of these considerations, the National Action Plan urges judges to overcome their reluctance to concern themselves with the level of professionalism in their respective legal communities. Instead, they are encouraged to set an example of appropriate conduct, to make their expectations about behavior clear to the lawyers who practice before them, and to enforce those expectations fairly and consistently. The National Action Plan offers some concrete suggestions on how judges might do so:

It is far easier to maintain an acceptable level of professionalism by lawyers if the judge's expectations about appropriate behavior are made clear to the lawyers and litigants at the very beginning of their relationship, before problems develop. Judges should take the earliest opportunity to explain to lawyers that professionalism and ethical conduct are mandatory for practicing in their courts. Some judges include provisions to that effect in pretrial orders. Others give the lawyers a copy of one of the lawyer's creeds (e.g., Texas Lawyer's Creed; Delaware pro hac vice rules) and require the lawyers to certify that they have read it, understand it, and agree to abide by its tenets. In smaller jurisdictions, it may only be necessary to set these parameters on first meeting with a lawyer who has not previously practiced in that court. In larger jurisdictions, where the number of judges and lawyers makes it more difficult to establish the personal ties that encourage professionalism, judges may elect to establish these expectations with the lawyers at the commencement of every suit, regardless of whether the lawyers have practiced before that judge or not. Whichever technique is employed, there should be no question that the judge will not tolerate any unprofessional conduct.20

Nothing acts as a deterrent to unprofessional conduct by lawyers quite as effectively as the watchful supervision of the trial judge. The National Action Plan endorses active judicial involvement in the pretrial management of cases. Early and direct judicial availability in discovery disputes, consistent and even-handed enforcement of existing court rules and pretrial orders, and the imposition of appropriate sanctions are cited as particularly useful tools for encouraging professional conduct by lawyers.21 Close supervision over pretrial matters also places judges in a position to ensure that orders are followed, to inquire why deadlines may not be met, and to investigate whether delays occur because of legitimate or illegitimate reasons.22

Clear expectations and adequate pretrial supervision notwithstanding, some lawyers need to be reminded occasionally. Generally, an oral admonition and concrete suggestions for behavior modification are sufficient, but repeated lapses should be met with progressively more severe sanctions including the imposition of fines, use of the court's contempt powers, and, if warranted, referral to the lawyer disciplinary agency.23

Taking on these responsibilities will undoubtedly add to judges' already copious workload, and the drafters of the National Action Plan recognized this reality. A proactive approach to pretrial management was recommended, however, because it was believed that, in the long run, the whole justice system would be better served if lawyer professionalism and ethical conduct were elevated to a higher priority.24 To the extent that it would ease the ability of the trial bench to adopt a more active role in pretrial management, the National Action Plan also recommends that appellate judges support these efforts in their decisions unless those efforts were clearly an abuse of discretion.25

Judges in Glass Houses

The primary focus of the National Action Plan is on lawyer professionalism and ethical conduct and the steps that state supreme courts should take to raise the professional standards in which the legal community practices. The plan was not intended as a blueprint for regulating the professionalism and ethical conduct of judges, but the notion that judges should adhere to standards that are at least as high as those imposed on lawyers is certainly implied throughout the document. And many of the same recommendations concerning lawyer discipline, lawyer support and continuing education programs, and public outreach could easily be extended to the bench.

Judges who fail to adhere to appropriate standards of behavior are, fortunately, few and far between. But they do exist and their inappropriate conduct - or more to the point, the willingness of their judicial colleagues to overlook or tolerate that conduct - sends a very mixed message to lawyers about the importance of professionalism to a successful career or public respect.

For obvious reasons, lawyers are not generally in a position to hold judges accountable for their conduct. That accountability can only come from within the judicial community itself. Unless and until the bench is prepared to hold itself to the same (or higher) standards than those expected of the bar, its credibility as a role model for lawyers will be suspect.
Conclusion

The success of the National Action Plan depends on the ability of the state supreme courts to implement its recommendations in their respective jurisdictions. And because so many of the plan’s recommendations involve the active involvement and cooperation of the trial and appellate benches, many of the state supreme courts will be seeking their assistance in those implementation efforts. Unquestionably, many of the recommendations call for greater judicial involvement in lawyer professionalism and ethical programs, but the past few decades have made it abundantly clear that public perceptions of judges and of the whole justice system cannot be easily separated from its perceptions of the legal community. If the justice system is to continue to be a credible institution in our democratic system of government, this National Action Plan is an endeavor worthy of judicial support.

Paula L. Hannaford is a staff attorney and Senior Research Analyst for the Research Division of the National Center for State Courts. Her areas of expertise include jury system management and trial procedure; legal and judicial ethics and discipline; state-federal jurisdiction; and probate court procedure. In addition to authoring multiple articles on these and other subjects, she has contributed to several NCSC publications including the books Jury Trial Innovations and Managing Notorious Cases. She received her J.D. degree from William & Mary Law School, and also has a M.P.P. degree from the Thomas Jefferson Program in Public Policy at the College of William and Mary.

For More Information about the National Action Plan on Lawyer Conduct and Professionalism

The full report, which runs 96 pages with appendices, can be downloaded from the National Center for State Courts Web site at http://www.ncsc.dni.us/CCJ/Natlplan.htm.

Section I of the report provides an overview of the problem, along with a discussion of the institutional role of the courts, the bar and the law schools and the individual roles of judges, lawyers and educators. Section II provides recommendations (reprinted at pages 41 to 44 of this issue) and detailed comments regarding each recommendation. Section III contains briefing papers that led to the recommendations, covering the areas of professionalism, educational initiatives, public outreach initiatives, litigation reform initiatives, bar admissions, lawyer support programs, and disciplinary enforcement. These briefing papers report the responses of thirty-three state chief justices to a survey seeking information about programs presently in use throughout the country.

For those who are not savvy travelers on the information superhighway, a copy of the report can be obtained by contacting Paula L. Hannaford, National Center for State Courts, 300 Newport Avenue, Williamsburg, Virginia 23185. She can be reached by e-mail at phannaford@ncsc.dni.us.
The National Action Plan on Lawyer Conduct and Professionalism*

Section II: Recommendations

(Comments sections omitted)

A. Professionalism, Leadership, and Coordination

The appellate court of highest jurisdiction in each state should take a leadership role in evaluating the contemporary needs of the legal community with respect to lawyer professionalism and coordinating the activities of the bench, the bar, and the law schools in meeting those needs. Specific efforts should include:

- Establishing a Commission on Professionalism or other agency under the direct authority of the appellate court of highest jurisdiction;
- Ensuring that judicial and legal education makes reference to broader social issues and their impact on professionalism and legal ethics;
- Increasing the dialogue among the law schools, the courts and the practicing bar through periodic meetings; and
- Correlating the needs of the legal profession – bench, bar, and law schools – to identify issues, assess trends and set a coherent and coordinated direction for the profession.

B. Improving Lawyer Competence

1. Continuing Legal Education (CLE)

Each state’s appellate court of highest jurisdiction should encourage and support the development and implementation of a high-quality, comprehensive Continuing Legal Education (CLE) program including substantive programs on professionalism and competence. An effective CLE program is one that:

- Requires lawyer participation in continuing legal education programs;
- Requires that a certain portion of the CLE focus on ethics and professionalism;
- Requires that all lawyers take the mandated professionalism course for new admits;
- Monitors and enforces compliance with meaningful CLE requirements;
- Encourages innovative CLE in a variety of practice areas;
- Encourages cost-effective CLE formats;
- Encourages the integration of ethics and professionalism components in all CLE curricula;
- Encourages CLE components on legal practice and office management skills, including office management technology; and
- Teaches methods to prevent and avoid malpractice and unethical or unprofessional conduct and the consequences for failure to prevent and avoid such conduct.

2. Law Office Management

State bar programs should support efforts to improve law office efficiency. Effective support includes:

- Establishing a law office management assistance program;
- Providing assistance with daily law office routines; and
- Providing monitoring services for lawyers referred from the disciplinary system.

3. Assistance with Ethics Questions

Lawyers should be provided with programs to assist in the compliance of ethical rules of conduct. State bar programs should:

- Establish an Ethics Hotline;
- Provide access to advisory opinions on the Web or a compact disc (CD); and
- Publish annotated volumes of professional conduct.

4. Assistance to lawyers with mental health or substance abuse problems

Lawyers need a forum to confront their mental health and substance abuse problems. State bar programs should:

---

* Adopted by the Conference of Chief Justices, January 21, 1999.
5. Lawyers Entering Practice for the First Time — Transitional Education

Judicial leadership should support the development and implementation of programs that address the practical needs of lawyers immediately after admission to the bar. Effective programs for newly admitted lawyers:

- Mandate a course for new admittees that covers the fundamentals of law practice;
- Emphasize professionalism;
- Increase emphasis on developing post-graduation skills; and
- Ensure the availability of CLE in office skills for different office settings.

6. Mentoring

Judicial leadership should promote mentoring programs for both new and established lawyers. Effective programs:

- Establish mentoring opportunities for new admittees;
- Establish mentoring opportunities for solo and small firm practitioners;
- Provide directories of lawyers who can respond to questions in different practice areas;
- Provide networking opportunities for solo and small firm lawyers; and
- Provide technology for exchange of information.

C. Law School Education and Bar Admission

1. Law School Curriculum

In preparing law students for legal practice, law schools should provide students with the fundamental principles of professionalism and basic skills for legal practice.

2. Bar Examination

The subject areas tested on the examination for admittance to the state bar should reflect a focus on fundamental competence by new lawyers.

3. Character and Fitness Evaluation

Law schools should assist bar admissions agencies by providing complete and accurate information about the character and fitness of law students who apply for bar admission.

4. Bar Admission Procedures

Bar admissions procedures should be designed to reveal instances of poor character and fitness. If appropriate, bar applicants may be admitted on a conditional basis.

D. Effective Lawyer Regulation

1. Complaint Handling

Information about the state’s system of lawyer regulation should be easily accessible and presented to lawyers and the public in an understandable format. The disciplinary agency, or central intake office if separate, should review complaints expeditiously. Matters that do not fall under the jurisdiction of the disciplinary agency or do not state facts that, if true, would constitute a violation of the rules of professional conduct should be promptly referred to a more appropriate mechanism for resolution. Complainants should be kept informed about the status of complaints at all stages of proceedings, including explanations about substantive decisions made concerning the complaint.

2. Assistance to lawyers with ethics problems or “minor” misconduct (e.g., acts of lesser misconduct that do not warrant the imposition of a disciplinary sanction)

The state’s system of lawyer regulation should include procedures for referring matters involving lesser misconduct to an appropriate remedial program. Such procedures may include:

- Required participation in a law office management program;
- Required participation in a lawyer assistance program;
- Enrollment in an “ethics school” or other mandatory CLE; and
- Participation in a fee arbitration or mediation program.

3. Disciplinary Sanctions

The range of disciplinary sanctions should be sufficiently broad to address the relative severity of lawyer misconduct, including conduct unrelated to the lawyer’s legal practice. Disciplinary agencies should use available national standards to ensure interstate consistency of disciplinary sanctions. All public sanctions should be reported to the National Lawyer Regulatory Databank of the American Bar Association.
4. Lawyers’ Funds for Client Protection

The state's system of lawyer regulation should include a Lawyers’ Fund for Client Protection to shield legal consumers from economic losses resulting from an attorney's misappropriation of law client and escrow money in the practice of law. Rules or policies of the appellate court of highest jurisdiction should:

- Provide for a statewide client protection fund;
- Require that the fund substantially reimburse losses resulting from dishonest conduct in the practice of law;
- Finance the fund through a mandatory assessment on lawyers;
- Designate the fund's assets to constitute a trust;
- Appoint a board of trustees, composed of lawyers and lay persons, to administer the fund; and
- Require the board of trustees to publicize the fund's existence and activities.

5. Other Public Protection Measures

The state's system of lawyer regulation should include other appropriate measures of public protection. Such measures that the Court should enact include:

- Mandating financial recordkeeping, trust account maintenance and overdraft notification;
- Establishing a system of random audits of trust accounts;
- Requiring lawyers who seek court appointments to carry malpractice insurance;
- Collecting annual information on lawyers' trust accounts;
- Studying the possibility of recertification;
- Providing for interim suspension for threat of harm; and
- Establishing a 30-day no contact rule.

6. Efficiency of the Disciplinary System

The state system of lawyer regulation should operate effectively and efficiently. The Court should enact procedures for improving the system's efficiency, including:

- Providing for discretionary rather than automatic review of hearing committee or board decisions by the Court;
- Providing for discipline on consent;
- Requiring respondents to disciplinary investigations to be reasonably cooperative with investigatory procedures;
- Establishing time standards for case processing;
- Periodically reviewing the system to increase efficiency where necessary;
- Eliminating duplicative review in the procedures for determining whether to file formal charges;
- Authorizing disciplinary counsel to dismiss complaints summarily or after investigation with limited right of complainants to seek review;
- Using professional disciplinary counsel and staff for investigation and prosecution and volunteers on boards and hearing committees;
- Providing appropriate training for all involved; and
- Incorporating disciplinary experiences in CLE curricula.

7. Public Accountability

The public should have access to information about the system of lawyer regulation including procedures, aggregate data concerning its operations, and lawyers' disciplinary records. Laypersons should be included on disciplinary hearing panels and boards. Other measures to ensure public accountability of the disciplinary agency include:

- Making written opinions available in all cases;
- Making formal disciplinary hearings open to the public;
- Collecting and making available information on lawyers' malpractice insurance; and
- Speaking about the disciplinary system at public gatherings.

E. Public Outreach Efforts

1. Public Education

Judges, lawyers and bar programs should provide more public understanding of lawyer professionalism and ethics by developing and implementing public education programs. Effective public education programs should:

- Emphasize lawyer professionalism in court communications with the public;
- Provide a "Public Liaison" Office or Officer to serve in a clearinghouse function;
- Distribute public education materials in places commonly accessible to the public;
- Include public speaking on the topic of professionalism on the agenda for bar association speaking bureaus;
- Encourage a more active role between educational institutions and organizations and the justice system; and
- Educate the legislative and executive branches of government about issues related to the legal profession and the justice system.

2. Public Participation

The participation of the public should be supported in all levels of court and bar institutional policy-making by judges, lawyers, and bar programs. Judges, lawyers, and bar programs should:

- Publicize the nomination and appointment process for public representatives on court and bar committees;
- Once appointed, provide lay members access to the tools necessary for effective participation; and
- Provide adequate funding on an ongoing basis.

3. Public Access to the Justice System

Judges, lawyers, and bar programs should encourage public
access to the justice system through the coordination of pro bono programs. Effective coordination of pro bono programs should:

- Encourage judicial support and participation in lawyer recruitment efforts for pro bono programs;
- Provide institutional support within the court system for lawyer pro bono service;
- Establish an “Emeritus Lawyer” pro bono program;
- Provide institutional and in-kind support for the coordination of pro bono programs; and
- Explore funding alternatives to support pro bono programs.

4. Public Opinion
To gauge public opinion about the legal profession and the level of professionalism demonstrated by lawyers, the court and bar should create regular opportunities for the public to voice complaints and make suggestions about judicial/legal institutions.

Practice Development, Marketing, and Advertising
The judiciary, the organized bar and the law schools should work together to develop standards of professionalism in attorney marketing, practice development, solicitation and advertising. Such standards should:

- Recognize the need for lawyers to acquire clients and the benefit to the public of having truthful information about the availability of lawyers;
- Emphasize the ethical requirements for lawyer advertising and client solicitations;
- Emphasize the need to be truthful and not misleading; and
- Encourage lawyers to employ advertising and other marketing methods that enhance respect for the profession, the justice system and the participants in that system.

F. Lawyer Professionalism in Court
1. Alternative Dispute Resolution Programs
If appropriate for the resolution of a pending case, judges and lawyers should encourage clients to participate in Alternative Dispute Resolution (ADR) programs. An effective ADR program should:

- Ensure that court-annexed ADR programs provide appropriate education for lawyers about different types of ADR (e.g., mediation, arbitration);
- Establish standards of ethics and professional conduct for ADR professionals;
- Require lawyers and parties to engage the services of ADR professionals who adhere to established standards of ethics and professional conduct;
- Encourage trial judges to implement and enforce compliance with ADR orders; and
- Educate clients and the public about the availability and desirability of ADR mechanisms.

2. Abusive or Unprofessional Litigation Tactics
To prevent the use of unprofessional or abusive litigation tactics in the courtroom, the court and judges should:

- Encourage consistent enforcement of procedural and evidentiary rules;
- Encourage procedural consistency between local jurisdictions within states;
- Adopt court rules that promote lawyer cooperation in resolving disputes over frivolous filings, discovery, and other pretrial matters;
- Encourage judicial referrals to the disciplinary system;
- Educate trial judges about the necessary relationship between judicial involvement in pretrial management and effective enforcement of pretrial orders;
- Encourage increased judicial supervision of pretrial case management activities; and
- Establish clear expectations about lawyer conduct at the very first opportunity.

3. High Profile Cases
In high profile cases, lawyers should refrain from public comment that might compromise the rights of litigants or distort public perception about the justice system.

G. Interstate Cooperation
The appellate courts of highest jurisdiction should cooperate to ensure consistency among jurisdictions concerning lawyer regulation and professionalism and to pool resources as appropriate to fulfill their responsibilities. Specific efforts of interstate cooperation include:

- Continued reporting of public sanctions to ABA National Regulatory Data Bank;
- Using the Westlaw Private File of the ABA National Regulatory Databank;
- Inquiring on the state's annual registration statement about licensure and public discipline in other jurisdictions;
- Providing reciprocal recognition of CLE;
- Establishing regional professionalism programs and efforts;
- Recognizing and implementing the International Standard Lawyer Numbering System created by Martindale-Hubbell and the American Bar Association to improve reciprocal disciplinary enforcement; and
- Providing information about bar admission and admission on motion (including reciprocity) on the bar's website.
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 insurmountable 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 court, 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 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...
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.

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 is that 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 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. 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 that all too often they have not worked fairly.

- Lawrence Dark

...
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
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, the less confidence they have in them? Or is that an anomaly or what?

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 Minuita, then it is necessary to be able to acquire those who can lead us through the Minuita. 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 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, and 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 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.  
Mr. Tyler: Well, I think the other

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 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.

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
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 nearsightedness 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 extraordinary 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.

Catherine Crier is the host of The Crier Report on the Fox News network, an in-depth interview program covering national and international issues. She began her broadcasting career with CNN in 1989, anchoring the evening news programs Inside Politics and Crier and Company. She later joined ABC News, where she was a correspondent on 20/20 and World News Tonight. Prior to her move into broadcasting, she was a state district judge for the 162nd District Court in Dallas County, Texas.

Tony Mauro has covered the United States Supreme Court for USA Today and the Gannett News Service for two decades. He has a graduate degree in journalism from the Columbia University Graduate School of Journalism; serves on the steering committee of the Reporters Committee for Freedom of the Press; and is a member of the ABA Conference of Lawyers and Representatives of the News Media.

Lawrence J. Dark has been the president and CEO of the Urban League of Portland, Oregon, since 1994. His professional and community work has been primarily in economic and social justice, education, health and equity issues. He is presently working on a three-year national project, “Community Leadership: Community Change through Public Action,” a collaborative effort of the Kettering Foundation and the National Association for Community Leadership, with support from the W. K. Kellogg Foundation. Dark served on the Community Focus Courts Advisory Committee of the National Center for State Courts from 1995 to 1997. He has a law degree from the Northwestern University School of Law.

Tom Tyler is professor of psychology at New York University and an adjunct professor at the New York University Law School, where he teaches legal psychology. He has written a number of articles and several books concerning public trust and confidence in authorities and institutions. They include Why People Obey the Law (1990) and Social Justice in a Diverse Society (1997).

Stephen J. Parker is dean of law at Monash University in Melbourne, Australia. He is secretary and treasurer of the Judicial Conference of Australia, the national body representing judges and magistrates. Professor Parker wrote a 1998 report for the Australian Institute of Judicial Administration entitled, “Courts and the Public,” which was the first major assessment in Australia of developments to improve the relationship between the courts and the community.

Frank A. Bennack, Jr., is the president and CEO of the Hearst Corporation, which has a broad range of publishing, broadcasting, cable and other communication outlets. Bennack has been with Hearst for more than forty years, including a seven-year tenure as publisher and editor of the San Antonio Light. In addition to his positions with Hearst, Bennack is also a director of the Chase Manhattan Bank, American Home Products Corporation and Polo Ralph Lauren Corporation. He served as chairman of the Newspaper Association of America in 1992-93.

* 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 Airlines, Inc., 119 S. Ct. 2139 (1999); and Albertsons, Inc. v. Kirkingburg, 119 S. Ct. 2162 (1999).
The second panel discussion at the National Conference on Public Trust and Confidence in the Justice System discussed what the panelists saw as the most critical issues affecting public trust and confidence in the courts. The discussion was led by Harvard law professor Charles Ogletree, Jr. Panelists were Lyle Denniston, a reporter for the Baltimore Sun; Beverly Watts Davis, executive director of San Antonio Fighting Back; Mary Hernandez, vice president of the San Francisco Board of Education; and Frances Zemans, a court consultant.

Charles Ogletree, Jr.: It is a pleasure to serve as the moderator for this second panel about the critical issue we’re talking about, public trust and confidence. We have worked out an arrangement among the panelists today that each of them will take a central question and address that question, and the others will respond. And then we will have some interactive dialogue before we are told that our time expires.

And a lot of the issues that you heard earlier this morning are really at the tip of the iceberg as far as we are concerned when you talk about the critical issues. The survey which all of you have read and have had described gives you a thumbnail sketch of some of the issues that the public finds important, the public’s rating of those issues, and our task as a group today is to give you a sense of some other issues that we think are competing, in some sense [in a] complementary [way] and, occasionally, in conflict with what you have heard and what you have read.

To start off, we’ll ask Lyle Denniston to give us his views on one of the critical issues as we look at our justice system and the public sense of confidence and trust. Lyle.

Lyle Denniston: One of the problems that you in the judiciary and the law have is we in the media sometimes say and write really dumb things. In the last panel, you heard Ms. Crier say something which is really ignorant. She was describing the Sutton case that is now pending before the Supreme Court and said the issue was whether or not near-sighted people are disabled. That is just dumb.* That is not the issue. That is not the — it came in a hypothetical as the court explored the reach of the Americans with Disabilities Act. But there is no cure, ladies and gentlemen, for riotous, rampant ignorance in the media.

Now, I’m going to try to really provoke you. If you have the public in for a session of education, don’t give them this much material to try and digest before they come, okay? Try to dumb it down a little bit because many people who come into the judiciary as outsiders are not prepared to invest this much energy in understanding your system.

Charles and I talked earlier with other members of the panel about what I would address. Since we are trying to identify critical issues here, building off of the last panel, and public perception as well as the survey, how can we identify critical issues?

Well, it seems to me, one, that the over-arching critical issue is [that] when you are addressing the question of public trust and confidence, I think you must divide it between two sectors. You must divide it between the internal [and external] community of law. [The internal community is] your own internal process and the people who participate in it, coming in as jurors or as litigants. And to some degree, you

---

* Catherine Crier’s remarks, to which Mr. Denniston was responding, are found at page 53. In the case to which they referred, Sutton v. United Air Lines, Inc., 119 S. Ct. 2139 (1999), the Court did, indeed, decide that severely near-sighted people who were denied employment as airline pilots were not disabled within the meaning of the ADA, since corrective lenses generally allowed such people to function identically to people without a similar impairment. The decision came out about a month after this conference was held. Although it appears that Mr. Denniston was incorrect on this point, he did get two rounds of applause from attendees for his criticism of “riotous, rampant ignorance in the media.” Overall, his remarks were interrupted by applause more often than any other speaker in any of the panel discussions.
are going to have to develop strategies within that internal community which are contradictory to the strategies that you must develop for dealing with the external community. For example, the role of the media is different when we are sitting in your courtroom and when we — and, therefore, are part of the internal community and when we go back out and do our stories or our analyses and we then are talking to the external community and are being a part of them.

But, as I say too often, I encounter in the courts a perception of what you are doing is so dreadfully important and so dreadfully complicated that you can't pay too much attention to how it is being perceived on the outside. I see a lot of times in the judiciary, as I cover courts on all levels, that you are engaging in activities that you think are required for your system, but you are not engaging in the impact on the outside.

Let me give you an example, two examples, really. First of all, if you have a civil lawsuit and you have a settlement of that lawsuit, too easily, I think, the judiciary gives in to the desires of the parties to keep the terms of that settlement sealed. And what that leads to, ladies and gentlemen, is not a blackout on how the press covers that lawsuit, but it leads to conjecture, to leaks, to indecision and to dumbness.

And so, when you are sitting in a civil case and you have a settlement imminent, I think it is incumbent upon both lawyers and the judiciary to wonder whether or not the secrecy is going to serve the long-term interests of either of the parties or of the public on the outside.

Another issue, it seems to me — and this is particularly true in the federal judiciary. The federal judiciary has a Rule 11, which means that you are supposed to take action against frivolous lawsuits. It seems to me Rule 11 is one of the rules of civil procedure that is too little enforced. We have an organization in Washington that has now filed 29 separate lawsuits against various aspects of the Clinton Administration and, just this week, filed a thirtieth one because they want to try to stop the war in Yugoslavia through the use of the Freedom of Information Act. Identifying and taking action against frivolous lawsuits is something, it seems to me, that has a tremendous potential for building public confidence.

If you would crack down on lawyers who file these lawsuits which are of maximum benefit only for their publicity value, I think it would enhance the external community's understanding. But I do think that it is terribly important, also, for you to look for strategies or issues as to what the external community requires of you.

As I said in my opening, you cannot cure the problem of ignorance or inattention or the total lack of subtlety that you sometimes see in the media. And another panelist from the last group was speaking somewhat boastfully about his great story on the number of minority law clerks in the Supreme Court. That was one of the most riotously superficial stories I have ever read in my life because it did not get at the problem. It got at the manifestation of the problem at the Supreme Court of the United States, and there is much more of the problem than that. And that's a problem that you are going to have to try and always deal with - the media as the medium through which you reach the external community. And you can't do too much about that.

Another thing that you can't do too much about is that the media is not terribly interested in what you do as a whole. I'm sorry to say that, ladies and gentlemen, but unless you have a trial that has a lot of blood, gore or notoriety in it, you are not going to get very much press coverage. And most of the time, the kind of press coverage you are going to get is some reporter who is usually assigned to the police beat who is asked to run over to the courthouse, run in and out of the trial a couple of times a day, pick out the best witnesses and come back and write meaningfully and knowingly about how the process works.

But what can you do about reaching the external community through the media? First of all, it seems to me, you have to refuse to deal with the reporters who simply are not giving you enough attention. Just tell them no. Just turn them away. You do not have to talk to a person in the media simply because they are a member of the media.

You also should make things available to them because, ladies and gentlemen, the media are lazy. They need to have it on a placard. And as George Wallace used to say, you have got to put the corn down where the hogs can reach it, which means that you have got to dumb it down a good deal.

One other area that, it seems to me, is awfully important for you to try to exploit is the Internet. I can tell you, ladies and gentlemen, I was doing stories this week about cases now pending in the European Court of Human Rights and the International Court of Justice, and I had more easily, readily available material about the pleadings and about the oral arguments than I can get any day in the Supreme Court of the United States.

It strikes me as being lunatic that the Supreme Court of the United States doesn't now have the mechanism to communicate by the Worldwide Web. The Supreme Court does not have its pleadings online. It doesn't even have them electronically filed. For four years, I had been covering the Paula Jones lawsuit against the president. Every filing in Judge Susan Webber Wright's court is simultaneously filed in paper and in electronic form, and you can read her docket within minutes after every filing. You think I can read a Supreme Court transcript within minutes after the hearing is over? No, I have to pay $5 a page to [a] reporting company and wait ten days.
There just simply has to be an end to the reticence on the part of the judiciary and the judicial system to being a participant in the discourse about the law in your community.

Mr. Ogletree: Thank you, Mr. Denniston. As you can see, for better or for worse, the ABA gave us the green light to be the critical committee, and we will criticize anything that comes before us, whether it is relevant or not. I did get a note from Ms. Crier asking for a rebuttal. We’ll save that for later.

External as well as internal issues are critical. Access to information is critical. The public access to proceedings, the closed proceedings, and technology innovation are key features that Lyle Denniston addressed.

Beverly Watts Davis also has been thinking about this survey and has some ideas about what we mean when we think about critical issues when it comes to the issues of public trust and confidence in the justice system.

Beverly Watts Davis: I have to tell you, in my community, we have lots of young people and we have a phrase, and it says, “You go, boy.” Having said that, I am here today representing really the coalition movement in this country involving hundreds and thousands of coalitions who are working very, very hard in their communities to fight drugs, crime and violence and who are really the best partners and a tremendous vehicle for connecting communities and courts.

And it’s interesting because one of the things, I think, [it] is very critical that we look at today is really defining where justice begins. I would venture to say that most of you all in the room here believe that justice begins when you get to the courtroom. That’s pretty much how we have — your community and your culture has really thought about it that way.

But for people external to the courts, I would venture to tell you that for you to think about this in different ways, that justice begins long before people ever get to your courtroom. Justice begins when people get that first ticket. Justice begins when they get down to that courtroom. Justice begins when they are settling a ticket and they deal with that one district attorney who is settling that day.

Justice begins in many, many more forms that you all do not really consider yourself attached to, although you are a part of in terms of really looking at how people perceive the justice system. And I think that has a great weight in terms of how people are perceiving and their feelings of legitimacy of the whole system.

One of the things that we have not really [discussed] — and you won’t get into later — is the whole idea [that] the community wants to see, as Lyle has just said, the courts really change their role. Overall, people really do see the courts both as the problem solver, but really, more recently, as a problem creator. Problem solver is in the sense that the court is there to resolve disputes. We accept that as a system. We’re glad it exists. We want it to be fair. We also see it, in more and more communities, as the people to fix it, to put those bad people away.

The problem creation comes in the sense that, in resolving those disputes, there is a great disconnect between how people feel about how those issues get resolved. And interestingly enough, when people talk about the biggest barriers in terms of accessing the system, it was legal representation. People do believe — I think, very, very rightly so — I believe it is the biggest barrier. But sadly enough, I think the cost of legal representation is, in fact, the most important factor to “get justice.”

I was really dismayed this past week and a half to visit with a whole group of young people from around the country. And contrary to what we have seen, there are a whole lot of young people out there doing the right thing. And listening to those young people, amazingly enough, when we talked about the biggest barriers in terms of resolving the system, it was legal representation. People do believe — I think, very, very rightly so — I believe it is the biggest barrier. But sadly enough, I think the cost of legal representation is, in fact, the most important factor to “get justice.”
a good lawyer.

Now, that, to me, was a real telling statement about what people perceive about justice — that innocence, their innocence, when they rated what was important, the fact that they were innocent would play a secondary role as to whether or not they would be treated fairly or whether or not they would get justice. And so, many, many of these young people said, “One of the things that I’d do is, I need to make sure that, whatever I do, I make enough money so I can hire a good lawyer,” not that they could come to the courts and get fairness. And I think that speaks very, very much to the fact of what this next generation feels about how they are going to interact with this system. And I would venture to say to you all that we have got to figure out and deal with the access issues in a much different way.

Again, I want to go back to where people see justice begins. When you look at the way — take, for instance, getting tickets. That is actually probably the most broad-based way most people actually enter into the “justice system.” And I can tell you, coming from San Antonio, Texas, that even when I walk into the room for getting tickets — not that I have gotten a lot, but my brief experience in getting tickets, in getting a speeding ticket, I was very amazed to see what the color, the rainbow — well, the color of — the majority of colored people who were sitting in that room.

And I will tell you that on more than one occasion when I had to go in and pay a speeding ticket, the situation was the same. It was incredible that almost — I mean, I could count on one hand people who were not black and brown who were in there paying their tickets. I found that incredible. These were on two different occasions and in a span of almost nine months, me going back and forth into that courtroom, because I was going back in actually to help someone else. But I was amazed to see that that was the same.

The second thing that people find, and you will see in the survey, is people who have had interaction with the court system have had a — you know, have a better feeling in some cases, particularly those who served on juries. They come back feeling better about the court system.

The real disconnect there, ladies and gentlemen, is the fact that people who serve on juries may or may not ever look like me. I have been summoned seven times. I have yet to be able to serve on a jury. And one time I got so frustrated I said to the judge, “Why can’t I serve?” And he said, “Quite frankly,” he said, “probably it’s — I’m going to tell you, it is because you are African-American. Number two, you are too smart.”

And I said, well, then, in that case, how would they know? I can understand that they figured out the first one, but how would they figure out the second one?

And he said, well, you know, when they talked to you, you were educated, etc. I said, “Oh, so what you are telling me is that if I was on trial and I asked for a jury of my peers, I couldn’t have any smart African-Americans sitting on the jury.”

Ladies and gentlemen, that whole thing that those lawyers do to strike people — I don’t care what you say, it is inherently wrong because people can be struck for the wrong reasons. And if you’re telling me that I can ever have a jury of my peers, you should not be able to strike people because of what they look like or because of their — because of whatever it is. That is just inherently wrong because then that means I will never get a jury of my peers. And that means when I walk into that courtroom, I don’t think I can get justice because I will never get a jury of my peers, which is fundamental in our Constitution.

Lastly, I want to share with you all that this means that there are parts of our system that really work well, and there are parts that we have to have guts enough in this country to change. And I would honestly say that the whole movement that is occurring with drug courts — and I bring them up — is in direct response to people believing that they should be able to play a fundamental role in the problem-solving capacity in their communities.

I do believe that you all, as judges — I personally believe you have been hampered by the sentencing guidelines and those kinds of things. Whatever 85 percent in truth in sentencing is, I don’t know how you have 85 [percent] of the truth. That, in and of itself, makes no sense to people out in the community. And what I’m simply saying is that the need to be involved in the problem-solving process and what people see as justice is something that we in the whole justice system have to deal with — and particularly you all in the courts.

I do believe, as I talk about the drug court movement — I am looking at 3,000 coalitions who are actively out there trying to fight crime, drugs and violence to make their communities better. I am telling you that — I mean, there now have to be over 600 drug courts. There’s a conference coming up in the first week of June that’s got over 3,000 people coming. That is a direct reflection, ladies and gentlemen, of people trying to find another way to make justice responsive to them.

And I will share with you all, ladies and gentlemen, all over these last five or six, seven years, the courts have done a great job in helping us decrease crime. And in doing so, we’ve put a lot of people behind bars. I’m from the State of Texas. We, unfortunately, have the honor of putting more people in jail in the entire world.

Now, guess what [happens] this year? Two million people are going to be up for release. You all, as judges, help put them behind those bars. But you know what? You are totally disconnected from the fact that those people are coming back out, and they are coming back out to the community that they went to jail [from.] They are coming back out to my community. They are coming back out being totally disconnected from the process of community changes over this time, to making themselves better, to address crime, to changes in environments, to do all those things. They are coming back out totally unprepared to walk into a community that is changed.

And the judges in this country have stepped back and said, hey, we sent them away, we are finished with them until they do something heinous and stand before you again. I think that is absolutely terrible. You all are the final fixers on this. You have to dispense judgment. And being part of that, that means you have to be a part of how we deal with that situation. You can’t just send people away and not be a part of how to figure out how we make sure that their re-entry is done [right].
And I'm simply telling you all that I think it is very, very important for the courts to figure out how people have access, better access and involvement with the dispensation of justice. You all have to be a part of solving this problem as opposed to just sentencing because, by and large, people come back to our communities. They come back to the community. If you are not engaged with us to figure out how we reintegrate people back into the community, then you truly are a much bigger part of the problem than you are the solution.

They are going to be coming back to my community, and they're going to be angry and mad. And I will tell you this situation. Those of you who heard about the incident in Jasper, Texas — this was where an African-American man was pulled to his death by two people. Those people had been out of jail, and they were just down from the state prison less than two miles from that town. Those people had come back. The judge in that town said, hey, you know, I have done my job. Those two men stayed in that community, couldn't get a job, couldn't find housing, and their only support group was the prison hate gang that they were with when they went to prison. When the judge — and I would love to see split sentencing within jurisdictions — when the judge stepped away from that, there were no real folks they could go to. I hope nobody here believes that probation, with a 225-person caseload, can really do their job. There was nobody there to be able to make sure that any of that could happen. Jasper, Texas, is just one incident of what we will see. And so, I am imploring you all that it is time for us to look at the elements of the court system, get you all back involved, not just on the front end, but in the back end. I would implore you all to look at the drug court movement and see what it is that's making people go to that, flock to that and be involved in that, because somehow they are doing something right and relevant that gets people involved with the real problem solving of how we address behavior in our society.

And so again, when we talk about where justice begins, I really say it begins when a person gets a ticket or their first encounter with law enforcement or whatever part of the justice system they enter into. But it also begins all the way through to helping us re-enter people back into society because, truly, ladies and gentlemen, it is only through judges and the sanction that you all have ... that we have ever been able to change behavior of people who have been in the criminal justice system. It is only with your help we have been able to make that happen. And without you, we are truly, in my opinion, creating one of the biggest public safety threats when you all are not involved with us in this process. We need you connected. We need you connected now. Where justice begins and ends has got to be a circle.

Mr. Ogletree: Thank you. Beverly Watts Davis has raised one of the critical issues that you can look at in your workshops. She started by saying, where does justice begin? But I think as you look into the litany of the issues that she raised, the second and even more critical issue is, where does justice end? And one of the perceptions may be that it begins too late. We don't see the first confrontation between citizens in the administration of justice. And it ends too early because we don't see the aftercare or follow-through, the sense that these individuals who are in the justice system, civil or criminal, are citizens and deserve certain rights and expect certain protection from society, and mentioned a lot of specific context for that to be applied.

Next we will hear from Mary Hernandez talk about her views of some critical issues of public confidence and trust that may not have been addressed in this conference without her being at the conference to address those.

Mary Hernandez: Lawrence Dark started his remarks in the earlier panel with a disclaimer that he did not speak for all African-Americans, and I guess I should start with the same disclaimer and the fact that — you know, his remark that not all African-Americans are monolithic in their views is even more true for Hispanics. As a former president of the Hispanic National Bar Association, I used to joke that every board meeting was an exercise in coalition building in that we had Americans of Cuban, Puerto Rican, Salvadoran, Mexican, [and] South American descent. Some of us go back four or five generations in America. Some were recent immigrants. And so, we have a very, very diverse community. There's no cookie-cutter approach.

But I don't have a choice but to try to speak on behalf of all Hispanics because I am the only one you will hear from in this entire conference. And so, while I usually am a very upbeat person, I have to start on a very serious note. As we look at the critical issue about true or perceived bias, let's look at this particular process that we are going through.

It seems, to me, clear that a significant number of people in this very room believe that critical issues can be addressed and solutions can be adequately designed without including the largest ethnic minority in the country, the perspective of Hispanic-Americans. If you look at the video that was shown, there was not a Hispanic-American face. If you look at the ABA survey, Hispanics represented three percent.* We are more than four times that large. So it was so insignificant that they really couldn't draw any conclusions about how we felt in that particular survey. And yet, it was mentioned that that would be used to design solutions. So the message to us is either that we are not needed in the design of those solutions or we are not wanted, or perhaps both.

If we look at actual perceived bias, I guess I have to ask — let's exclude Puerto Rico. How many Hispanic judges are in this room? Would you please raise your hands. Okay. We have one. Thank you. I have to say, in adding to this, that you know, Catherine Crier made a comment I'm actually going to support: he who makes the rules, rules.

* Unlike the ABA survey referenced here by Ms. Hernandez, the 1999 survey commissioned by the National Center for State Courts and funded by the Hearst Corporation oversampled both African-Americans and Hispanics so that statistically reliable information about the opinions of those important groups would be available. The results of that survey are carefully examined in the article by David Rottman and Alan Tomkins, which begins on page 24 of this issue.
I have to mention a couple of things that are near and dear to my heart as an Hispanic-American. There has never, in the history of the United States, been an Hispanic on the United States Supreme Court. There has never, in the history of the United States, been an Hispanic senator. Only this last year, in the whole history of California since it was not part of Mexico, it's the first time in its history that an Hispanic was elected to statewide office.

We are not at the table. And I guess I have a rhetorical question, and that is, can we really expect this community to have trust in a system that has either chosen not to consider their perspective sentences in the criminal courts than African-Americans. And yet, they still had not as nearly a great degree of cynicism.

Let me give you two explanations. One is, if I can over stereotype a little bit, we are raised to be very deferential to those in positions of authority and to our institutions. We are raised to give them the benefit of the doubt.

And I look at my own experience with my mother. I'm the youngest of five. And when my older siblings went to school, when they came home reporting problems, it never occurred to her that it could possibly be the teacher. [She thought it] could not possibly be the teacher. She had not as nearly a great degree of cynicism.

And one is, if I can overstereotype a little bit, you know, we are raised to be very deferential to those in positions of authority and to our institutions. We are raised to give them the benefit of the doubt.

And I look at my own experience with my mother. I'm the youngest of five. And when my older siblings went to school, when they came home reporting problems, it never occurred to her that it could possibly be the teacher. [She thought it] could not possibly be the teacher. She had not as nearly a great degree of cynicism.

But let's go to the question about the survey of the National Center for State Courts. And I applaud them for trying very hard to be inclusive in terms of the demographics of the survey. And, in fact, I thank the National Center for State Courts. The reason I'm here is because they got me involved in these issues in 1995 because they saw very much the value of being inclusive of the Hispanic perspective. So I do want to make some compliments in that regard.

But it is not terribly surprising to me that, overall, there is a degree of trust [by Hispanics], and sometimes that's contrary to the reality. In California some years ago there was a study that showed that Hispanics got actually far greater or, worse yet, is not aware that they exist?

But let's go to the question about the survey of the National Center for State Courts. And I applaud them for trying very hard to be inclusive in terms of the demographics of the survey. And, in fact, I thank the National Center for State Courts. The reason I'm here is because they got me involved in these issues in 1995 because they saw very much the value of being inclusive of the Hispanic perspective. So I do want to make some compliments in that regard.

I want to talk about the dangers of the “educate-the-public approach” that I feel are inherent in this as a critical issue. The danger is that it will make courts less likely to do what I think is critical, and that is a critical self-examination of how they need to change the way they do business to better serve the public. If I can exaggerate a little bit, it is, you know, “We are pretty darned good, and it's just that they just need to be educated about how darned good we are, and then every-
thing will be okay; they will realize that we are perfect, and trust and confidence will soar.” And that, I think, if I go to an analogy in Littleton, Colorado, as people are trying to figure out why, the fingers start pointing in every direction. It’s the parents. It’s the schools. It’s the media. It’s the NRA. It’s the gun control. It’s the Internet. It’s the entertainment industry. And each of those institutions respectively say, no, it is the other one.

And I think that not a single one of us is able to change the world alone, but we cannot deny the responsibility to do our part. And you are here today not to design strategies to tell other people how to change, to tell the public schools to change or the media to. I hope you are here to say, “How can I do my part as the court system? How can I do my part? How can I have a critical review of what I do?”

- Mary Hernandez

I think that not a single one of us is able to change the world alone, but we cannot deny the responsibility to do our part. And you are here today not to design strategies to tell other people how to change, to tell the public schools to change or the media to. I hope you are here to say, “How can I do my part as the court system? How can I do my part? How can I have a critical review of what I do?”

Mr. Ogletree: Thank you. Ms. Hernandez has identified a number of important issues for the breakout groups. For example, one of the major problems is the [failure to provide] adequate representation to a wide range of interests, and the absence of representation of Hispanics is a glaring concern that she raises. Secondly, and perhaps even more profoundly, the cultural diversity that sometimes can be missed in these surveys, the fact that some could misinterpret the deference in authority as acquiescence in decision making. And we have to have different types of instruments to understand how people in their culture and in their communities respond to issues. And then finally, the important issue about education and how that can be placed as a priority in discussions.

Finally, we have Dr. Frances Zemans, who will give us her thoughts about what initial critical issues need to be on the table for our consideration.

Frances Zemans: Since our time is getting away from us quickly, as often happens in events like this when we are trying to cover such a large and broad range of issues, I want to take just a moment to comment on a couple of things that have been said, and that’s the advantage and disadvantage of coming as the last person.

I just wanted to mention, with respect to Beverly Watts Davis’s point about justice beginning before you get to the courthouse, I would like to push that envelope a little further and point out that you have to at least minimally look at the role of the legislature, which does the work of making the rules that the courts are supposed to be enforcing. And I think it is extremely important that any discussion of the justice system take that into account.

Unfortunately, the courts are burdened by the fact of being the justice system by definition, but justice we take in this country [to include] social justice as well, which has been mentioned by a number of the panelists. And so, it is a particularly sticky issue and one that I think needs to be recognized as you think about the strategies of what can and should be done. The other point about where does justice begin beyond the courtroom is the issue of knowing one’s rights and knowing how to assert one’s rights. This is not the kind of education we have been talking about so far, but I think it is a very important part of it.

One of the things that makes it difficult for people to get access to justice is that they don’t even know that they have the opportunity because they don’t know what their rights are and they don’t know how to go about asserting them. Those are other variables that need to be taken into account if you’re going to think about access to justice.

Just one or two things about what Lyle said about the internal and external view. I think we all look at the world through our own prisms, and we need to take that into account, obviously. With respect to the courts and internal and external perceptions, I think back to an executive from Nordstrom’s Corporation, who I listened to on a panel one time who was talking about service. And Nordstrom’s has this reputation of being service-oriented, and the idea was to try to get him to give some insights into people who work and operate the courts as to how they might provide better service.

He said something that I thought was very interesting, and that was that all service institutions tend over time to become designed for the benefit of the providers as opposed to the benefit of the users. If you really want to be service
institutions — and this is just another way. I think, of saying what Lyle was trying to say — then you have to be constantly aware that you need to be in the business of thinking about how to organize your institutions for the benefit of the users and that the providers, meaning you, should not be the primary ones to be thinking about.

And that plays out, I think, in the courtroom. We talked about some examples, traffic court being such a primary experience. When people who are represented by lawyers are always given the first slots before the judge, that is a definition of who is important in the courtroom. The definition is the lawyers are more important than the litigants, generally.

And there is a whole long list of things like that that I could go through, but this is an issue of unintended consequences that come out of structural reality. And I think as you think about the strategies, you need to give some thought to unintended consequences. That’s an example.

Another example — and I won’t go through a whole litany — is the amount of money that jurors are paid to show up. For people who are wage earners, who when they miss work that means they miss pay, for people who are self-employed, these turn out to be real burdens for people who don’t have child care for their children. These are serious realities that have a negative consequence on certain portions of the population.

Now, these are difficult issues to deal with. But again, as you think about your strategies, I think you need to take some of those potential unintended consequences into account so that you don’t end up causing things that you really don’t intend to cause.

I think my job on this panel was to be one of reflecting on the survey that was done of the state teams. That means the responses that all of you gave to the questions that you were sent by the panel organizers. I think that, as Catherine Crier mentions, there are many consistent themes that continue to come up.

And as I was thinking back about the various conferences like this that I have attended and participated in at least since 1990, the Future of the Courts National Conference and then many smaller ones thereafter in individual states; in 1995, the Improving Court and Community Collaboration Conference; the Just Solutions Conference; all of these raised many of the same issues that we are still struggling with here today: equality, fairness, problems with the adversary system, judges being at the core but not the sole actors in the justice system, and a need for more consumer orientation. These continue to be issues and, no doubt, will continue to be.

With respect to the category of education, which has been mentioned a number of times here and has been mentioned in the prior symposia that led up to this conference, I have to say that it keeps being mentioned how many Americans don’t even know or can’t identify the three branches of government. And I have to tell you that, as a former professor of political science, I guess I think it would be nice if everybody knew that there are three branches of government and that they are the executive, legislature and judicial.

But that’s not part of public education that I find terribly troubling or terribly important. What I find much more important, and I think what is interesting about the survey that was discussed here that Heast Corporation supported, and also as pointed out in the prior ABA survey that’s been referred to, and that is that the public has a pretty interesting and pretty well-founded understanding of the rule of law, although they might not call it that; that they have a sense that they want and expect a neutral decision maker. They have a sense that they don’t want people convicted on issues other than the law.

Though they say that politics influence judicial decision making, they don’t like it, and they don’t think it ought to be that way. That basic core of understanding is something I think can be built upon, and what is important for the people within the system is to try and make it clear to the public that to achieve those commonly held norms, we need to have certain structural realities, and we need to be able to convince the public that what you are doing, in fact, is enhancing those values.

You are way ahead of all sorts of other countries that are first trying to instill these values about the importance of the law. We’re way ahead in that game. But what isn’t being made is the disconnect between what you are doing and why what you’re doing is enhancing the values that society holds.

And I guess I would argue that that’s what you are supposed to be doing. And I think most of you see your jobs that way, that you are critical actors in making sure that the rule of law is the way in which our democratic system operates.

Let me focus on one last issue, and that is making sure that we take cognizance of the fact that we are really talking about a wide range of systems and that these different systems, all of which we call the justice system, are in fact quite varying. Ms. Davis was talking about the criminal justice system in a very, very focused way. Ms. Hernandez was talking about — well, I believe both of them were talking about traffic court, which is also a very different kind of reality. We have had references to, in other contexts, not here so far, I don’t think, tort law and to the civil justice system and the incongruities, perhaps, that exist there.

If you look at the survey results — and now I’m talking about the public opinion survey results, both the Hearst Survey and then the earlier ABA survey — you will see that the public, when they are given the opportunity to respond to those differences, they recognize those differences. If you look at the different responses related to civil justice versus criminal justice, traffic versus juvenile courts, there is an understanding that these different parts of the system really don’t all run quite the same way according to many of the issues we would like to have them be concerned about.

And that takes me back again to this issue of strategies. As you think about strategies, you need to be cautious in not thinking that one strategy — even if you take to heart, as I hope you will, Ms. Davis’s comments about your job here and what we are going to do about those issues — but you need to be cautious in understanding that you may need to do different things in different contexts because these really are very different kinds of systems. They often operate very differently. They certainly have different populations that come through them.

And your strategies are certainly going to have many unintended consequences, and some of those unintended
consequences ... you might decide are negative if you don't take into account the great diversity of what is going on in the different parts of the court system and coordinate your strategies accordingly.

Mr. Ogletree: Thank you very much. I have been passed a note to tell the critical issues panel that they should gather their things and leave the room soon as possible and not come back. Not really.

We have run out of time. We wanted to have more of a discussion, but I do want to make a couple of important points. Many of you have been working on these issues for months and years and have a sense of the depth of the public's concern about the justice system, and I hope that you can hear these panels asking you to do two things: to avoid the self-congratulations that often comes with surveys and opinion polls and other analyses that give you one sense of the public's views about what it is — they want to make sure anecdotally there's a lot more that you want to consider.

And the second, to make sure that, even though you have a sense of the person's perspective, you may not have the depth of feelings unless you look broader and deeper and to other communities to get a better feel for that.

And one of the most profound things I think Dr. Zemans said is very important. The knowledge about our system of government, our branches of government, may be important. It's certainly important to the justice system. It's certainly important to the lawyers and judges. But the public has a sophisticated sense about our legal system, and they have raised a lot of concerns, as you have heard in your various panels, in your various sessions.

And it is our job, I think, ... to make sure we can see a distinction between something having representation and being representative. There is a distinction that I think all the panels have addressed.

We have to make sure that, in some aspects of the justice system, there is over-representation and that we have to be cognizant of that. I think all of these panelists have said as much as we focus on the public, per se, and we think of John Q. or Jane Q. Citizen as the people who are giving us these views, in a sense, the profession has the same issues of public trust and confidence.

I commend to all of you the Feb. 2, 1999, first-ever joint issue of the American Bar Association Journal and the National Bar Association Report magazines, which talked about race in the law. And the most disturbing and yet informative finding is that minority lawyers and judges have a profoundly different view of the justice system than non-minority lawyers and judges. These are people who are educated, who are wealthy, who are intelligent, who are successful. And yet, their sense about trust and confidence in the system is simply very different from others, which means that even in the profession, in the academy, in the fraternity, we have responsibility to look even deeper to try to resolve some of these issues.

We have exhausted our time. Your work is just beginning.

Charles J. Ogletree, Jr., is the Jesse Climenko Professor of Law and the faculty director of clinical programs at Harvard Law School. He is the founder and director of the Criminal Justice Institute and the Saturday School Program. He was co-author of Beyond the Rodney King Story: An Investigation of Police Conduct in Minority Communities and served as counsel to Anita Hill during the Senate confirmation hearings of Justice Clarence Thomas. Ogletree earned B.A. and M.A. degrees in political science from Stanford University, graduating with distinction, and received his J.D. from Harvard, where he was special project editor of the Harvard Civil Rights-Civil Liberties Law Review.

Lyle Denniston reports on the United States Supreme Court for the Baltimore Sun. He has covered the Supreme Court for more than 40 years. He is the author of The Reporter and the Law: Techniques of Covering the Courts (1992) and writes a monthly column for American Lawyer evaluating lawyers' arguments before the Court. Denniston lectures on constitutional history for Penn State University's Washington program.

Beverly Watts Davis is the executive director of San Antonio Fighting Back and vice president of the United Way of San Antonio and Bexar County. San Antonio Fighting Back is a comprehensive empowerment and community improvement program that addresses substance abuse, crime and violence. Davis previously served as the state coordinator for Texas' anti-drug efforts. She has served on the board of trustees of Austin Community College and on advisory committees for the U.S. Department of Justice and the U.S. Department of Housing and Urban Development. Davis recently received the National Volunteerism Award from U.S. Attorney General Janet Reno.

Mary Hernandez is vice president of the San Francisco Board of Education. Born and raised in Texas, she graduated magna cum laude in economics from Harvard University and received her law degree from Stanford University. She has a part-time business law practice and is an adjunct assistant professor at the Hastings College of the Law. Hernandez served as president of the Hispanic National Bar Association in 1994-95. She has served on a number of advisory boards dealing with court/community issues and public trust, including ones appointed by the National Center for State Courts and the Judicial Council of California.

Frances Kahn Zemans is a justice system consultant whose areas of expertise include public understanding of the justice system, the role of the jury, judicial merit selection, and judicial conduct and ethics. She previously served as the executive vice president and director of the American Judicature Society and taught political science at the University of Chicago. Zemans also conducted research on the legal profession and the judicial system at the American Bar Foundation. She received a Ph.D. in political science from Northwestern University. Her most recent article is "The Accountable Judge: Guardians of Judicial Independence," 72 S. Cal. L. Rev. 625 (1999).
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.

Seaborn Jones: It has to go down [the list] to the last [one] before I see a strategy that 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: 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 bias task 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.
The task force reports tell you chapter and verse, with specificity, what 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 with street-walking prostitution, and it had to do with the sale of drugs on the street. And it is one of the poorest socioeconomic 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 that 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 justice 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 to people who 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 let—

**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 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'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 has. I'm not Veronica McBeth. I don't have the facility of going out into the community that Veronica 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 and 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 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.

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 and 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.


= Veronica Simmons McBeth
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 ethical 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 readily 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 citizens 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 get 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 didn'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:** 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.

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 huge profession of lawyers out there. There are a lot more lawyers than there are judges. There is a whole lot of lawyer-ing 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

[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. ... 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
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 comments 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 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.

Bruce D. Collins is the corporate vice president and general counsel of C-SPAN, the public affairs cable network. He joined C-SPAN in 1981 as an on-air host and moderator of its interview and call-in programs. He has become a senior manager of C-SPAN, a non-profit cooperative effort of the cable television industry.

Veronica Simmons McBeth is presiding judge of the Los Angeles Municipal Court. She was appointed to the bench in 1981 after having served as a deputy city attorney in Los Angeles. She is a graduate of the UCLA law school, where she served as a member of the UCLA Law Review and as editor-in-chief of the Black Law Journal. She has been a leader in court and community collaboration efforts. In 1998, she received the prestigious William H. Rehnquist Award from the National Center for State Courts.

W. Seaborn Jones is a partner in the Atlanta law firm of Gleaton, Persons, Egan & Jones. He was president-elect of the National Conference of Bar Presidents at the time of this conference and served as a member of the planning committee for it. Jones chairs the Atlanta bar’s committee on standards of the profession and has served on a Georgia court commission on professionalism as well.

John Seigenthaler, Sr., served for 43 years as a journalist for The Tennessean, the morning newspaper in Nashville. He began as reporter in 1949 and ended as editor, publisher and CEO of the paper, where he retains the title of chairman emeritus. In 1982, he became the founding editorial director of USA Today, where he served for a decade, retiring from both the Nashville and national newspapers in 1992. In 1991, he founded the First Amendment Center at Vanderbilt University. He is a former president of the American Society of Newspaper Editors.

Diane C. Yu is associate general counsel for Monsanto Company, with significant management responsibilities over its large legal staff. She previously served as general counsel for the State Bar of California, where she argued attorney discipline cases before the California Supreme Court. Yu was a White House Fellow in 1986-87, serving as a special assistant to U.S. Trade Representative Clayton Yeutter.

Lynn Hecht Schafran is the director of the National Judicial Education Program (NJEP), which is a project of the National Organization for Women’s Legal Defense and Education Fund. She is a graduate of the Columbia Law School and has been with the NJEP since 1981. She has designed and implemented courses for judicial education in the areas of fairness and prevention of bias and is the author of an annotated director of the resources available to implement the recommendations of various task forces on the elimination of gender bias in the courts.
Educational Conference on Therapeutic Jurisprudence

For the second year in a row, the AJA Midyear Meeting will include an exciting educational conference devoted to an emerging issue of general interest to the judiciary. With financial support from the Fetzer Institute, the San Juan conference will feature four of the top experts worldwide in the emerging area of therapeutic jurisprudence – making this the most important conference ever held for judges on therapeutic jurisprudence.

David B. Wexler
Prof. of law and psychology; co-author with Bruce Winick of the book, Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence

Bruce J. Winick
Prof. of law and co-founder with David Wexler of the therapeutic jurisprudence field of social inquiry

Peggy Hora
Superior Court Judge, Alameda County, California

William Schma
Circuit Judge, Kalamazoo County, Michigan

Therapeutic Jurisprudence

Therapeutic jurisprudence is a perspective that recognizes that rules of law, legal procedures, and the behavior of lawyers and judges often has an impact – positive or negative – on psychological well-being.

Therapeutic jurisprudence proposes only that we recognize and consider the potential therapeutic and antitherapeutic consequences of the law and legal processes; it does not propose that therapeutic concerns should “trump” other deeply held values. It does urge us to consider whether insights from psychology can be brought into the law or its administration in a way that will improve therapeutic consequences without offending traditional principles of justice.

Therapeutic jurisprudence has begun to influence day-to-day judging and lawyering in areas such as how courts might influence a criminal defendant's acceptance of responsibility; the role of apology in tort and other settings; the anti-therapeutic consequences of delay in personal injury case resolution; and the therapeutic implications of mediation, as examples.


The Meeting Schedule

The AJA Midyear Meeting includes meetings of the AJA Executive Committee and Board of Governors, as well as some AJA committee meetings. All AJA members are welcome to attend any of these meetings. For those who may choose to attend only the educational conference on therapeutic jurisprudence, it will be held on Friday afternoon, May 5, 2000.

San Juan, Puerto Rico

There's lots to see and do in San Juan. Our official functions will include lunch on Friday before the educational conference, as well as dinner on Friday night at La Princesa restaurant, located in historic old San Juan. There's also an optional rain forest tour on Saturday, May 6. A limited number of rooms are reserved for attendees at the conference at the rate of $125 (single or double) at the conference hotel, the Condado Plaza Hotel & Casino in San Juan, 1-787-721-1000 or 1-800-468-8588. Room reservations should be made directly with the hotel.

Conference Registration

Contact Shelley Rockwell at the National Center for State Courts, P.O. Box 8798, Williamsburg, Virginia 23187-8798, 1-757-259-1841, e-mail: srockwell@ncsc.dni.us to register for the conference. The cost of registration is $125 for judges and $75 for spouses or guests.
The American Judges Foundation (AJF) is dedicated to promoting education, fostering public awareness and furthering community commitment of the judiciary. This non-profit organization strives to provide judges with resources vital for continuing their role as knowledge gatherers, information seekers and decision makers.

Through conferences, forums, discussions and publications, judges are exposed to current trends within the legal system and kept current with societal issues that affect their jurisdiction.

AJF has led a major educational effort on domestic violence, an issue many judges confront every day. An AJF publication on domestic violence, now out of print, remains available on the Internet at http://aja.ncsc.dni.us/domviol/booklet.html.

AJF and the American Judges Association co-sponsor an annual law student essay contest, which draws entries from across the nation. Topics must be “of general interest to any broad segment of the judiciary.” The winning essay – and others found of merit – are published here in Court Review for your benefit.

The American Judges Foundation invites you to join us in these efforts through your tax deductible contribution.

American Judges Foundation, Inc.
P.O. Box 8798
Williamsburg, VA 23187-8798
(804) 259-1841
Editor’s Note: Almost any resource that can help a judge do a better job can help to improve public trust and confidence in the courts. Thus, it is a daunting task to prepare a list of references in this area. The Conference of Chief Justices, the Conference of State Court Administrators and the National Center for State Courts are joining forces to prepare a plan just to identify best practices from around the country - ultimately hoping both to identify such programs and to disseminate information about them. That will obviously be a worthwhile project, and, as such materials are prepared by other national groups, we will certainly tell you about them. In the meantime, we have prepared this somewhat eclectic collection of resources that might be of use to you in a variety of areas. Information on how to order publications from the American Bar Association, the American Judicature Society and the National Center for State Courts is found on page 82.

**BIAS, FAIRNESS & EQUITY**

New Mexico Supreme Court Committee to Study Racial and Ethnic Fairness and Equality in the Courts, Final Report of the New Mexico Supreme Court Committee to Study Racial and Ethnic Fairness and Equality in the Courts. New Mexico Supreme Court, 1999. 56 pp. Contact: Lisa Lightman, (505) 827-4624, e-mail: aocljl@nmcourts.com.

For a recent, comprehensive statewide report on the problems of racial and ethnic bias, the report issued in 1999 by a New Mexico committee chaired by New Mexico Supreme Court Justice Joseph Baca is an excellent resource. The committee, with the assistance of an outside consulting firm, conducted detailed surveys of judges, court staff, attorneys and others who routinely have involvement with the courts. It also held public hearings throughout New Mexico; collected data about the profile of the workforce in the courts and in other agencies, along with data on arrests, sentencing and offender characteristics for adults and juveniles; and reviewed other studies about race and ethnic issues in New Mexico. Its report concluded that there was a picture of overall fairness and equality in the courts, although there were also many areas for improvement. The report concluded with a series of recommendations for improving racial, ethnic and cultural awareness; for improving access to representation and court-related services; and for improving the representation of racial and ethnic groups in juries and in the judicial workforce.


This publication is the result of a State Justice Institute grant and is sponsored by five national organizations: the National Association of Women Judges, the National Judicial College, the National Center for State Courts, the American Bar Association Commission on Women in the Profession and the National Judicial Education Program (a project of the NOW Legal Defense and Education Fund). The directory provides an annotated list of actions taken and materials available to address gender bias in the courts that can be readily replicated or adapted for use in other courts.


Developed under a grant from the State Justice Institute, this is a model curriculum for judges about problems faced by women of color when interacting with the justice system. The curriculum is designed to assist judges in making sure that women of color receive equal access to the justice system. A separate unit of the curriculum discusses psychological research about how and why the human mind works to develop stereotypes; how those stereotypes may become reflexive judgments that impair fairness; and how conscious intervention can help to avoid discriminatory behavior. Another unit of the curriculum addresses gender-based violence.

**COURT AND COMMUNITY COLLABORATION**


In this book, Judge Richard Fruin provides descriptions of seventeen judicial outreach programs in place around the country, ranging from town hall meetings to teen courts to judge-hosted educational radio programs. Central to the book are working papers, publicity and associated materials from the individual programs, which are included. In addition, other program ideas for judicial outreach are also described. The price is discounted to $9.95 for ABA Judicial Division members; add $3.95 to either price for S&H. ABA Product Code 5230048.

This NCSC-produced guide includes a description of six exemplary projects of court-community collaboration, in addition to a detailed discussion of how to develop such programs.


On February 9, 1999, the Judicial Council of California unanimously approved the recommendations of the Special Task Force on Court/Community Outreach, including the release of the task force's major work product, Dialogue, a comprehensive "how to" resource to aid courts in court and community collaboration activities.


This is a reprint of the binder of materials distributed at a May 1998 conference. It details a five-step planning process and its use in development of a court strategic plan for use in court and community collaboration. Information about that planning process can also be found on the Web at http://www.courtinfo.ca.gov/programs/community/court_planning.htm.

California Court and Community Collaboration Project Web Site http://www.courtinfo.ca.gov/programs/community/index.htm

This project, sponsored by the California Judicial Council, has as its stated purpose "to improve the courts' ability to maximize resources, meet increasing demands and improve public confidence." A number of resources are available at the site.


This paper provides a useful discussion of the benefits to be achieved from court-community collaboration.

The Judges' Journal, Fall 1999 Special Issue. ABA Judicial Division. $6.50.

The Fall 1999 issue of The Judges' Journal is devoted to court-community outreach and collaboration. Articles cover the ethical issues involved; what is currently going on in federal and state courts; and how daytime court television programs are affecting public perceptions of the judicial system.


American Bar Association, Community Involvement (an ABA Roadmap publication). $5.

**ETHICS - JUDGES**


Now available, this is the third edition of what is clearly the most comprehensive work on judicial ethics. Professors Shaman, Lubet and Alfini cover the Code of Judicial Conduct and its variants as adopted around the country.

American Judicature Society, Judicial Conduct Reporter. Quarterly. $28 per year.

This quarterly newsletter analyzes developments in judicial discipline, reporting current decisions around the country. Relevant books and journal articles are noted.


This is designed as a self-study guide on ethics issue that confront part-time judges who also practice law. It includes sections on misuse of office; when disqualification is required; how being a part-time judge affects the lawyer's practice; serving as an arbitrator or mediator; serving as a fiduciary; business and financial activities; and political activities.


This is actually a set of six different papers examining judicial ethics advisory opinions on specific topics: Recommendations by Judges (#841); Political Activity by Members of a Judge's Family (#842); Organizations That Practice Invidious Discrimination (#843); A Judge's Attendance at Social Events, Bar Association Functions, Civic and Charitable Functions, and Political Gatherings (#844); Ethical Issues for New Judges (#845); and Real Estate Investments by Judges (#846). Individual papers may be ordered by number for $7 each.

This is a combination of a video and an accompanying study guide, intended to provide direction to judges to allow fair and impartial handling of settlement conferences and processes. Guidelines and accompanying commentary for handling such conferences in an ethical way are provided; a discussion guide for judicial educators is also available.


This program, designed to teach new judges how to fulfill their judicial responsibilities, consists of three videotapes and a self-study guide. Topics covered include becoming a public figure, courtroom control and handling stress.


This program, covering topics such as courtroom demeanor, prejudice and bias, dealing with pro se litigants, conflict of interest and disqualification, off-the-bench conduct and supervising court personnel, consists of two videotapes. A self-study guide and instructor's manual are also included.

**ETHICS – COURT STAFF**


Topics covered include confidentiality, political activity, favoritism, discrimination and sexual harassment. The video includes four scenarios in which actors portray situations often encountered by court employees. Each scenario is followed by a panel discussion. A one-hour videotape, instructor's manual and self-study guide are included.


This code covers areas such as abuse of position, confidentiality, conflict of interest, political activity and performance of duties.

**INFORMATION TECHNOLOGY**

Top 10 [or 11] Court Web Sites (announced at CTC6 Conference, Sept. 1999):

1. North Dakota Supreme Court Home Page - www.court.state.nd.us
2. San Diego Superior Court Home Page - www.sandiego.courts.ca.gov/superior/
4. Washenaw County Trial Court - www.co.washtenaw.mi.us/depts/courts/index.htm
5. Delaware Municipal Court Website - www.municipalcourt.org
6. Iowa Supreme Court - www.judicial.state.ia.us
8. Superior Court of California, County of Sacramento - www.sac-judicial.org
10. Connecticut Judicial Branch Home Page - www.jud.state.ct.us

Links to Other Court Web Sites:


The National Center for State Courts provides a fairly comprehensive listing of court Web sites.

AALL Link to Web Sites: http://www.bc.edu/bc_org/avp/law/lawlib/aallwg/

The American Association of Law Libraries provides a link to examples of the best Web sites it could find in a variety of areas. The criteria used by its committee in picking the best sites are also provided.


This is a consultant's report, done under a State Justice Institute grant, on how to improve the initial Web site set up by the Maricopa County Superior Court. To see the Court's general Web site, go to http://www.ssuercourt.maricopa.gov/. To look at their Self-Service Center for the use of litigants, go to http://www.ssuercourt.maricopa.gov/ssc/sschome.html.


**JUDICIAL INDEPENDENCE**


AJS has a collection of materials on judicial independence at this site. This includes its "Judges Under Fire" section, which details and documents attacks on judges throughout the country.

Colorado State Courts, Judicial Independence Resources http://www.courts.state.co.us/scao/judin d.htm

Resources on judicial independence have been collected at this page on the Colorado state courts' Web site.
American Bar Association Special Committee on Judicial Independence
http://www.abanet.org/judind/What.html

At this ABA Web site, you can find information on ABA activities related to judicial independence, as well as talking points, model speeches, a bibliography and other materials.


American Bar Association, Judicial Independence (an ABA Roadmap publication). $5.


JUDICIAL SELECTION & RETENTION


If you are interested in setting up a fair program to evaluate judicial performance, this report is probably the best resource you could find to use as a starting point. It describes the structure and operations of statewide judicial performance evaluation programs in Alaska, Arizona, Colorado and Utah. The authors provide their own recommendations for establishing an effective judicial retention evaluation program.

American Bar Association, Judicial Selection (an ABA Roadmap publication). $5.


JUDICIAL SYSTEM REFORM


This new book by court management consultant Robert Tobin of the National Center for State Courts traces the court reform movement and looks critically at what has been accomplished and how reform might best be pursued in the future.


JURY REFORM


We previously catalogued the best books and articles on jury reform earlier this year in The Resource Page of Court Review. Additional materials beyond those listed here are found there.


In this article, Arizona Superior Court Judge Mike Dann presents a compelling argument that the traditional legal model of judicial behavior - in which jurors must act passively throughout the trial - is contrary to overwhelming social science and education research about people, jurors included, learn best. He presents a reality-based behavior model of the juror, discusses the lessons we can learn from educators, and then discusses the implications of these lessons for jury reform.


This jury reform manual was the work product of a unique committee that looked into reforms needed to both state and federal courts in D.C. The report includes detailed references. Copies are available from the Council for Court Excellence, 1150 Connecticut Ave., N.W., Suite 620, Washington, D.C. 20036-4104, (202) 785-5917. The Council requests payment of $5 to cover postage and handling.


This monograph provides an overview of the jury reform efforts of the past several years in Arizona, California, Colorado, the District of Columbia and New York. It describes the work and makeup of each jurisdiction's jury reform commission and tells which of the recommended reforms have been adopted. The authors also give advice on how to start a similar process in your jurisdiction.


The one thing we know is true when large groups of summoned jurors fail to report is that the jury ultimately chosen may not be fully representative of the community. This report carefully examines the available options for dealing with the problem.


This monograph presents a simple proposition - that jurors, even in routine cases, may face stress they do not face in their normal pursuits - and provides a thorough discussion of ways judges and others in the court system can reduce juror stress. Includes results of surveys of more than 800 persons summoned for jury duty and more than 800 trial judges. To order, send $5 to cover postage and handling to NCSC, Att.: Lynn R. Grimes, P. O. Box 8798, Williamsburg, Virginia 23187-8798, or e-mail lgrimes@ncsc.dni.us.


All of the proposals for jury reform are catalogued here with pros, cons and citations to cases and articles discussing each one. Topics covered include juror questioning of witnesses, juror note-taking and juror discussion of evidence during trial.

More than one hundred pages of appendices are included, providing sample preliminary jury instructions, instructions about the deliberation process and jury exit questionnaires.


MEDIA RELATIONS

American Bar Association, Division for Media Relations and Communications Services, The Reporter's Key: Rights of Fair Trial and Free Press. ABA, 1999. 65 pp. First copy free, $10 per copy thereafter.

American Bar Association, Division for Media Relations and Communications Services, Planning a Bar-Media Seminar. ABA, 1988. 19 pp. $3.

American Bar Association, Division for Media Relations and Communications Services, Facts About the American Judicial System. ABA, 1999. 35 pp. $19.95.

American Bar Association Special Committee on Judicial Independence - www.abanet.org/judind/What.html

At this ABA Web site, you can find talking points to use on judicial independence, model speeches and editorial columns, and other materials that could be used as background information when talking with the media.

ORGANIZATIONS

ABA Web sites: General ABA site - www.abanet.org
ABA Judicial Division - www.abanet.org/judical
ABA Office of Justice Initiatives - www.abanet.org/justice
ABA Division for Legal Services - www.abanet.org/legalservices
ABA Governmental Affairs Office - www.abanet.org/legadv

ABA Standing Committee on Judicial Independence - www.abanet.org/judind/judIndephom.e.html

American Judges Association, Association Services, P. O. Box 8798, Williamsburg, Virginia 23187-8798, (757) 259-1841.
Web: http://aja.ncsc.dni.us/

Web: http://www.ajs.org/

Web: http://www.clasp.org

Web: http://www.clasp.org

Web: http://www.faircourts.org/

Conference of State Court Administrators (COSCA), c/o National Center for State Courts, P. O. Box 8798, Williamsburg, Virginia 23187-8798, (757) 253-2000.
Web: http://cosca.ncsc.dni.us/

Web: http://www.courtexcellence.org/

Legal Services Corporation, 750 First St., N.E., 10th Floor, Washington, D.C. 20036, (202) 336-8800.
Web: http://www.ltsi.net/lsc/

National Association for Court Management (NACM), c/o National Center for State Courts, P. O. Box 8798, Williamsburg, Virginia 23187-8798, (757) 259-1841.
Web: http://nacm.ncsc.dni.us/

National Center for State Courts, 300 Newport Avenue, P. O. Box 8798, Williamsburg, Virginia 23187-8798, (757) 259-1841. Web: http://www.ncsc.dni.us

National Center on Poverty Law, 205 W. Monroe St., Chicago, Illinois 60606, (312) 263-3830.

Public Justice Center, 500 East Lexington St., Baltimore, Maryland 21202, (410) 625-9409. Web: http://www.publicjustice.org

State Justice Institute, 1650 King St., Suite 600, Alexandria, Virginia 22314, (703) 684-6100. Web: http://www.statejustice.org/


PRO SE LITIGANTS


This is a thorough, readable manual for helping pro se litigants, with an appendix of additional resources, including contact names and a bibliography. It reports the findings and recommendations of an American Judicature Society/Justice Management Institute study financially supported by the State Justice Institute.


We previously catalogued resources on helping pro se litigants in the Summer 1998 issue. Included there are Web sites for use by pro se litigants and an easy-to-clip set of guidelines for court staff to use on what they can – and cannot – do to assist pro se litigants.

Maricopa County, Ariz., Superior Court, Self-Service Center. Maricopa County Superior Court, 1997. 61 pp. Contact: Bob James, (602) 506-6314. This publication, which reports on the establishment of self-service centers in Phoenix, includes an independent evaluation of their program done by an outside consultant. This Maricopa County project was aided by a grant from the State Justice Institute. You can view the Self-Service Center’s Web site at http://www.superiorcourt.maricopa.gov/ssc/sschome.html.

PUBLIC EDUCATION

American Bar Association, Road Maps publication series. $5 each. The Road Maps series consists of several different publications, designed to address general audiences, including the public, the bench and the bar. The titles of the Road Maps publications include: Judicial Selection; Community Involvement; Funding the Justice System; Independence of the Judiciary; The American Jury - Changes for the 21st Century; User-Friendly Courts - Customer Service in the Courthouse, and Access to Justice. Volume discounts are available for distribution at community forums, among policy makers or to state and local organizations.


American Bar Association, Division for Public Education, Law and the Courts. ABA, 1995. $2.50.

American Bar Association, Division for Media Relations and Communications Services, Facts About the American Judicial System. ABA, 1999. 35 pp. $19.95.


This 25-minute videotape provides an overview of the U.S. justice system for immigrants and has been produced in eleven languages (Arabic, Cantonese, English, French, Haitian, Khmer, Korean, Polish, Russian, Spanish and Vietnamese). When ordering, specify the desired language. An instructor’s manual is included.


This 18-minute videotape provides an overview of the jury’s role in the U.S. justice system. It includes both information about jury service and dramatized stories of citizens directly affected by the constitutionally guaranteed right to trial by jury. The video was intended for use in courthouse juror orientation, public outreach programs and civics courses.

PUBLIC OPINION

Perceptions of the U.S. Justice System http://www.abanet.org/media/perception/home.html


How the Public Views the State Courts http://www.ncsc.dni.us/ptc/results/nms4.htm

The full report on this 1999 survey sponsored by the National Center for State Courts and the Hearst Corporation is available on the Web. For an overview of the data, see the article in this issue by David Rottman and Alan Tomkins.
PUBLIC TRUST & CONFIDENCE

National Action Plan
http://ncsc.dni.us/PTC/Ptc.htm

The 51-page draft National Action Plan, prepared following the May 1999 national conference, is available at this Web site. When the draft goes into final form, you can expect that it will be posted here as well.

National Conference on PT&C
http://ncsc.dni.us/PTC/Ptc.htm

For anyone who would like even more information on the May 1999 national conference than is found in this issue, it's available at this Web site. Included are briefing papers made available to the conference participants; polling data on the national survey taken in advance of the conference; tallies of votes by conference participants ranking various issues and strategies; and a complete transcript of the plenary sessions of the conference.

HOW TO ORDER PUBLICATIONS

American Bar Association: 750 N. Lake Shore Drive, Chicago, Illinois 60611. To order by fax or phone with credit card: Fax (312) 988-5850; Phone 1-800-285-2221 or (312) 988-5522; or use the order form on the ABA Web site at http://www.abanet.org/.

American Judicature Society: 180 N. Michigan Ave., Suite 600, Chicago, Illinois 60601. To order by phone or fax with credit card: Fax (312) 558-9175; Phone (312) 558-6900 ext. 147.

National Center for State Courts: For published items, contact the NCSC Fulfillment Department, P. O. Box 580, Williston, Vermont 05495-0580. You can also order by phone at 1-888-228-NCSC or by e-mail at ncsc.orders@aidcvt.com. For reports available without charge, contact the NCSC home office, 300 Newport Avenue, P. O. Box 8798, Williamsburg, Virginia 23187-8798, (757) 259-1841.


The report title is a mouthful, so we'll simplify things here. This report summarizes the work of a regional conference of federal and state judges convened in October 1997. The conference, sponsored by AJS and funded by the State Justice Institute, included judges from the states of the Sixth, Seventh and Eighth Circuits. The conference broke into smaller discussion groups, and the suggestions of each group as to areas in which state and federal judges could cooperate to improve public trust and confidence in the courts are summarized, including public education and outreach programs. Also included is survey data of these federal and state judges regarding issues on which state and federal judges share issues of mutual concern.


These were the materials for a statewide conference of court employees, in which issues related to public trust and confidence in the courts were addressed. Topics addressed at the conference included re-engineering the courts; racial and gender bias; public education programs; specialty courts; enforcement of court orders; and jury reform.


Report of mailed survey taken in Fall 1998 of judges and attorneys, covering many of the same topics included in the 1998 Texas survey of the general public.

American Bar Association, Office of Justice Initiatives, 1999 Summary of State and Local Justice Initiatives.


TRIAL COURT PERFORMANCE STANDARDS (TCPS)


To the extent that public trust and confidence can be affected by judicial performance, the Trial Court Performance Standards are an excellent starting point for a thorough review of the performance of a judge, a court or a court system. The NCSC’s Pam Casey gives an excellent overview of the TCPS in this article, which is available on the Web.

Trial Court Performance Standards http://www.ncjrs.org/courdocs.htm

From this Web site, you can download several publications of the Bureau of Justice Assistance covering the TCPS in detail. For an overview,
start with Trial Court Performance Standards with Commentary. More detailed publications are also available, including ones about the various measurement systems that can be used to measure and improve compliance with the standards.

**Trial Court Performance Standards Listserve**

An e-mail discussion listserve regarding the TCPS has been set up by the NCSC. Contact Hillery Efkeman at hefkeman@ncsc.dni.us to join.

**USER-FRIENDLY COURTS RESOURCES**


This book contains more than 100 suggestions for improving courthouse services at minimal cost and with limited effort. The tips were submitted by judges, lawyers and court staff and have already been implemented in various places around the country.


This is a training manual for court employees, designed to improve service to the public. The manual reviews how court staff can analyze the needs and expectations of the public with whom they come in contact in the workday.


This publication, which reports on the establishment of self-service centers in Phoenix, includes an independent evaluation of their program done by an outside consultant. This Maricopa County project was aided by a grant from the State Justice Institute.


This is a 22-minute, closed captioned videotape demonstrating real-life stories of people with hearing impairments who have been denied full access to the justice system. Hosted by nationally known comedienne Kathy Buckley, who is hard of hearing, it describes what can be done to ensure that those who are deaf or hard of hearing can fully participate in judicial proceedings.


**THANKS ...**

Court Review received the help of staff at the National Center for State Courts, the American Bar Association, the State Justice Institute and the American Judicature Society in putting together this list of resources. Special thanks go to Pam Casey, Tim Fautsko, Carol Flango and David Rottman of the NCSC; Eileen Gallagher, John Holtaway, Darmea McCoy, Jeremy Persin, Mary Ann Peter and Jack Sweeney of the ABA; Kathy Schwartz and David Tevelin of the State Justice Institute; and Seth Andersen, Beth Murphy and Shelly Partilla of AJS.

**AMERICAN JUDGES ASSOCIATION FUTURE CONFERENCES**

<table>
<thead>
<tr>
<th>Event Type</th>
<th>Date</th>
<th>Location</th>
<th>Room Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000 Midyear Meeting</td>
<td>May 4-6</td>
<td>San Juan, Puerto Rico Condado Plaza Hotel &amp; Casino</td>
<td>($125.00 single or double)</td>
</tr>
<tr>
<td>2000 Annual Conference</td>
<td>September 10-15</td>
<td>Kansas City, Missouri The Westin Crown Center</td>
<td>($134.00 single or double)</td>
</tr>
<tr>
<td>2001 Midyear Meeting</td>
<td>March 29-31</td>
<td>Hot Springs, Arkansas Hilton Hot Springs Convention Center</td>
<td>($90.00 single or double)</td>
</tr>
<tr>
<td>2001 Annual Meeting</td>
<td>September 30-October 5</td>
<td>Reno, Nevada Silver Legacy Resort</td>
<td>(Room rate to be determined)</td>
</tr>
</tbody>
</table>
**BOOKS**


This CD-ROM contains more than 70 hours of oral argument and oral opinion pronouncements in 50 cases decided over the past four decades. The audio is made from master recordings available at the National Archives and the CD-ROM provides annotations to all of the oral arguments so that listeners can jump from point to point. Cases include Brandenburg v. Ohio, Gideon v. Wainwright, Gregg v. Georgia, Griswold v. Connecticut, Wisconsin v. Yoder, Miranda v. Arizona, United States v. Nixon and Clinton v. Jones. If you want to preview some of the material, the audio (but without annotations) is available on the Web at http://oyez.nwu.edu.


In time to set the stage for the next batch of Supreme Court cases on federalism, this book offers broad-based commentary on the sharing of judicial power between the federal government and the states. The book is written by University of Cincinnati law professor Michael Solimine and Wright State University political science professor James Walker, who argue that a dual system of strong state and federal courts benefits both the development of the law and the protection of liberty.


Constitutional Interpretation examines how courts should go about interpreting the Constitution drawing arguments from American history, political philosophy and literary theory. He concludes that interpreters should stick to the discoverable intentions of the writers. In Constitutional Construction, he moves away from issues of constitutional interpretation altogether, discussing instead how the Constitution guides and constrains political actors in the United States government. He discusses four case studies drawn from American history, including the impeachment of Justice Samuel Chase, the impeachment of President Andrew Johnson and the various battles between President Nixon and Congress, indicating how and why these cases set various standards for the application of constitutional principles and tipped the balance of constitutional powers.

**USEFUL INTERNET SITES**

American Judges Association  
http://aja.ncsc.dni.us/

Although we have been on the Web for quite some time, we haven't mentioned it before here on the Resource Page because there just wasn't enough there and what was there was often out of date. We believe we've fixed those problems and hope you'll take a look at our site. You can find the schedule for upcoming meetings and a directory of officers and board of governors members (with phone numbers and e-mail addresses). In addition, you can find the full text of all of the contents of Court Review beginning with the Spring 1998 issue. We will keep working to update and improve the site. Bookmark it and check back from time to time.

Justice Information Center  
http://www.ncjrs.org/

This U.S. Department of Justice site provides general access to information tracked by them about the justice system, including a search engine that searches more than 140,000 published and unpublished resources catalogued by DOJ from the early 1970's to the present. Click on "courts" and then "documents" to get a list of more than 100 documents available on line in full text, including the Trial Court Performance Standards, publications on drug courts and many others.

**FOCUS ON PUBLIC TRUST & CONFIDENCE**

The Resource Page focuses on resources relating to public trust and confidence in the courts beginning at page 76.