



# Public Trust and Confidence

## Research Services

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### National Conference on Public Trust and Confidence in the Justice System May 14-15, 1999, Washington, DC

Five hundred leaders from state and federal courts, the bar, the media, and citizen groups convened in the first-ever conference addressing the serious issue of public trust in the justice system. Many chief justices of state supreme courts were present in recognition of the importance of the conference. Forty-six states sent teams as did Guam and Puerto Rico.

#### **Friday Morning, May 14**

Officials of three sponsoring organizations greeted the participants: Chief Justice David Brock of New Hampshire, President of the Conference of Chief Justices; Kay Maxwell, First Vice President of the League of Women Voters of the United States, and Philip Anderson, President of the American Bar Association. Recognition was accorded the fourth sponsoring organization, the Conference of State Court Administrators and the organizations that funded the conference: American Bar Association, Bureau of Justice Assistance, Federal Judicial Center, and State Justice Institute.

Philip Anderson introduced the keynote speaker, William H. Rehnquist, Chief Justice of the United States, whose presence underscored the importance of the occasion, not only to state judges but to the federal judiciary as well. He stressed the link between judicial independence and public trust.

John A. Curtin and Thomas A. Zlaket, co-chairs of the conference planning committee, explained the prelude to the conference and how the participants would be asked to engage in an intensive strategic planning exercise leading to prioritization of the steps to be taken to increase public confidence. The gist of the overview was that the conferees would sequentially address five questions: How serious is the overall issue of public trust? What are the critical issues affecting public trust? What are the most effective strategies to deal with the critical issues? What are the barriers to effectuating these strategies? What actions can be taken at the national level to help surmount the barriers and support effective strategy implementation?

**Seriousness of the issue:** At this point the conference attendees were presented with a variety of information on public perceptions of the justice system:

A video summarizing the results of two ABA symposia that were designed to feed into the conference, one on judicial independence, the other on public perceptions of the justice system. In conjunction with the latter symposium the ABA had sponsored a public opinion survey that was made available to the conference.

Frank A. Bennack, President of the [Hearst Corporation](#), presented the [results of a public opinion survey](#) funded by his company and conducted by the National Center for State Courts. The survey contained some positive findings but also a number of findings that reflected public dissatisfaction. Among these were: 70% of African-Americans think that as a group they are treated somewhat worse or far worse than other groups; 81% agree that politics influences court decisions; 56% feel that most juries are not representative of the community; 68% do not agree that it is affordable to bring a case to court and 87% feel that having a lawyer contributes a lot to the cost of going to court; only 10% felt that courts in their communities handled cases in an excellent manner with 20% feeling that

criminal and family cases are handled in a poor manner and 30% feeling that juvenile cases are handled in a poor manner; and 44% felt that judges were out of touch with what was going on in their community.

A panel moderated by Catherine Crier, Fox News' Crier Report, discussed the survey information on public perceptions of the justice system. The panel, drawn primarily from academia and the media, reaffirmed the reported perceptions and added personal insights that highlighted the gravity of the issue. It was observed that although people may view the courts and legal profession negatively, they often have high regard for individuals in the system and would not be averse to having their children choose the law as a profession.

**What are the critical issues affecting public trust?** Prior to the conference, most of the participating states and territories submitted prioritized lists of public trust issues resulting in a preliminary identification of public trust issues common to most states. Professor Charles Ogletree of Harvard Law School moderated a panel (again chosen from outside the court community) that challenged or reinforced some of the priorities set by the participating states. It was pointed out that Hispanics, who are a very diverse group, were not well represented at the conference. It was observed that experience with local courts reinforces the view that there is bias in jury composition, treatment by court employees, and a very high percentage of defendants of color.

Following the panel discussion, the participants met in 15 small group sessions to reconsider their initial priorities. This resulted in the addition of some issues that states had not included in their pre-conference submission. The League of Women Voters provided most of the facilitators for the small group sessions. Discussion groups reports were provided by the American Association of Law Libraries.

#### **Friday Afternoon, May 14**

The Honorable Judith Kaye, Chief Judge, New York State Court of Appeals introduced luncheon speaker Mario Cuomo of Wilke, Farr and Gallagher, former Governor of New York. Drawing upon his experience in politics and as an attorney, Mr. Cuomo stressed the vital importance of judicial independence and the necessity of an apolitical judiciary. He called for improvements in judicial selection processes and encouraged the "august group" before him to persevere in improving the courts and to recognize that beneficial change is usually gradual.

**Critical Issues Continued:** The conference was reconvened to express itself by electronic voting on the critical issues affecting public trust. This session, moderated by Daniel Straub of Anabasis Straub and Associates, required voters to assign a critical rating to each of the 15 issues on the list (4 were "wild card" issues added in the morning small group sessions). For analytical purposes, the voters placed themselves in one of four demographic categories – judge, attorney, court administrator, and civic/business/other. In order of priority, the following six issues were deemed most critical: unequal justice in the justice system (up one step from the pre-conference rating), high cost of access to the justice system, lack of public understanding, unfair and inconsistent judicial process, partisan versus merit selection of judges (a wild card selection not highly rated in pre-conference submissions), and poor customer relations with the public. Judicial isolation from the community almost made the "most critical" list.

**What are the most effective strategies to deal with the critical issues?** Prior to the conference, many states submitted a list of strategies to deal with the issues they had chosen. These issues were condensed into a list of overarching strategies that might apply to one or more issues. As in the case of pre-conference selection of issues, a panel discussed the strategies and asked the participants to reconsider these strategies.

Bruce D. Collins, Corporate Vice President and General Counsel, C-SPAN moderated the panel on potential strategies. Three of the five members of this panel were connected with the bar or judiciary. The panel stressed the importance of attorney conduct in forming public perceptions of the justice system, use of technology and sound business practices in courts, and the mutual responsibilities of the press and the justice system. The participants then met in small groups to reconsider strategies. As a result of these sessions, five additional strategies were added to the voting list.

Dan Straub moderated the voting session on strategies. Nine of the sixteen strategies made the short list, three of them being “wild card” choices that came out of the small group sessions. In order of priority, the top six strategies were: improve education and training (this included public education), make the courts more inclusive and outreaching, improve external communication, provide swift, fair, and reasonably priced justice, share public trust programs and activities among states, and implement recommendations of gender, race and bias task forces and replicate successes. When the participants were asked how serious the problem of public trust was, ninety percent indicated that it was serious. Moreover, they felt it was their responsibility to do something about it. Judges and other participants saw judges as the natural leaders.

**Saturday Morning, May 15**

The morning session started with open microphone comments on barriers that might impede the strategies selected by the conference. The participants, seated in round table groups, were then given the opportunity to suggest in writing actions that they thought would be particularly effective to increase public trust. They also considered those national-scope actions that would be most helpful to the states in increasing public trust. The moderator was Professor Arthur Miller of Harvard University Law School. The facilitator was Daniel Straub who conducted a final electronic voting session that prioritized national actions and posed a number of attitudinal and evaluative questions.

**What are the barriers to effectuating these strategies?** In the first open microphone session, the participants identified 23 barriers. Reduced to major categories these barriers are:

Problems in the legal profession	Lack of diversity, use of legal jargon, no self-discipline, not standing up for judiciary against legislative encroachment, failure of profession to educate its members on the need to reform themselves
Problems in the judiciary	No listening or interacting, too hierarchical and non-democratic, failure to lead, lack of will to make changes, failure of quality control in lower courts
Weaknesses in procedures	Tension between fairness and efficiency, emphasis on winning at the expense of collaboration and facilitation, failure to develop judicial and non-judicial alternative dispute resolution alternatives
Attitudes of the public	Citizen dissatisfaction with government in general and failure of everyone to realize that some skepticism about government is inherent in a democracy, insufficient public accessibility to court proceedings, failure to give sufficient education to public on role and procedures of judiciary and perhaps causing unrealistic expectations about judges, affected by media misinformation
Insensitivity to minorities	Failure to deal aggressively with racial and ethnic bias, lack of understanding of how tribal judiciaries relate to state judiciaries
Resources	Inadequate resources provided to courts
Data	Lack of empirical data defining the problems and identifying what works

**What actions can be taken at the national level to help surmount the barriers and support effective strategies?** The conference, after an open microphone session devoted to advocacy of particular national actions, voted on those actions they felt to be most helpful. In order of priority the top four choices were: develop and disseminate successful models and best practices, engage in public education at the national level, examine the role of lawyers and their impact on public trust, and improve public access through information technology.

The participants were also asked to register their views on a series of attitudinal and evaluative questions. The conference evaluations of the conference were overwhelmingly positive. The participants found it worth their time, thought that the issues and information were relevant, and found that the polling data and electronic voting made important contributions. The conference strongly affirmed by vote that they were listening to the public and that they had confidence that the conference would lead to ameliorative actions.

### **Final Luncheon**

After an introduction by The Honorable Thomas A. Zlaket, Chief Justice, Supreme Court of Arizona, the Honorable Sandra Day O'Connor, Associate Justice, Supreme Court of the United States addressed the conference and urged participants to implement with "concrete actions" the choices they were making. She addressed specific areas where she felt there was an imperative need to build public trust: strengthening the family and juvenile justice system and dealing with the many pro se litigants in family courts; taking concrete actions to address the concerns of African-Americans who feel strongly that they do not receive equal justice; and continuing reforms of the jury system, greater participation of jurors and curbs on the misuse of peremptory challenges.

To demonstrate that the work of the conference was ongoing, the incoming presidents of the major organizational sponsors made closing remarks that expressed continuity of purpose in addressing public trust in the justice system. The speakers were: The Honorable E. Norman Veasey, Chief Justice, Delaware Supreme Court, President Elect, Conference of Chief Justices, Kay Maxwell, First Vice President, League of Women Voters of the United States, and William G. Paul, President Elect, American Bar Association.

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NOTE: For complete survey findings please [How the Public Views the State Courts: A 1999 National Survey](#) (click on title).

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### **Other Links**

- [Conference of Chief Justices – Resolution IX: In Support of the National Conference on Building Public Trust and Confidence in the Justice System](#)
  - [U.S. Public Gives Report Card on Nation's Courts – Press Release – Thursday, July 1, 1999](#)
  - [Americans Believe Justice is Neither Swift Nor Affordable – Press Release – Friday, July 2, 1999](#)
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Inquiries regarding **Public Trust and Confidence** or to obtain copies of any of these resources may be directed to the Research Division Office

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Last Modified: September 19, 2002  
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