

# Public Trust and Confidence in the Courts:

## What Public Opinion Surveys Mean to Judges

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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..."<sup>1</sup>

Thus, almost since the inception of our system of government, and certainly since Chief Justice Marshall in *Marbury v. Madison*<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> Perhaps the low point occurred in the wake of the Supreme Court's decision in the *Dred Scott*<sup>5</sup> 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."<sup>6</sup> Even Supreme Court decisions from recent times – for example, in such cases as *Brown v. Board of Education*<sup>7</sup> and *Roe v. Wade*<sup>8</sup> – 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.<sup>9</sup> 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,<sup>10</sup> 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

1. William H. Rehnquist, *The Supreme Court: The First Hundred Years Were the Hardest*, 42 U. MIAMI L. REV. 475, 477 (1988). See also EDWARD S. CORWIN, JOHN MARSHALL AND THE CONSTITUTION: A CHRONICLE OF THE SUPREME COURT 23-24 n.3 (1921).
2. 5 U.S. (1 Cranch) 137 (1803).
3. For a review, see generally JOHN R. HIBBING & ELIZABETH THEISS-MORSE, CONGRESS AS PUBLIC ENEMY: PUBLIC ATTITUDES TOWARD AMERICAN POLITICAL INSTITUTIONS chap. 2 (1995).
4. Susan M. Olson & David A. Huth, *Explaining Public Attitudes Toward Local Courts*, 20 JUSTICE SYS. J. 42 (1998).
5. 60 U.S. (19 How.) 393 (1856).
6. CHARLES WARREN, THE SUPREME COURT IN UNITED STATES HISTORY 38 (1922) (quoting Timothy Farrar, *The Dred Scott Case*, 85 NORTH AMERICAN REV. 392 (1857)).
7. 347 U.S. 483 (1954).

8. 410 U.S. 113 (1973).
9. Yankelovich et al., *Highlights of a National Survey of the General Public, Judges, and Community Leaders*, in NATIONAL CENTER FOR STATE COURTS, STATE COURTS: A BLUEPRINT FOR THE FUTURE 21 (1978).
10. "The principal source of public concern about judges is that there simply are not enough of them. Thirty-nine percent see this as a major problem. Of secondary (and much lower) concern to the public is the conduct and demeanor of judges—their diligence, sensitivity to the problems of those whose cases they deliberate, fairness, objectivity, and literal interpretation of the law. A minor problem in the public's estimation is the qualifications of judges. . . . Judges generally seem to command basic respect and confidence, though this esteem is equivocal and somewhat guarded." *Id.* at 33.

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.<sup>11</sup>

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,"<sup>12</sup> 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 promote 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 forcefulness across all of the national and state surveys.<sup>13</sup> The negative 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 economic-based unfairness in civil cases seemed to rival the perception of judicial leniency in criminal cases as a source of public dissatisfaction. There also was strong evidence of public con-

cern that political considerations, and especially campaign fundraising, exerted an undue influence on the judiciary.

The surveys also uncovered positive images of the courts. There were perceptions that judges are honest and fair in case decisions and well-trained, that the jury system works, and that judges and court personnel treat members of the public with courtesy and respect.

While the surveys between 1977 and 1998 reveal the contours of a relatively consistent public image of courts, it remained a broad-brush portrait. In particular, we lack a body of data that can measure the extent to which the image of the courts is the same when viewed from the perspective of different social groups. In this article, we use findings from a new survey to explore differences in perceptions of the courts among racial and ethnic groups and other issues that, in our view, deserve urgent attention by the judiciary in a period of re-examination of what the courts are doing and need to do better to secure the public's trust and confidence.

### Major Results from the 1999 National Survey

This section summarizes some of the more significant data found in the recent study sponsored by the National Center for State Courts and the Hearst Corporation, *How the Public Views the State Courts*.<sup>14</sup> The data we report here are those findings we believe have particularly interesting implications for the judiciary. Interested readers are referred to the complete 1999 *National Survey* report, located on-line at [www.hearstcorp.com](http://www.hearstcorp.com) or at [www.ncsc.dni.us./ptc/results.htm](http://www.ncsc.dni.us./ptc/results.htm).

The 1999 *National Survey* reported the views of 1,826 Americans who were interviewed via telephone by researchers from the Indiana University Public Opinion Laboratory. The interviews were conducted between January 13 and February 15, 1999. What especially distinguishes the interviews conducted for the 1999 *National Survey* from previous efforts is that, in addition to the 1,226 randomly sampled Americans, there was an oversample of 300 African-Americans and 300

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 REVIEW, Winter 1998, at 14 (1999).
14. NATIONAL CENTER FOR STATE COURTS, HOW THE PUBLIC VIEWS THE STATE COURTS: A 1999 NATIONAL SURVEY (1999) (hereinafter "1999 National Survey"). The 1999 *National Survey* was a true nationwide, 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 professionals, 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, collaborated on the writing of the report. Specific thanks are extended to Pam Casey, Maithilee 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 contributions. 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 Justice System, May 14, 1999.

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.<sup>15</sup>

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.

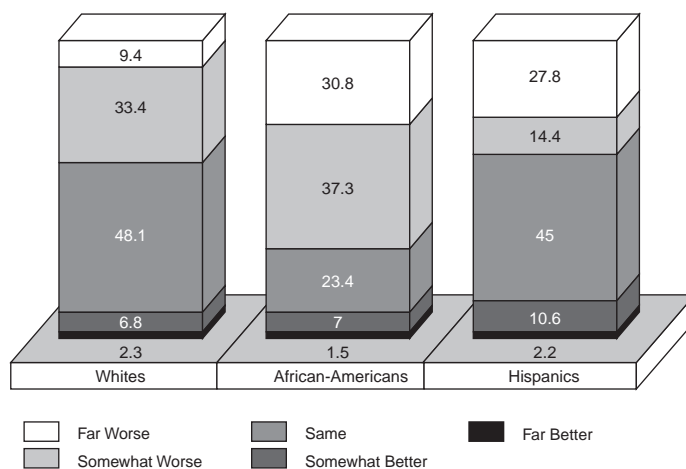
### Group Differences in Public Trust and Confidence in the Courts

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.<sup>16</sup> 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).<sup>17</sup>

Figure 1:  
What kind of treatment do African-Americans receive from the courts?



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.<sup>18</sup> 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).<sup>19</sup> 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.<sup>20</sup>

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).<sup>21</sup> Fewer African-Americans (18%) strongly agree that “Judges are generally honest and fair in deciding cases” than Hispanics (29%) or White/Non-Hispanics (34%).<sup>22</sup> More African-Americans (approximately 50%) strongly believe “Judges’ decisions are influenced by political considerations” in contrast to Hispanics (42%) or White/Non-Hispanics (35%).<sup>23</sup> 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.<sup>24</sup>

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 (72.1%) 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.

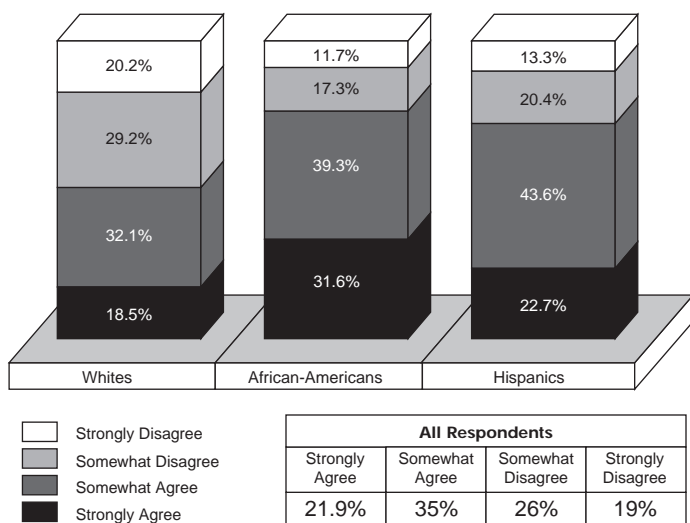
21. *See id.* at 40.

22. *See id.* at 30.

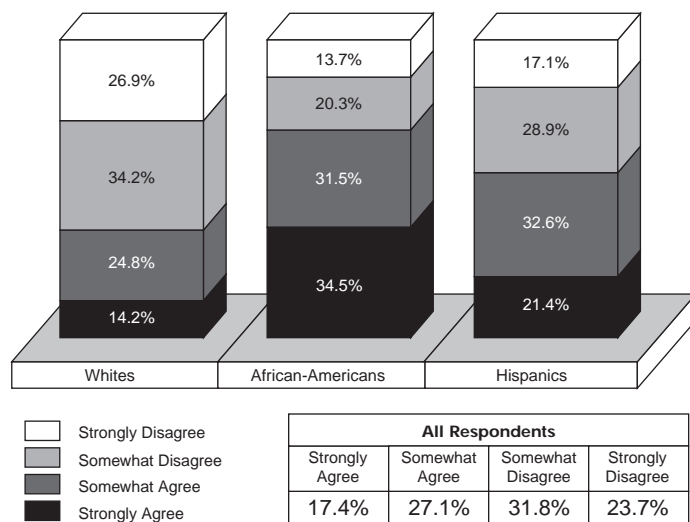
23. *See id.* at 41.

24. *See id.* at 37.

**Figure 2:**  
Most juries are not representative of the community



**Figure 3:**  
Courts are 'out-of-touch' with what's going on in their communities



We believe it is striking to note that others do not necessarily perceive African-Americans in as dire straits as African-Americans see themselves. For example, only 23% of African-Americans believe the court system treats them the same as it does other people, whereas twice as many White/Non-Hispanics and Hispanics believe the court system treats African-Americans the same as it does other people (see Figure 1).<sup>25</sup>

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.<sup>26</sup> 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.<sup>27</sup> 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.”<sup>28</sup> Eighty-five percent of Americans agree, “Courts protect defendants’ constitutional rights.”<sup>29</sup> And virtually three-quarters of the respondents agree, “Court personnel are helpful and courteous.”<sup>30</sup> 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-

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 NEGLIGENCE, RACE, CRIME,*

AND PUNISHMENT IN AMERICA (1996).

28. See 1999 *National Survey* at 30.

29. See *id.* at 32.

30. See *id.* at 26. But see text *supra* at note 18 (21% of African-Americans strongly disagree).



tions (see Table 1).<sup>31</sup> 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).

**Table 1:  
TRUST AND CONFIDENCE IN AMERICAN INSTITUTIONS**

Institution	Amount of Trust/Confidence			
	Great Deal	Some	Only a Little	None
Medical Profession	45.4%	42.2%	9.7%	2.7%
Local Police	42.6%	39.0%	12.3%	6.1%
U.S. Supreme Court	31.8%	44.7%	17.1%	6.4%
Office of the Governor	30.4%	46.5%	15.5%	7.6%
Public Schools	26.0%	49.4%	19.5%	5.0%
Courts in Your Community	23.2%	52.2%	16.9%	7.7%
State's Legislature	17.5%	58.3%	17.4%	6.9%
Media	10.4%	39.8%	31.1%	18.6%

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).<sup>32</sup> 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.

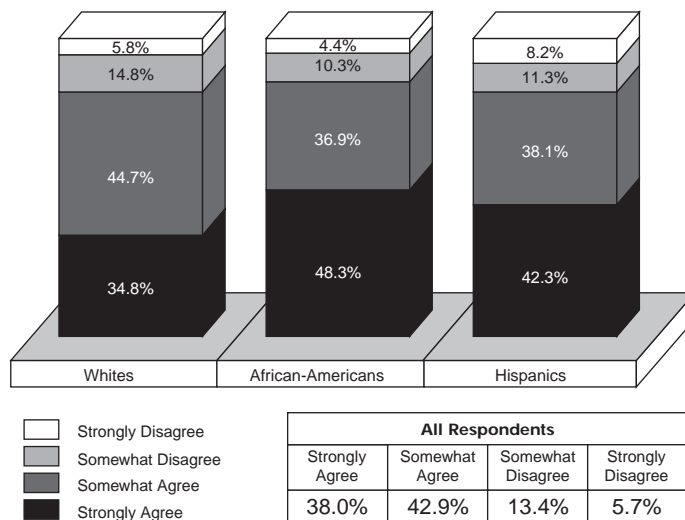
Although the vast majority of respondents agree that “Court personnel are helpful and courteous,” approximately 25% of Americans disagree.<sup>33</sup> The structure of the survey does not allow an understanding of whether the courteous (or discourteous) personnel are judges, clerks, or others in the courthouses. But other questions seem to point a negative finger directly at judges.

**Table 2:  
IN WHAT MANNER DO COURTS  
IN YOUR COMMUNITY HANDLE CASES?**

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

Eighty percent of the respondents agree that “Cases are not resolved in a timely manner.”<sup>34</sup> Over half agree that “Judges do not give adequate time and attention to each individual case,”<sup>35</sup> and that “Courts do not make sure their orders are enforced.”<sup>36</sup> Approximately 40% of Americans do not feel “court rulings are understood by the people involved in the cases”<sup>37</sup> or that courts are “in-touch” with their communities.<sup>38</sup> 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”<sup>39</sup> (see Figure 4) and “Elected judges are influenced by having to raise campaign funds”<sup>40</sup> (see Figure 5).

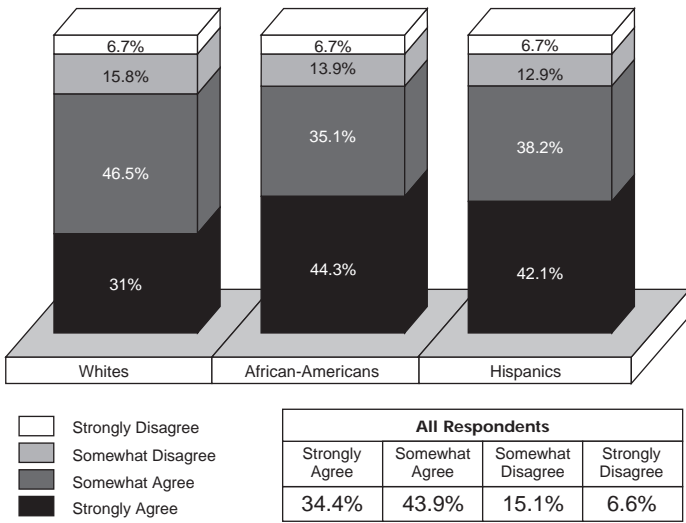
**Figure 4:  
Judges decisions are influenced by political considerations**



31. See 1999 National Survey, at 12.  
 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.

**Figure 5:**  
Elected judges are influenced by having to raise campaign funds



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.

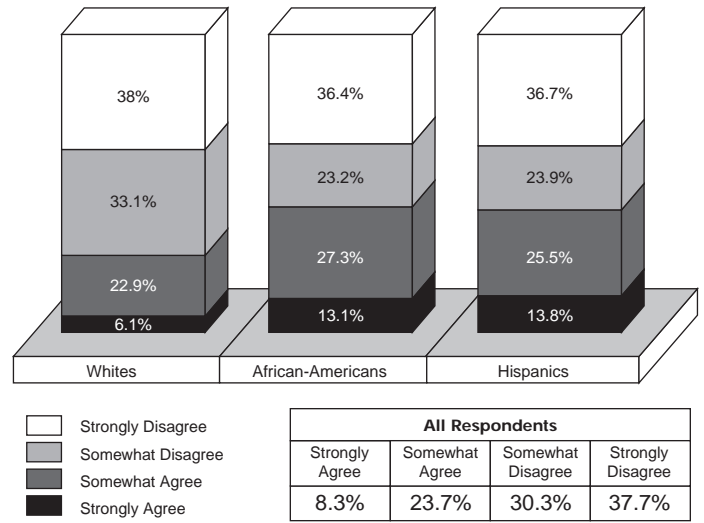
**The Economics of Court Access**

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).<sup>41</sup> 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.

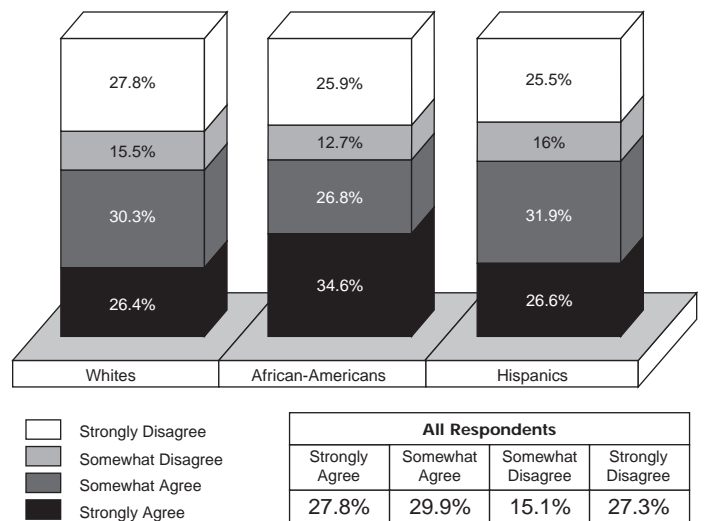
41. See *id.* at 22.  
42. See *id.* at 23.

**Figure 6:**  
It is affordable to bring a case 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.<sup>42</sup>

**Figure 7:**  
It would be possible for me to represent myself in court if I wanted to



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).<sup>43</sup> 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.<sup>44</sup>

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.”<sup>45</sup>

### Does the Public Still Care about Court Delay?

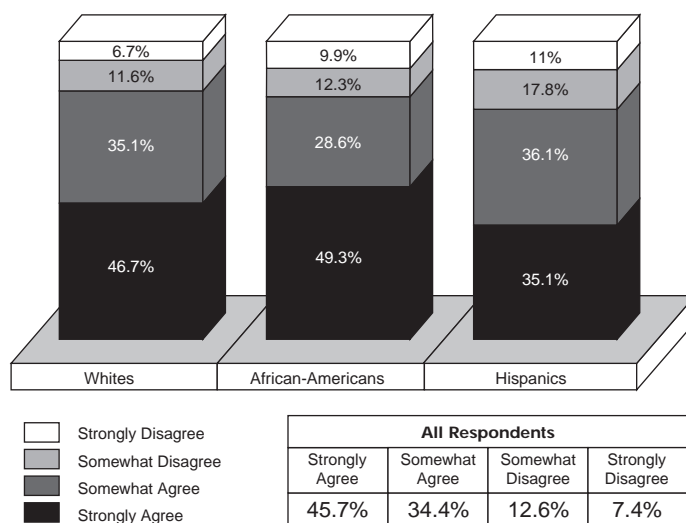
Late in the interviews, survey respondents were invited to express their views in their own words. They were asked to tell the interviewer either the most important thing that the courts in their community were doing well or poorly. One-half of the interviews asked what the courts were doing well and 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.<sup>46</sup> 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).<sup>47</sup> 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.<sup>48</sup>

Figure 8:  
Cases are not resolved in a timely manner



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.

45. Allen Brown, *Public Opinion Research*, in 3 FULL COURT PRESS: THE OFFICIAL NEWSLETTER OF THE STATE COURT SYSTEM OF FLORIDA 6 at 6 (1996).

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.

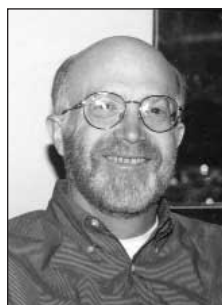
### Conclusion

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.<sup>49</sup> 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.<sup>50</sup> 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.”<sup>51</sup>



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49. Two recent opinion surveys document the difference between public and judicial assessments of court performance: ARIZONA SUPREME COURT, ARIZONA STATE COURT CITIZEN SURVEY (1997); SUPREME COURT OF TEXAS, THE COURTS AND THE LEGAL PROFESSION

IN TEXAS—THE INSIDER’S PERSPECTIVE (1998).

50. See Roger K. Warren, *Courts and the Public: The Need for Effective Communication*, CT. MANAGER, Winter 1997 at 20, 23.

51. See Olson & Huth, *supra* note 4, at 57.