

On Public Trust and Confidence: Does Experience with the Courts Promote or Diminish It?

by David B. Rottman

Startling findings from public opinion surveys sometimes change how people think so substantially that they become a part of conventional wisdom about a topic. A case in point is the belief that experience with a court reduces rather than enhances a person's confidence in the courts. The main piece of evidence underlying that belief comes from a landmark public opinion survey conducted in 1977, *The Public Image of the Courts*. The most striking conclusion highlighted in the report is that "those having knowledge and experience with the courts voiced the greatest dissatisfaction and criticism."¹

This article uses recent public opinion surveys to establish whether the gloomy conclusions from the 1977 survey still apply, to interpret the dynamics that translate court experience into opinion, and to rethink the ways courts might seek to gain and maintain public trust. The starting point, a reassessment of the 1977 survey findings, yields a less negative, but still troubling, view of court experience's impact. However, even the troubled past is not prologue, because since 1977 the extent and nature of public contact with courts has changed dramatically. Recent statewide opinion surveys track those changes and suggest that sheer, undifferentiated court experience is not in itself related to opinions. Rather, particular kinds of experience tend to promote or reduce confidence. Negative images of trial courts, partly fueled by mass media depictions, appear to be influential. Programs that improve court performance in areas like access to justice are the surest tools courts can wield in strengthening public support. That will not be enough. Courts need a reliable set of tools that promote a positive image among infrequent and non-court users.

A LOOK BACK

The Public Image of the Courts survey was a massive enterprise; certainly no subsequent survey about the courts or the legal system published before 1999 approached its breadth and

depth.² Interviews were conducted face-to-face with 1,931 randomly selected adults. Similar questions were asked of 317 "active" attorneys, 194 state and local judges, and 278 community leaders (mayors, state and local legislators serving on judiciary committees, local media staff, etc.).

The pattern of responses to questions in the survey did suggest that having had one's day in court was associated with negative views about the courts. It is less certain that the evidence was sufficiently clear and strong to justify pessimistic conclusions about the inability of courts to educate the public or to take affirmative steps to enhance public trust and confidence through changes in court policies.

The 1977 survey provided three main ways to assess what the public thought about the courts. One was a question soliciting the level of trust and confidence respondents had in the people running "state and local courts." The perceived need for court reform was another single-question measure of opinion (with responses ranging from "in no need" to "in great need" of reform). The third basis for differentiating positive from negative views came from a series of questions asking respondents whether individual attributes of courts were a problem.³

Experience with the courts was also measured in three ways. Opinions about the courts were considered separately for respondents with and without any court experience, claiming different levels of self-rated familiarity with the courts, and graded as having different degrees of "actual" knowledge (i.e., tested through a short quiz) about the courts. Forty-three percent of the respondents reported some form of experience with state or local courts. Seventy-four percent of survey respondents described themselves as having no familiarity at all with "state courts" and sixty-three percent as having no familiarity at all with "local courts." Tested knowledge of the courts was graded as extensive for twenty-eight percent of the respondents.⁴

Footnotes

1. Yankelovich et al., *Highlights of a National Survey of the General Public, Judges, and Community Leaders*, in NATIONAL CTR. FOR STATE COURTS, *STATE COURTS: A BLUEPRINT FOR THE FUTURE* 21 (1978) [hereinafter *COURT BLUEPRINTS*]. These conclusions continue to be regarded as authoritative. See, e.g., Julian V. Roberts and Loretta J. Stalans, *Crime, Criminal Justice, and Public Opinion*, in THE HANDBOOK OF CRIME AND PUNISHMENT 31, at 46 (Michael Tonry, ed. 1998).
2. However, two new national surveys focus exclusively or substantially on public opinion and the courts. Findings from a 1998 national survey sponsored by the ABA were published in February 1999 in AMERICAN BAR ASSOCIATION, *PERCEPTIONS OF THE U.S. JUSTICE SYSTEM* (1999). The National Center for State Courts conducted interviews for *How the Public Views the State Courts: A*

National Survey funded by the Hearst Corporation, in early 1999; survey findings will be released in May of 1999.

3. Questions included how serious respondents thought the following problems were: "Courts that are expensive for those who must use them;" "Judges who show little interest in people's problems."
4. A cautionary note: Actual and self-rated court knowledge vary strongly with the respondent's educational level, income, and race or ethnicity. See *COURT BLUEPRINTS*, *supra* note 1 at 8. Opinions about the courts also vary strongly according to those interrelated socio-economic factors. See Laura B. Myers, *Bringing the Offender to Heel: Views of the Criminal Courts*, in AMERICANS VIEW CRIME AND JUSTICE: A NATIONAL PUBLIC OPINION SURVEY 46, at 56 (1996). Therefore a direct comparison of, say, self-rated familiarity with opinions about the courts is likely to be misleading because it incorporates the influence of other factors.

Problem Number One: A lack of statistical testing Two sets of comparisons exemplify the persuasiveness of the 1977 survey findings on the link between court experience and perceptions of the courts. First, those *without* court experience tended to express more confidence in “state and local” courts than did those with such experience. (See Table 1.) A re-analysis of the information in Table 1 confirms that the difference was statistically significant, but also finds the difference was so slight as to be of no practical significance. Simply put, knowing whether someone has had court experience is not a useful way to predict their level of confidence in the courts.⁵

Confidence Level In State/Local Courts:	Any State Court Experience %	No State Court Experience %
Extremely confident	2	6
Very confident	17	20
Somewhat confident	35	40
Slightly confident	25	22
Not at all confident	20	10
Uncertain	1	2

*Question: Now I'd like to talk to you about your *confidence* in different institutions in American society. Here is a list of American institutions. As far as the people running these institutions are concerned, how confident do you feel about each institution?
Source: COURT BLUEPRINTS, Table II.2

Second, there was evidence that those who claimed a “high” level of familiarity had less confidence in the courts than did those who reported less familiarity with the courts. (See Table 2.) But there was very little distinction in the results among those with “moderate,” “low,” or “no” familiarity. As a result, the relationship between familiarity and confidence is not statistically significant.

5. Statistical significance offers assurance that our survey-based comparisons (e.g., between the proportion of court users and non-court users that have high confidence in the courts) are not due to chance. Chance is a consideration because we are using interviews with a small but randomly selected group of adults (a sample of some 800 to 2,000 is used in the typical national survey) to represent the opinions of *all* United States adults, who number in the millions. A sample is randomly drawn if each adult in the United States has the identical likelihood of being included. No single random sample, however, will exactly represent the adult population. So we need to find a way of deciding whether we should take seriously differences between users and non-users in our sample. Statistical significance offers a benchmark. Observed differences

Confidence Level in State/Local Courts:	FAMILIARITY WITH STATE COURTS			
	High %	Moderate %	Low %	None %
Extremely confident	3	7	2	6
Very confident	15	17	18	21
Somewhat confident	37	36	42	35
Slightly confident	24	25	25	21
Not at all confident	21	15	12	14
Uncertain	-	-	1	3

*Question: See Table 1.
Source: COURT BLUEPRINTS, Table I.9

There is, however, additional evidence supporting the view that those with more court experience had lower opinions of the courts. Thirty-one percent of those with at least some court experience believed that courts stood “in great need of reform” compared to sixteen percent of those who had no personal experience with the courts.⁶ The overall relationship is statistically significant, but once again is not large enough to be of any practical consequence. A perceived “great” need for reform was stated by thirty-six percent of those with high self-reported familiarity with the courts, compared to twenty percent of those who reported a low level of familiarity.⁷ Again, while statistically significant, the relationship is very weak. Overall, a social scientist would judge that the case for a negative impact from court experience was not proven because the observed differences either lacked statistical significance or, if statistically significant, were far too small to serve as a basis for drawing policy conclusions.⁸

Problem Number Two: All experience and knowledge are not the same. The 1977 findings are intriguing, but there are limits to how much we can learn from such analysis, at least from the 1977 survey. Quite simply, all experiences should not be treated equally, but the 1977 Yankelovich survey report largely did so. Criminal defendants will experience the courts differently than

between groups are noted only when tests indicate that there is only one chance in twenty (or, more rigorously, one chance in a hundred or even in a thousand) that the observed difference between individuals in our sample with court experience and those without such experience in our survey could exist when in fact there is *no* difference in the opinions of all court users and non-users.

6. COURTS BLUEPRINTS, *supra* note 1 at 24, Tbl. II.3.
7. *Id.* at 17, Tbl. I.10. This relationship is statistically significant.
8. The apparent weakness of the above evidence is noted in Herbert M. Kritzer & John Voelker, *Familiarity Breeds Respects: How Wisconsin Citizens View Their Court*, 82 JUDICATURE 59, 64 (1998).

witnesses in a civil trial, and witnesses differently than jurors. A simple dichotomy of any experience versus no experience fails to consider differences in the frequency and variety of contact with the courts. This lack of nuance means that all manner of contacts with the court were evaluated the same.

A more focused look undermines the claim of negative consequences from court experience. For example, those survey respondents who felt that they knew the most about traffic courts gave those courts a high rating compared to other kinds of courts.⁹

Also, both “familiarity” with and “knowledge” of the judicial branch of government are strongly related to the educational attainment, income, social class, and race or ethnicity. Differences in confidence by levels of knowledge and familiarity thus also reflect differences in people’s social backgrounds.¹⁰

There are other limitations to what we can learn from the 1977 survey. The analysis of the survey data was relatively unsophisticated, geared toward what was needed to make a clear and direct presentation to a large conference audience. The kinds of analysis needed to tease out the nature of the experience to opinion connection have never been attempted. The age of the survey data is also a major limitation. A great deal has changed in the public’s contact with the courts.

A CHANGING NEXUS: COURTS AND PUBLICS

On balance, it seems sensible to treat the basic finding that those who knew the courts well rated them less highly than those with little or no knowledge as a working hypothesis in need of further empirical testing given its standing as a part of conventional wisdom about courts.¹¹ The main empirical test

is whether the 1977 survey findings remain relevant.

Public opinion changes slowly for the most part. The broad contours of public opinion and the courts are, therefore, likely to have persisted. There is less certainty that experience with the courts continues to foster negative perceptions. The reason for that uncertainty is a sea change in the nature of public contact with the courts.

Since 1977, the composition of jury pools has become far more representative, special small claims procedures have become universal, and the nature of the disputes that bring people to the courthouse has changed. The broad dimensions of that change can be seen in the changing workload of the courts themselves. Between 1984 and 1996, *civil* case filings increased by thirty-one percent, *criminal* filings by forty-one percent, and *small claims* cases by forty-one percent. The largest increases, however, were in the areas of domestic relations, where case filings grew by seventy-four percent, and in juvenile cases, which rose by sixty-three percent. Traffic cases, the staple of court contact during the 1970s, declined by fifteen percent over the 1984-97 period. As a point of comparison, the United States population increased by twelve percent over those years.¹²

The change in the nature of people’s court experience has been more dramatic still. Surveys conducted by or on behalf of state judicial branches permit an approximation of what has changed. (See Table 3.) In 1977, six percent of American adults had ever served on a jury. Statewide surveys conducted in the 1980s and 1990s suggest that between twenty to thirty percent of adults had experienced jury service.¹³

This change resulted from an era of reform that featured the removal of legal prohibitions to jury service by women and

9. See Barry Mahoney et al., *Courts and the Public: Some Further Reflections on Data from a National Survey*, in COURT BLUEPRINTS, *supra* note 1, at 83, 93.

10. See COURT BLUEPRINTS, *supra* note 1, at 15. A further complication is that differences in tested knowledge may reflect differences in the way people learn about the courts. For example, the statement, “In a criminal trial, it is up to the accused to prove his innocence” is one of the true or false questions used to test a person’s court knowledge. Those with low incomes, low levels of education, and who belong to minority groups were far less likely to answer “false” to that question than were their higher income, educated, white counterparts. See COURT BLUEPRINTS, *supra* note 1, at 8. This “knowledge” gap may reflect differences in how people accumulate knowledge of the legal system. The content of knowledge obtained from experience “at the street level” may differ from that obtained in the classroom.

11. The Yankelovich survey’s findings are consistent with another major survey carried out during the 1970s, the ABA’s 1973-74 *Legal Needs of the Public* survey, which included five questions rating the courts. Former defendants and plaintiffs in court cases were less confident in the fairness, quality of judges and judging than others (a significant difference was found in four of the five statements asked). The sharpest contrast came in response to the statement, “Judges . . . give adequate attention and time to each individual case.” See Barbara A. Curran & Inge Fryklund, *Opinions and Perceptions*, in THE LEGAL NEEDS OF THE PUBLIC: THE FINAL REPORT OF A NATIONAL SURVEY 236, 235 tbl. 6.8 (Barbara A. Curran, ed. 1977). Those who had served as jurors or appeared as wit-

nesses in a court case were less likely than those who had appeared in court to agree with the statement. “Judges are generally selected from the most able members of the legal profession.” See *id.* On the other statements, however, jurors and witnesses did not differ from the views expressed by non-court users to a statistically significant degree. See *id.* at 239 tbl. 6.9.

12. BRIAN OSTROM, ET. AL., EXAMINING THE WORK OF THE STATE COURTS 1996 (1997).

13. The report prepared based on the 1977 survey offers conflicting estimates of the proportion of the American public that has served as jurors: at various points rates of six, eight, and twelve percent are offered. See Mahoney, *supra* note 1, at 94 n. 20. The six percent figure is cited here because it is based on responses to the most direct question, which asked whether the interviewee had ever served on a jury. The jury service estimates cited from state surveys refer to that or a very similarly worded question (variations include “served on a jury in a case” (Massachusetts) and “ever been a juror” (Iowa)). It is uncertain whether such wording allowed respondents to clearly distinguish *having served* on a jury from *having received a jury summons but not served* on an actual jury. However, the North Carolina (1995) survey offers reassurance: while twenty-two percent reported having been called and served as a juror, an additional thirty-one percent reported being called but not having served “in the past, but not in the last year” (seven percent said they had been called but did not serve in the last twelve months, and two percent that they had been called and served). See WILKERSON AND ASSOCIATES, NORTH CAROLINA COURT SYSTEM RESEARCH 34 (1995).

members of minority groups and the practice of using exemptions to discourage their jury service. In 1977, the impact of the “key-man” system, in which jury commissioners selected their jury pools from persons, essentially men, known to them as honest, upstanding members of their community was still pervasive. The federal courts abolished the “key-man” system in 1968.¹⁴ States followed the federal courts’ lead with varying degrees of speed.¹⁵ The cumulative effect of court opinions and new statutory provisions opened up jury service to an extent never before experienced. In 1977, the probability that an adult of any age had ever served on a jury was slight; thereafter, that probability grew — and it rose from zero for many groups of Americans.

		% Ever Serve on a Jury	% Ever Court Witness	% Ever Court Observer
1977	NATIONAL SURVEY	6	4	6
1986	MICHIGAN	18		
1988	WASHINGTON	19		54
1991	MASSACHUSETTS	21	22	52
1992	CALIFORNIA	21	20	55
1995	IOWA	24		
1995	MISSISSIPPI	30		
1995	NORTH CAROLINA	22		
1997	NEW MEXICO	27		

Fewer surveys examine the prevalence of court participation as a witness or as an observer. The existing post-1977 survey data suggests a marked increase in the likelihood of being a witness or court observer. (See Table 3.) In the 1977 survey, only four percent of adults reported having ever been a court witness; two state surveys suggest that, by the early 1990s, about one-fifth of all adults had been a witness (California and Massachusetts). The change in the likelihood of ever having observed a court proceeding grew even more dramatically, from six percent in 1977 to about one-half by in 1990 (California, Massachusetts, and Washington).¹⁶

The reported levels of court experience found in a very recent national survey conform closely to what state surveys indicate. The proportion of the population with some kind of contact with the courts has grown significantly since 1977. Indeed, eighty-nine percent of the survey respondents reported some prior court experience and seventy-eight percent reported

some form of “active involvement” with the courts as jurors, witnesses, or litigants. Twenty-four percent of the respondents reported having served on a jury.¹⁷

**WHAT DID THE PUBLIC THINK OF THE COURTS
IN THE LATE 1980s AND 1990s?**

Until this year, no national survey findings comparable to the 1977 survey were available to assess how public opinion about the courts may have changed since 1977. There is, however, an underused body of information accumulated through twenty-three statewide surveys conducted in 21 states since 1984.¹⁸ (See Table 4.)¹⁹ Most surveys focused on public trust and confidence issues in a fairly comprehensive manner and were sponsored by the state’s judicial branch. The untold story that emerges from the heretofore largely untapped twenty-one surveys is mixed in terms of public confidence in, and support for, the courts and judiciary.

Although the surveys do not present a single message, there are some consistencies in the opinions expressed in the various states:

- The public is more (but only slightly more) confident in courts than in the other branches of state and local government.
- “Somewhat confident” probably describes the typical evaluation that the public has of the state courts.
- Questions about state courts of last resort attract responses expressing greater confidence than do questions asked about “the state’s courts” or a particular kind of court.
- The public is poorly informed about the role of the courts and court procedures, and is largely unaware of reforms undertaken by a state’s courts.
- There is no apparent connection between a state’s demonstrated commitment to and action toward court reform and public expressions of confidence or ratings of court performance.
- The public holds certain strong negative images of the state courts: that trial courts are difficult to access, slow to reach decisions, costly to use, difficult to understand, and unconcerned with crime control. In addition, the public in many states is convinced that courts are influenced negatively by political considerations and connections.
- On other matters there are significant differences among states in public perceptions, notably on whether courts treat people of different races and ethnicity the same and on the relative standing of courts vis-à-vis state and local executive and legislative bodies. A perception of racial bias is as high as three-quarters and as low as one-third of respondents to state surveys. States with heterogeneous populations generate the strongest perceptions of unfairness based on race and

14. This was accomplished through passage of the Jury Selection and Service Act, 28 U.S.C. §§ 1861-1878.

15. See generally G. Thomas Munsterman and Paula Hannaford, *Reshaping the Bedrock of Democracy: American Jury Reform During the Last 30 Years*, 36 JUDGES’ J., 1 at 5 (1997).

16. A change of that magnitude is likely to be based, in part, on differences in the methodology and specific questions used in the 1977 survey and those used in the later state surveys.

17. See AMERICAN BAR ASSOCIATION, *supra* note 2, at 29.

18. There have been multiple surveys in New Jersey and Utah during this time period.

19. Another state, Idaho, conducted a survey in 1997. It is excluded from the table because it did not employ random sampling to select respondents. The survey findings are outlined in Craig Hemmens, *Public Knowledge About Courts: A Case Study of Idaho*, 37 JUDGES’ J. 16 (1998).

ethnicity. It is very likely, however, that differences in question format and wording are one reason that perceptions of bias are reported to differ so greatly among states.

- The strongest and most widespread perception of unfairness, however, relates to a belief that the rich are far more likely than others to prevail in legal proceedings.
- The public is far from monolithic. Confidence in and perceptions of the courts vary systematically on the basis of people's racial, ethnic, and socio-economic backgrounds, and differ between men and women. Members of minority groups, including judges and lawyers, perceive the extent of racial and ethnic bias in the courts very differently than their white counterparts.
- There are some areas in which the public gives the state courts high ratings. In particular, there is a strong sense that judges and court staff treat people with courtesy and respect.²⁰

YEAR	STATE	SAMPLE SIZE	POLLSTER TYPE
1984	NEW JERSEY	800	UNIVERSITY
1986	MICHIGAN	789	UNIVERSITY
1988	WASHINGTON	800	COMMERCIAL
1989	ALABAMA	422	UNIVERSITY
1989	RHODE ISLAND	404	COMMERCIAL
1990	UTAH	600	COMMERCIAL
1991	MASSACHUSETTS	400	COMMERCIAL
1991	UTAH	600	COMMERCIAL
1992	CALIFORNIA	1488	COMMERCIAL
1992	NEW JERSEY	800	UNIVERSITY
1992	VIRGINIA	1600	COMMERCIAL
1995	IOWA	803	UNIVERSITY
1995	MISSISSIPPI	670	UNIVERSITY
1995	NORTH CAROLINA	800	COMMERCIAL
1995	WISCONSIN	522	UNIVERSITY
1996	FLORIDA	1042	COMMERCIAL
1997	ARIZONA	511	COMMERCIAL
1997	NEW MEXICO	403	COMMERCIAL
1998	CONNECTICUT	1200	UNIVERSITY
1998	KANSAS	1226	UNIVERSITY
1998	LOUISIANA	1200	UNIVERSITY
1998	MARYLAND	600	COMMERCIAL
1998	TEXAS	1215	COMMERCIAL

WHAT DO MORE RECENT SURVEYS REPORT ABOUT THE EXPERIENCE TO OPINION LINK?

A survey conducted in Louisiana last year was the most ambitious attempt thus far to investigate the link between court experience and opinions about the courts.²¹ In addition to interviewing a random sample of 1,200 Louisiana adults, 800 persons who had used the courts within the past five years were identified and interviewed. The answers given by the respondents with court experience were then contrasted with those provided by respondents who reported no court contact during the past five years.²²

The result was a mixed picture concerning the importance and impact of court experience on opinions. Experience did enhance knowledge about the courts. Court users were significantly more likely to claim that they were familiar with the courts. Specifically, seventy-eight percent of users and fifty-three percent of non-users claimed familiarity with the courts. Court users also claimed that their experience was the main source of their information about the courts (fifty-one percent of users compared to eleven percent of non-users, a group that included those whose court experience had taken place more than five years ago). So while thirty-two percent of non-users cited television as their main source of information and thirty-six percent cited newspapers, the comparable figures for court users were seventeen percent and twenty-one percent, respectively.

The issue now becomes whether the difference in sources of information is associated with the opinions people held about the courts. The answer was mostly no, but partly yes. On a positive note, and in marked contrast to the 1977 survey, opinions of court users in Louisiana were not more negative than non-users. Rather, they provided assessments that were slightly higher or identical to those offered by persons without court experience. Court users were not more likely to approve of how the courts handled criminal cases, to rate judges highly, to approve of the time and cost involved in going to court, or to approve of specific court reform proposals. Nor did they rate the courts higher than non-users or believe in greater numbers that the courts had been improving in recent years. Users and non-users shared much the same set of views.

Instead, the Louisiana survey directs attention to the importance of considering the kinds of court experiences people based their perceptions concerning the courts. The survey distinguished among nine categories of court users. (See Table 5.) There was a pattern in which the approval rating given to the courts was highest for former jurors, traffic defendants, and court employees and lawyers. Approval was relatively high, although less strongly so, for participants in domestic relations cases and witnesses. The lowest ratings were from "visitors" to the courts, civil litigants and victims. Jurors and witnesses tended to offer the most positive assessment of the courts in

20. These conclusions are based on a review of the reports compiled in DAVID B. ROTTMAN, STATE COURT SURVEYS ON PUBLIC TRUST AND CONFIDENCE (National Center for State Courts 1998) and JACK SWEENEY, BAR PUBLIC OPINION SURVEYS CONCERNING LAWYERS AND THE JUSTICE SYSTEM (American Bar Association Office of Justice Initiatives 1998).

21. SUSAN E. HOWELL, CITIZEN EVALUATION OF THE LOUISIANA COURTS: A REPORT TO THE LOUISIANA SUPREME COURT (Univ. of New Orleans 1998).

22. A similar survey emphasizing the user/non-user contrast was conducted in Virginia in 1992.

terms of fairness (in the treatment of minority groups and in treating the poor and wealthy alike). The differences between court user categories were small, however. Perhaps the most notable finding cited in many of the state surveys, as well as the 1977 survey, was the stark contrast between the very high ratings given by court insiders (court employees and attorneys) and the ratings given by all other user categories.

**TABLE 5
OPINIONS OF JUDGES:
LOUISIANA SURVEY (% AGREEING)**

	Judges are too influenced by politics	Judges show little interest in people's problems	Judges are fair and impartial
Jurors	37	69	77
Traffic Court	65	57	85
Domestic	60	44	84
Visitor	64	54	84
Civil Litigant	52	46	84
Witness	49	59	79
Victim	57	56	86
Criminal Defendant	73	51	85
Court Employee/Lawyers	30	73	75

SOURCE: Howell, *supra* note 19 at 42 tbl. 23.

Louisiana respondents, of course, do not necessarily reflect how people nationally regard the state courts. There is other evidence from other state surveys that can help establish whether court experience continues to elicit a negative impression of the state courts. Eight additional state surveys conducted since 1984 compared the attitudes and ratings of those with and those without court experience, often differentiating by the type of court contact.

The most straightforward assessment is to ask litigants, jurors and others whether their experience had a positive or negative effect on the image of the courts. In Arizona, a 1997 survey found that forty-eight percent of court users came away with a more positive impression of the courts and thirty-nine percent had a more negative impression. Generally, court users in New Jersey (1984 and 1992), Virginia (1992), and Connecticut (1998) tended to say that their experience did not

change their image of the courts. Where a change in opinion was reported, it tended to be in a negative direction (people reporting a negative change outnumbered those reporting a positive change by two to one in New Jersey and by three to two in Connecticut and Virginia).²³

Less direct, but still relevant, evidence is available from six states that compared the ratings and attitudes of court users in various categories to those of respondents who reported no court contact. The simplest comparison is in terms of the overall ratings of the courts, which can be made for three states (California, Michigan, and New Mexico). Here, jurors (in one state) and litigants (in two states) tended to rate the courts lower than did those without court experience. These differences were not substantial, however, and no difference existed for one-half of the comparisons. All in all, more recent state surveys suggest a distinct reduction since 1977 in the ratings gap between court users and non-users, but the gap persists.

These and other state surveys also looked at how categories of court users differed from one another and from non-users in attitudes about the courts (e.g., their fairness, speed, and accessibility). The resulting picture suggests considerable progress since the 1977 survey regarding what court experience implies for confidence in and approval of the state courts.

As early as 1988 a survey in Washington pointed to positive change in the impact of court experience: researchers there concluded that “having experience with the court system, in general, appears to have a neutral effect on attitudes”²⁴ and that “familiarity with the court system either has a neutral or positive affect on the public’s attitudes.”²⁵ The direction and magnitude of differences between those with and without court experience varied significantly by the kind of experience, with jurors, as in most surveys, displaying the most positive attitudes toward aspects of court performance.

Perhaps the most positive consequence of having had direct experience of the courts is a very strong belief that court personnel are courteous. A Mississippi survey (1986), for example, found that persons with all categories of experience — except that as a victim — were more likely than others to believe that persons in the courthouse were treated with courtesy and respect, a finding echoed in all other state surveys that asked the relevant question.

Finally, there is evidence that the kind of court also makes a strong difference in what people think about the courts (specifically, from 1984 and 1992 surveys in New Jersey and the very recent Louisiana survey). It is noteworthy that high opinions of the courts were most commonly found among those with criminal court experience. Criminal court experience was associated with higher ratings of judges in terms of fairness, knowledge, care, deliberation and openmindedness (from the New Jersey

23. The difference between Arizona and the other two states is almost certainly attributable to question wording. Arizona did not offer survey respondents the choice of “no change,” recording it only if volunteered by the respondent. The New Jersey and Virginia surveys included “unchanged” as an option read to the respondents. This is a good lesson: survey findings rarely, if ever, speak for themselves and differences across surveys need to begin with an examination of the question wording, placement in the survey (what

kinds of questions preceded the question being examined), and the way “don’t know” responses were handled. There is often no “right” approach to question wording but even a slight difference in wording can drastically alter the way the question is understood by survey respondents.

24. GMA RESEARCH CORPORATION, WASHINGTON STATE JUDICIAL SURVEY, FINAL REPORT 19 (GMA Research Corp., Bellevue, Wash., 1988).

25. See *id.* at 57.

surveys). Generally, the lowest ratings were by individuals with traffic court experience.

In sum, statewide surveys conducted over the last fifteen years suggest that there is no confidence gap between those with and without court experience.²⁶ Surveys and questions on some topics suggest that those with court experience had more favorable views of the courts; in other surveys and on other topics, there was no clear difference associated with experience with the court system. This suggests that the purported negative impact of court experience, which featured so prominently in writings based on the 1977 survey, was not replicated in state surveys conducted in the 1980s. Rather, the issues today are what kinds of experience in which kinds of courts promote or inhibit a positive image of the courts and how people balance court experience against other influences on public opinion such as the media.

WHAT IS THE ROLE OF COURT EXPERIENCE IN SHAPING OPINIONS?

Experiences people have in and with courts are one way in which opinions about courts are shaped. But people with and without direct experience are exposed to other powerful opinion-shapers, notably the mass media and the prevailing overall distrust of government that has prevailed since the late 1960s.²⁷

One interpretation of the respective roles of direct court experience and other opinion-shapers argues that experience trumps other influences. It is claimed, for example, that opinions of persons with court experience stem from perceptions of fairness based on their observations, while opinions of individuals lacking direct court experience stem from their overall low confidence in government.²⁸

If accurate, there are positive and negative implications for the courts from this interpretation. One positive implication is that courts can make changes to court processes that enhance

the sense of fairness with which people leave the courthouse. The academic field of procedural justice leads to the conclusion that people tend to be satisfied with outcomes that they believe stem from fair processes, even if their side lost.²⁹ Enhanced performance by the courts, especially with regard to procedural fairness, therefore, may promote greater confidence among those entering the courthouse.

This gives the courts an advantage over legislatures and executive agencies in securing the public's trust and confidence. Courts, and particularly the U.S. Supreme Court, are viewed as making decisions through consistent, even-handed processes; they also explain the reasoning behind their decisions. Courts are seen as institutions "that can be counted on to make decisions in a fair way" and make decisions only after they assemble all the relevant information."³⁰

The negative implication of the experience triumphs interpretation theory is that courts are relatively powerless to improve confidence among those who are without direct court experience. This is because it is assumed that people without court experience develop opinions about courts that are consistent with their low confidence in and satisfaction with government institutions generally.³¹ There are areas, however, in which courts can potentially change negative opinions that are held by both court users and non-users. Research points, for example, to a public perception that courts are less likely than local government to give people an opportunity to express their views.³² Well publicized reforms that respond to that perception might enhance the public image of the courts.

Another interpretation about how court experience influences opinion holds that the dominant influence on public opinion about local courts is a set of negative perceptions largely formed through the media, perceptions that are not readily changed by positive contact with the courts. Court experience in this view does tend to promote confidence.

26. The recent ABA-sponsored public opinion survey reverses the most publicized finding from the 1977 Yankelovich survey. Specifically, in 1998, the more knowledge of the courts and the more court experience people had, the more confident they were in the courts. Confidence in state-level and lower courts was significantly higher among respondents reporting that their most recent court experience was positive (thirty-two percent were extremely or very confident in the courts) than for those reporting a negative experience (fourteen percent). See AMERICAN BAR ASSOCIATION *supra* note 2 at 7, 54. It is not clear, however, that there is a direct link between experiences in court and people's opinions about the courts. Most respondents (eighty-two percent) claimed that their most recent court experience did not change their opinions about the courts. The report on the ABA survey concluded that "those with positive experiences are probably not going to improve their perceptions but those with negative experiences have a good chance of becoming even more negative." See AMERICAN BAR ASSOCIATION, *supra* note 2, at 8. This predictive inference seems unduly pessimistic given the limits in what a cross-sectional survey can support.

27. See JOHN R. HIBBING & ELIZABETH THEISS-MORSE, CONGRESS AS PUBLIC ENEMY: PUBLIC ATTITUDES TOWARD AMERICAN POLITICAL INSTITUTIONS 42 (1995).

28. See Susan M. Olson and David A. Huth, *Explaining Public Attitudes Toward Local Courts*, 20 JUSTICE SYS. J. 41, 52. (1998). Olson and Huth also review past research about public opinion on local courts and make a useful contribution to that literature (based on the 1991 Utah state survey).

29. Hibbings and Theiss-Morse *supra* note 25, at 14. For a full explication of the procedural justice perspective, see TOM. R. TYLER, WHY PEOPLE OBEY THE LAW (1990).

30. James L. Gibson, *Understanding of Justice: Institutional Legitimacy, Procedural Justice, and Political Tolerance*, 23 LAW & SOC'Y REV. 469 (1989).

31. But other research and interpretation find that the courts are not closely linked in the public mind with the other branches of government. For example, people see the U.S. Supreme Court as a part of the "constitutional system" but not as a part of the "Washington System." Hibbings & Theiss-Morse, *supra* note 25, at 89. This distinction may follow from a general perception that the U.S. Supreme Court is not involved in solving the problems the public sees as being of the greatest concern. See *id.* at 52. On balance, the courts doubtless suffer somewhat from the current low standing of government in the public mind, but it seems sensible to place greater weight on the influence of direct court experience and the mass media on public perceptions of the courts.

32. See Gibson, *supra* note 28, at 493.

However, the positive influence associated with court experience rapidly erodes, giving way to the negative image of courts promoted in the media. The evidence for this interpretation is that “exit surveys” given to court users as they leave the courthouse find relatively high levels of satisfaction, while surveys of court users carried out a few months after their court experience generate lower levels of satisfaction. Random surveys of the general public find still lower levels of satisfaction.³³ This suggests that court contact, whether positive or negative, will tend to be neutral in its impact on people’s overall opinions about the courts over the long haul.

There are indications that the mass media today play a powerful role in forging public perceptions of trial courts. This extends to fictional (television dramas and comedies resolving around legal themes) and non-fiction coverage of the courts, and to the blend of fact and fiction found in programs offered by television “judges” before whom litigants appear on a self-selected basis. The power of such influences is demonstrated by a recent study that surveyed people who had previously had contact with the legal system and asked if they would turn again to lawyers and the courts to resolve future disputes. Survey respondents were asked in detail about their experience with the legal system and the amount and influence of mass media sources of information about the courts. The study concluded that the influence of the media was predominant in shaping that decision, finding that “only the frequent contact with media sources, and not direct legal experiences, may create personal barriers to the use of lawyers for future conflict situations.”³⁴ The same, or a very similar, pattern may apply to the formation of public opinion on trial courts, and blunt what local courts can do to improve their public image.

There are other possible explanations for the limited impact of experience on opinions. The use of elections in selecting state judges is one possible culprit. In contrast to the appointed federal judiciary, the majority of state judges stand for election, whether in retention systems or partisan elections.³⁵ Some surveys show a strong belief that those who provide campaign contributions to judges get special treatment.³⁶ And the existence of campaigns also means that messages — good and bad — transmitted in those campaigns may supersede other messages the courts would prefer to send. This may explain why federal

courts tend to attract higher levels of public confidence and trust than do state and local courts.³⁷

A case can be made, however, that judicial elections connote public accountability, something that the public values greatly. So in some respects judicial elections, most of which are non-partisan and come after an initial appointment process, have positive effects on opinion. But elections place state courts in a bind because the value of offering accountability through elections is negated by perceptions of unfair influence through campaign contributions by the wealthy and powerful. The right balance between accountability and perceived neutrality may be difficult to achieve.³⁸

CONCLUSION: WHY SHOULD JUDGES CARE ABOUT PUBLIC OPINION?

A judge or court manager can reasonably ask why she needs to be concerned with findings from social science surveys on the topic of public trust and confidence. What can surveys add to the wisdom accumulated through direct interaction with the public in courtrooms?

The most general answer is that public opinion, regardless of its accuracy or source, defines the legitimacy of government institutions. A decline in legitimacy poses a particular challenge to the judiciary, which, as Hamilton noted, “has no influence over either the sword or the purse” but is expected to prevent tyranny by the majority and to protect the Constitutional rights of individuals.³⁹

A more practical answer is that current efforts to secure public support for the courts rest on assumptions about what promotes a positive view of the courts. The most basic assumption is that courts should concentrate on efforts to expand public knowledge about the institutional role and court procedures through judicial outreach. Court educational programs, court newsletters, and court visitors programs are based on this idea. That assumption may be too limited, however. Public opinion surveys suggest a surer return may follow from an emphasis on changing court processes in ways that, for example, allow for more direct participation by litigants and more meaningful involvement by the public in court programs. Such changes potentially foster positive experiences and set the stage for enhanced public confidence. There is general evidence that such

33. See Kritzer & Voelker, *supra* note 5, at 63-64.

34. Terance D. Meithe, *Predicting Future Litigiousness*, 12 JUST. Q. 563, 578 (1995).

35. See generally *An Interview with Roy Schotland*, COURT REVIEW, Fall 1998 12 at 13 (reviewing state court election practices in which eighty-seven percent of trial judges stand for some type of election).

36. In Pennsylvania, eighty-eight percent of respondents in a 1998 survey believed that “decisions made by judges in their courtrooms” were, at least some of the time, “influenced by large contributions made to their election campaigns.” *Id.* at 17 (The question wording, however, may encourage agreement by the phrase “at least some of the time.” Other state surveys have found high but more modest levels of agreement with statements concerning judicial involvement in political fund-raising.)

37. Public support for the U.S. Supreme Court, which is high, appears to rest on a different foundation than that for local courts. One rea-

son for that high support is the Court’s unique national institutional role as guarantor of freedom. At any given time, dissatisfaction with the Court by a proportion of the population is high and linked to specific court opinions. However, the effect is short-lived because the Court is seen as protecting basic democratic values and as a champion of justice. There appears to be a predisposition to support the U.S. Supreme Court, rooted in how people learn about our political system. See JEFFREY J. MONDAK AND SHANNON ISHIYAMA SMITHEY, *THE DYNAMICS OF PUBLIC SUPPORT FOR THE SUPREME COURT*. 59 J. POLITICS. 1114. In this view, the U.S. Supreme Court has legitimacy — it enjoys public support that is not contingent on satisfying specific demands. Ultimately the legitimacy of the U.S. Supreme Court rests primarily on the willingness to submit disputes to it for adjudication and acceptance of the finality of its decisions rather than on specific outcomes to disputes. See Gibson *supra* at 469.

38. See, e.g., Gibson, *supra* note 30, at 492.

39. FEDERALIST 78.

efforts by government leaders indeed can engage the public and raise confidence and support, at least in the short-term.⁴⁰

As to public education, it is difficult for lower courts to send out a consistent, coherent message. To the extent they attempt it, it is likely to be drowned out by other messages in the mass media. Still, the public cites current and retired judges as their preferred source for information about the courts and justice system generally.⁴¹ Other effective educational programs may lie beyond the jurisdiction of the courts. Specifically, the educational system at all levels needs to explain the role of local courts in our system of government through a renewed commitment to civic education.

To at least this extent, judges have an interest in becoming informed consumers of survey findings. To make appropriate use of survey data, it is helpful to place public opinion on the courts in a broader perspective. What level of trust do other branches of government and other institutions attract? Trust and confidence in institutions, public and private, has declined continuously and sharply in the United States since the mid-1960s. A similar decline occurred in virtually all industrial countries. Few institutions have been immune; only the scientific community retains the public's full confidence. Among government entities, the public's trust is lowest at the federal level, somewhat higher at the state level, and highest at the local level.⁴²

There are some quasi-technical issues as well. Sensible consumers of surveys recognize that responses to survey questions are not direct measures of court performance. For the most part, public opinion surveys capture people's perceptions, what might be considered an emotional rather than a reasoned response.

The level of public confidence recorded in surveys is strongly influenced by the way questions are worded and the order in which questions are presented. Public expectations and opinions on aspects of court performance are likely to differ between courts of general jurisdiction and courts of limited jurisdiction, but surveys rarely distinguish public perceptions by the type of court. Some public criticism expressed in surveys reflects poor performance by the courts in a particular state or locality and calls for remedial action. Other criticisms reflect perceptions shaped by sensational cases and misunderstandings of the judicial branch's role that must primarily be addressed through public education and judicial outreach.

Perceptions of the courts also are rooted in basic orientations (e.g., "fairness and equality," "protection of society") that cannot be represented by a single survey question. It is these underlying orientations, measured through sets of related questions, that best describe public opinion on courts. Attempts to identify and explore the content of such orientations are rare, however. Similarly, no one survey can be definitive. Each survey offers a snapshot, never fully in focus, of what people think and believe. Knowledge comes from the accumulation of survey

findings and their interpretation and reinterpretation.

In this context, what should we conclude about the influence of court experience on public opinion? First, contact with the courts nowadays seems to have either a neutral or moderately positive impact on how people rate the state courts. This is a dramatic change from the situation described by the 1977 survey, "Public Image of the Courts."

Second, there is some evidence (from one state, Wisconsin, and a short survey) that initial court contact has a very positive input on how the public views the courts. That effect is soon overwhelmed by media depictions of the courts and legal profession, which are playing a key role in shaping public opinion of the courts. Enhanced confidence in the court can be sought by responding to unmet public expectations of how the court process should operate, as in the ability to directly express their viewpoints before the courts. This raises the traditional issues about the efficacy and propriety of self-representation by litigants and concerns over how to balance self-expression with fairness between the parties to a dispute. It appears, however, that those issues may prove unavoidable because of their centrality in how the public evaluates institutions of government.

Third, there is also evidence that the public responds positively to efforts courts make to be more accessible, more sensitive to the perception of fairness in court decisions and procedures, from which litigants and others draw their experience. Fourth, public opinion surveys can contribute to a more sophisticated understanding of why the halo effect of court contact is short-lived and how that effect can be extended.

Fifth, and finally, the Trial Court Performance Standards offer a reasonable framework for translating survey results into policy discussion and decisions.⁴³ The Standards merge the judicial branch's institutional role of interpreting and applying the law independently (independence and accountability), the procedural concerns of making decisions in individual cases (equality, fairness, and integrity) and consumer-related concerns (accessibility and expedition and timeliness). As a leadership tool, the Standards translate the numerous questions asked in surveys into a manageable number of meaningful categories within which patterns can be identified and interpreted, and plans for improvement made.



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40. See Marc J. Hetherington, *The Political Relevance of Political Trust*, 92 AM. POL. SCI. REV. 791 (1998).

41. See AMERICAN BAR ASSOCIATION, *supra* note 2, at 101.

42. See the essays in *WHY PEOPLE DON'T TRUST GOVERNMENT* (Joseph

Nye, Philip Zelickow, and David King, eds. 1997).

43. A separate article by Pamela Casey at page 24 of this issue provides a useful introduction to the Trial Court Performance Standards.