

Critical Issues Affecting Public Trust and Confidence in the Courts

A Panel Discussion

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

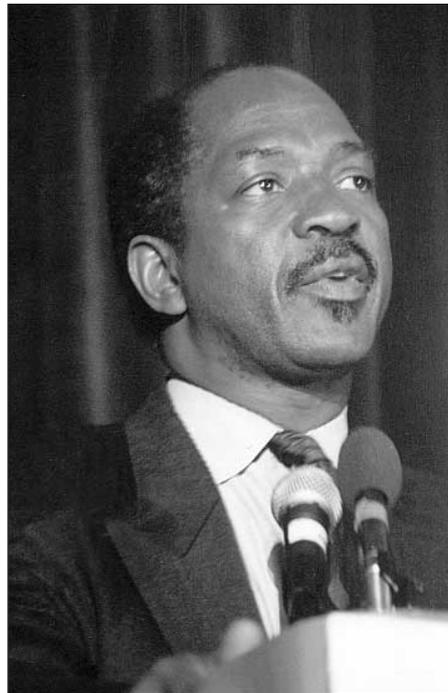
Charles Ogletree, Jr.: It is a pleasure to serve as the moderator for this second panel about the critical issue we're talking about, public trust and confidence. We have worked out an arrangement among the panelists today that each of them will take a central question and address that question, and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

And a lot of the issues that you heard earlier this morning are really at the tip of the iceberg as far as we are concerned when you talk about the critical issues.

The survey which all of you have read and have had described gives you a thumbnail sketch of some of the issues that the public finds important, the public's rating of those issues, and our task as a group today is to give you a sense of some other issues that we think are competing, in some sense [in a] complementary [way] and, occasionally, in conflict

with what you have heard and what you have read.

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



Lyle Denniston: One of the problems that you in the judiciary and the law have is we in the media sometimes say and write really dumb things. In the last panel, you heard Ms. Crier say something which is really ignorant. She was describing the *Sutton* case that is now

pending before the Supreme Court and said the issue was whether or not near-sighted people are disabled. That is just dumb.* That is not the issue. That is not the — it came in a hypothetical as the court explored the reach of the Americans with Disabilities Act. But there is no cure, ladies and gentlemen, for riotous, rampant ignorance in the media.

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

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

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

* Catherine Crier's remarks, to which Mr. Denniston was responding, are found at page 53. In the case to which they referred, *Sutton v. United Air Lines, Inc.*, 119 S. Ct. 2139 (1999), the Court did, indeed, decide that severely near-sighted people who were denied employment as airline pilots were not disabled within the meaning of the ADA, since corrective lenses generally allowed such people to function identically to people without a similar impairment. The decision

came out about a month after this conference was held. Although it appears that Mr. Denniston was incorrect on this point, he did get two rounds of applause from attendees for his criticism of "riotous, rampant ignorance in the media." Overall, his remarks were interrupted by applause more often than any other speaker in any of the panel discussions.

are going to have to develop strategies within that internal community which are contradictory to the strategies that you must develop for dealing with the external community. For example, the role of the media is different when we are sitting in your courtroom and when we — and, therefore, are part of the internal community and when we go back out and do our stories or our analyses and we then are talking to the external community and are being a part of them.

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

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

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

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

through the use of the Freedom of Information Act. Identifying and taking action against frivolous lawsuits is something, it seems to me, that has a tremendous potential for building public confidence.

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

As I said in my opening, you cannot cure the problem of ignorance or inattention or the total lack of subtlety that you sometimes see in the media. And another panelist from the last group was speaking somewhat boastfully about his great story on the number of minority law



clerks in the Supreme Court. That was one of the most riotously superficial stories I have ever read in my life because it did not get at the problem. It got at the manifestation of the problem at the Supreme Court of the United States, and there is much more of the problem than that. And that's a problem that you are going to have to try and always deal with — the media as the medium through which you reach the external community. And you can't do too much about that.

Another thing that you can't do too much about is that the media is not terribly interested in what you do as a whole. I'm sorry to say that, ladies and gentlemen, but unless you have a trial that has a lot of blood, gore or notoriety in it, you are not going to get very much press cov-

erage. And most of the time, the kind of press coverage you are going to get is some reporter who is usually assigned to the police beat who is asked to run over to the courthouse, run in and out of the trial a couple of times a day, pick out the best witnesses and come back and write meaningfully and knowingly about how the process works.

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

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

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

about the pleadings and about the oral arguments than I can get any day in the Supreme Court of the United States.

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

That is a mindless refusal to apply technology to the external community through the media.

One final point. If you begin to understand the limitations of the media and the difficulty of making you happy, which is terribly, terribly obvious to me, can you reach the community, the external community in other ways? Of course, you can. But you can't do it with a Law Day speech. You can't do it with a half-an-hour tour of the courthouse. You have to think creatively and imaginatively about how you are a part of the community and the community is a part of you. The PTA, the Chamber of Commerce, the Lion's Club, the Rotary, whatever.



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

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

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

— Lyle Denniston

There just simply has to be an end to the reticence on the part of the judiciary and the judicial system to being a participant in the discourse about the law in your community.

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

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

cle for connecting communities and courts.

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

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

ticket and they deal with that one district attorney who is settling that day.

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

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

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

I was really dismayed this past week and a half to visit with a whole group of young people from around the country. And contrary to what we have seen, there are a whole lot of young people out there doing the right thing. And listening to those young people, amazingly enough, when we talked about justice and where they were going and how they felt in terms of how the country is responding to youth violence and what's happening with our young people, when I asked them, well, what do they think about the justice system and, you know, did they think it was fair, amazingly enough — and this crossed both socio-economic lines, racial lines and cultural lines — the number one thing that these representative young people thought, in order to get fairness out of the justice system, what you had to do was hire you

a good lawyer.

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

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

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

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

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

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

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

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

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

I do believe that you all, as judges — I personally believe you have been hampered by the sentencing guidelines and those kinds of things. Whatever 85 percent in truth in sentencing is, I don’t know how you have 85 [percent] of the truth. That, in and of itself, makes no

sense to people out in the community. And what I’m simply saying is that the need to be involved in the problem-solving process and what people see as justice is something that we in the whole justice system have to deal with — and particularly you all in the courts.

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

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

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

And the judges in this country have stepped back and said, hey, we sent them away, we are finished with them until they do something heinous and stand before you again. I think that is absolutely terrible. You all are the final fixers on this. You have to dispense judgment. And being part of that, that means you have to be a part of how we deal with that situation. You can’t just send people away and not be a part of how to figure out how we make sure that their re-entry is done [right].

And I'm simply telling you all that I think it is very, very important for the courts to figure out how people have access, better access and involvement with the dispensation of justice. You all have to be a part of solving this problem as opposed to just sentencing because, by and large, people come back to our communities. They come back to the community. If you are not engaged with us to figure out how we reintegrate people back into the community, then you truly are a much bigger part of the problem than you are the solution.

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

address behavior in our society.

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

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

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

Mary Hernandez: Lawrence Dark started his remarks in the earlier panel with a disclaimer that he did not speak for all African-Americans, and I guess I should start with the same disclaimer

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

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

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

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

* Unlike the ABA survey referenced here by Ms. Hernandez, the 1999 survey commissioned by the National Center for State Courts and funded by the Hearst Corporation oversampled both African-Americans and Hispanics so that statistically reliable information

about the opinions of those important groups would be available. The results of that survey are carefully examined in the article by David Rottman and Alan Tomkins, which begins on page 24 of this issue.

I have to mention a couple of things that are near and dear to my heart as an Hispanic-American. There has never, in the history of the United States, been an Hispanic on the United States Supreme Court. There has never, in the history of the United States, been an Hispanic senator. Only this last year, in the whole history of California since it was not part of Mexico, it's the first time in its history that an Hispanic was elected to statewide office.

We are not at the table. And I guess I have a rhetorical question, and that is, can we really expect this community to have trust in a system that has either chosen not to consider their perspective

sentences in the criminal courts than African-Americans. And yet, they still had not as nearly a great degree of cynicism.

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

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

duce a much different result than a survey of the Hispanic community at large. Those of us who are more familiar are going to tell you a different story.

I wanted to come, if I had the time, to talk with the education hat on. I am vice president of the board of education in San Francisco. I'll just touch on that with a different hat on, that education is the critical issue of the outreach because I hear so much about it.

I have to make a little joke. You know, over the history of the U. S., as we have economic booms and then economic declines, you can look at almost any period in history with an economic decline, and someone will say it is

I think back to an executive from Nordstrom's Corporation, who I listened to on a panel one time who was talking about service. He said something that I thought was very interesting, and that was that all service institutions tend over time to become designed for the benefit of the providers as opposed to the benefit of the users. If you really want to be service institutions, then you have to be constantly aware that you need to be in the business of thinking about how to organize your institutions for the benefit of the users and that the providers, meaning you, should not be the primary ones to be thinking about.

– Frances Zemans



or, worse yet, is not aware that they exist?

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

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

school; it has to be you. And yet, by the time my older sister and I got to high school, it was the subject of a federal discrimination lawsuit, and my mother got a clue, you know.

And so, by the time I was there, she fought so hard to make sure that my rights were being addressed that I was the only person of color in the honors courses.

So I think when you look at – does familiarity breed confidence – in a Hispanic community, that may not ring true. And as we begin to wake up to the realities of the experiences that our colleagues have in the courts, “to know us is to love us” is not going to necessarily ring true for all segments of society.

And I would venture to guess that a survey of Hispanic lawyers would pro-

because of our lousy public schools. But I have never heard them in the area of the booms say that we are in an economic boom because of our great public schools. So I hope, as you are looking at quality in the public schools, that as public confidence grows, you are going to give us credit.

I want to talk about the dangers of the “educate-the-public approach” that I feel are inherent in this as a critical issue. The danger is that it will make courts less likely to do what I think is critical, and that is a critical self-examination of how they need to change the way they do business to better serve the public. If I can exaggerate a little bit, it is, you know, “We are pretty darned good, and it's just that they just need to be educated about how darned good we are, and then every-

thing will be okay; they will realize that we are perfect, and trust and confidence will soar." And that, I think, if I go to an analogy in Littleton, Colorado, as people are trying to figure out why, the fingers start pointing in every direction. It's the parents. It's the schools. It's the media. It's the NRA. It's the gun control. It's the Internet. It's the entertainment industry. And each of those institutions respectively say, no, it is the other one.

And I think that not a single one of us is able to change the world alone, but we cannot deny the responsibility to do our part. And you are here today not to design strategies to tell other people how to change, to tell the public schools to

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

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

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

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

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

He said something that I thought was very interesting, and that was that all service institutions tend over time to become designed for the benefit of the providers as opposed to the benefit of the users. If you really want to be service



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

- Mary Hernandez

change or the media to. I hope you are here to say, "How can I do my part as the court system? How can I do my part? How can I have a critical review of what I do?"

I could talk about this. Civics is a required curriculum. We do spend in high school at least a semester on the branches of government, the roles. We have a citywide mock trial competition, a partnership with our local bar association in doing some law academies, showing careers. There are things that the public school needs to keep doing, but the danger is that [focusing on public education as they key strategy] will prevent you from doing a critical self-examination that you need to do. Thanks.

respond to issues. And then finally, the important issue about education and how that can be placed as a priority in discussions.

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

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

institutions — and this is just another way, I think, of saying what Lyle was trying to say — then you have to be constantly aware that you need to be in the business of thinking about how to organize your institutions for the benefit of the users and that the providers, meaning you, should not be the primary ones to be thinking about.

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

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

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

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

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

And as I was thinking back about the various conferences like this that I have attended and participated in at least since 1990, the Future of the Courts National Conference and then many smaller ones thereafter in individual

states; in 1995, the Improving Court and Community Collaboration Conference; the Just Solutions Conference; all of these raised many of the same issues that we are still struggling with here today: equality, fairness, problems with the adversary system, judges being at the core but not the sole actors in the justice system, and a need for more consumer orientation. These continue to be issues and, no doubt, will continue to be.

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

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

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

You are way ahead of all sorts of other countries that are first trying to instill these values about the importance of the law. We're way ahead in that game. But what isn't being made is the disconnect

between what you are doing and why what you're doing is enhancing the values that society holds.

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

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

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

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

And your strategies are certainly going to have many unintended consequences, and some of those unintended

consequences ... you might decide are negative if you don't take into account the great diversity of what is going on in the different parts of the court system and coordinate your strategies accordingly.

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

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

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

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

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

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

the profession has the same issues of public trust and confidence.

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

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

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

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

Beverly Watts Davis is the executive

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

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

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