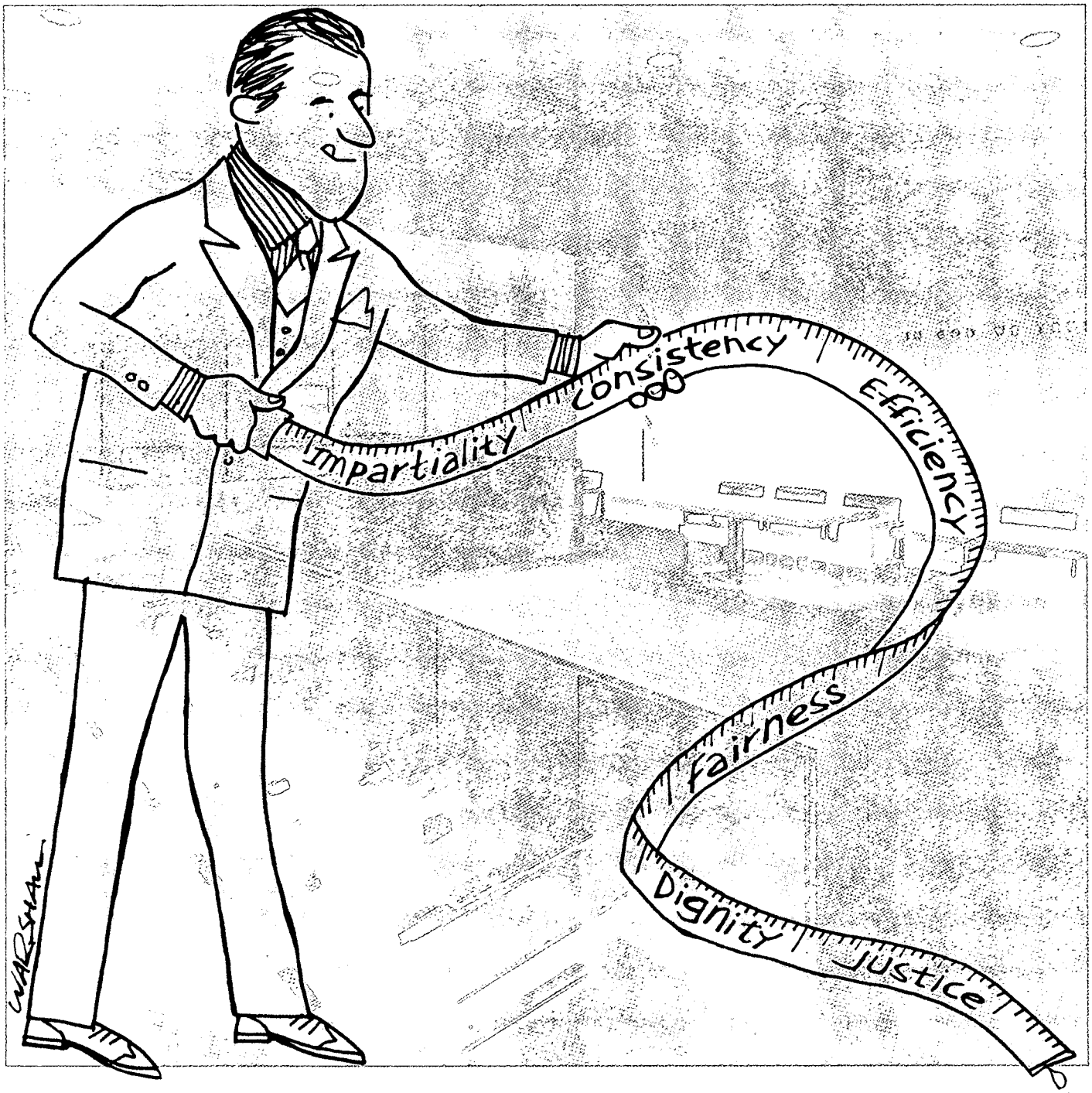
What standards should we use to judge our courts?

Although definitive standards for judging courts do not exist, there are many useful measures. An on-going effort to both further define and meet standards will enhance public respect for the courts.

by John M. Greacen



Courts, whose business it is to render judgments concerning the rights and duties of citizens in the course of resolving disputes, are themselves the subject of critical judgment—by the press, the lawyers, the legislature, special interest groups, social science researchers and the "public." Courts are important governmental entities and because our society places a high value on critical examination of all public institutions, it is not only inevitable, but also highly appropriate, that courts be the subject of continuing open scrutiny.

As is true of every other American governmental institution, the courts' different constituencies have widely varying expectations of the judicial system and judge the courts by very different standards.[1] Compliance with court judgments rests in large part upon the respect accorded the courts as an institution. Judicial leaders should therefore periodically review the standards by which the courts are being evaluated and consider the available means to positively influence the images that the various "publics" have of the judicial system.

This article attempts to capture the essence of one such recent review.[2] It does not purport to be an exhaustive exploration of the topic;[3] its aim is merely to present some perspectives on the courts today from the points of view of different "publics" with a stake in the judicial system.

The "court of public opinion"

The courts are a regular subject of public opinion polls. Though quibbles always exist about the way in which poll inquiries are phrased, the consistent results in different polls which ask similar questions leave little doubt that Americans hold these opinions about courts:

- By a two-to-one margin, we "place a lot of blame" for the high crime rate in this country on judges.[4]
- Eighty-five per cent of those questioned believe that courts in their local area deal "not harshly enough" with criminals.[5]
- Seventy-one per cent of the public agrees that "the police really can't do much about crime because the courts have put too many restrictions on police."[6]
- More than half of Americans surveyed believe that criminals convicted of three separate felonies should never be released[7] and fully 30 per cent are in favor of sterilization of habitual criminals.[8]
- Asked whether the justice system "mainly favors the rich" or "treats all Americans as equally as possible," only 39 per cent agreed with the latter.[9]
- Ordinary citizens have little understanding of the basic principles upon which the courts function, one third believing, for instance, that a person accused of crime is presumed guilty until proven innocent.[10]
- Approval of the court system is lower among those citizens who have been involved in litigation than those who have not had actual experience with the courts.[11]
- But, 83 per cent of the public believes that if they are a defendant in a court case, they are extremely, very or fairly likely to get a fair trial; only 11 per cent express the view that they are extremely, very or fairly unlikely to get a fair trial.[12]
- And, 94 per cent of jurors who are surveyed following their period of court service feel the trial in which they participated was "conducted in an orderly and efficient manner" and the judge who presided was "fair and impartial."[13]

What of these opinions? The public tends to view the courts as exclusively criminal courts. In fact, criminal cases constitute less than 15 per cent of the workload of a typical state court system.[14] The public's views about the courts, as criminal courts, are also, for the most part, demonstrably wrong:

- By and large, the courts dispose of criminal cases quickly. Speedy trial acts require that they come to trial within a specific number of days.[15] Criminal trials take priority over all other court matters.
- Criminal sentences are severe. Twice as many persons are in our state and federal prisons today as were there 15 years ago. In 1972, 100 of every 100,000 American adults were in prison. Today, 214 of every 100,000 of us reside there.[16] Despite these facts, the proportion of the population believing that the courts are too lenient has *increased* over that same time period![17]
- Major city prosecutors and police chiefs today generally report that police officers have so thoroughly assimilated *Miranda v. Arizona* into their procedures that it does not impede police effectiveness and that, since *Gates v. Illinois* and *United States v. Leon*, the search warrant requirement and exclusionary rule likewise have a negligible adverse effect upon criminal investigations and prosecutions.[18]

1. *See* Cook and Johnson, MEASURING COURT PERFORMANCE 123-150 (Research Triangle Park, NC: Research Triangle Institute, 1981). Chapter VI addresses *Court Constituencies and Their Expectations of Court Performance.*

2. Most of the information and ideas for this article came from the other four participants in a panel presentation in September 1987, on "The Courts: Are They Doing Their Job?" at the Presiding in Criminal Court conference in Phoenix, sponsored by The National Institute of Justice and the State Justice Institute. I am indebted to Professor Norval Morris, University of Chicago Law School; Neil Newhouse, The Wirthlin Group of McLean, Virginia; Hon. Gladys Kessler, District of Columbia Superior Court; and Arthur Snowden II, Alaska state court administrator, for any useful insights contained in this paper.

3. For a thoughtful recent analysis of the subject, *see* Feeney, *Evaluating Trial Court Performance*, 12 JUST. SYS. J. 148 (1987).

4. Wirthlin Group Database, CBS News/New York Times Poll, July 1977.

5. U.S. Dept. of Justice, Bureau of Justice Statistics, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS—1986, 86-87 (Washington, DC: U.S. Govt. Printing Office, 1987).

6. Wirthlin Group Database, ABC News/Washington Post Poll, December 1982.

7. *Id.*, Decision/Making Poll, June 1979.

8. *Id.*, Los Angeles Times Poll, January 1981.

9. *Id.*, ABC News/Washington Post Poll, June 1985.

10. Yankelovich, Skelly and White, Inc., *Highlights of a National Survey of the General Public, Judges, Lawyers, and Community Leaders* in STATE COURTS: A BLUEPRINT FOR THE FUTURE 5, 12 (Williamsburg, VA: National Center for State Courts, 1978).

11. *Id.*

12. Wirthlin Group Database, Audits and Surveys, Inc., Poll, July 1983.

13. Munsterman, Munsterman, Dodge and Conti, A SURVEY OF JURORS IN SELECTED PENNSYLVANIA COUNTIES (Williamsburg, VA: National Center for State Courts, 1983). *See also* Bennack, THE AMERICAN PUBLIC, THE MEDIA, AND THE JUDICIAL SYSTEM: A NATIONAL SURVEY ON PUBLIC AWARENESS AND PERSONAL EXPERIENCE 7 (New York: The Hearst Corporation, 1983), reporting that 89 per cent of jurors reported that they felt they "perform a useful service."

14. Flango, Roper and Elsner, THE BUSINESS OF STATE TRIAL COURTS (Williamsburg, VA: National Center for State Courts, 1983), reporting that criminal cases constituted 14.7 per cent, 14.3 per cent and 13.7 per cent of the trial court filings (excluding parking violations) in the nine states providing complete data for calendar years 1976, 1977 and 1978, respectively.

15. Subject to various exceptions. Data from the federal system demonstrates the priority given to criminal matters. The national median disposition time (for cases terminated in the 1987 statistical year) for civil cases was 8 months and for criminal cases was 3.4 months. For cases terminated after jury trial, the median time periods were 20 months and 5.7 months respectively for civil and criminal cases. ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, Table C-5 at 213 and Table D-6 at 290 (1987).

16. SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS, *supra* n. 5, at 301.

17. *Id.* at 86-87.

• A glance at the rates at which crimes are reported to the police, reported crimes are solved and arrested persons are charged by the prosecutor, shows that only a minute fraction of criminal events are ever brought before the courts.[19] The courts' role in crime control is, at best, symbolic.

The facts remain, though, that the American public is extremely punitive in its view toward crime and criminal offenders, that it holds stubbornly to the belief that the judges are too lenient, and that its overall opinion of the courts is based on this simple and erroneous view.

Can we afford to dismiss these attitudes as wrong? The public opinion pollsters have an adage, "Reality is what the public thinks is real." The "reality" documented above affects the courts in many ways: It undermines the respect for, and hence the authority of, the courts. If criminals share the general public's belief in the myth of judicial leniency, the deterrent effect of the law is diminished. The judicial branch's standing with the legislature and governor—and their willingness to provide adequate appropriations, supportive legislation, and cooperation—are adversely affected as well.

Changing public attitudes

There is no doubt that our society needs to do a better job of educating the public about the courts' mission, the principles upon which the court system is based, and the facts about the courts' performance in criminal and other cases. Some of the responsibility for this basic education must rest with the schools, but the courts can help—by preparing materials for the schools, arranging courtroom visits and orientation programs for students, and visiting classrooms. Judges make eloquent spokespersons for the justice process and its values. The courts also need to mount their own public relations campaigns—assembling information on court performance, presenting it in interesting ways, and making sophisticated use of the media available for bringing the courts' message to the public.

A note of caution is in order. It is likely that one source of public dissatisfaction with the courts is that the public-at-large holds a set of values different from most judges and lawyers. The late Lawrence Kohlberg, a Harvard psychologist, building on earlier work of Piaget and Erickson, propounded and validated a theory of the "stages of moral development" of children and adults.[20] His tests show that the majority of our population (and of other nations tested) functions at or below what he calls the Fourth Stage of development, which places primary emphasis upon the enforcement of rules and laws.[21] The underlying premise of our legal system characterizes the next highest stage of development—the Fifth Stage—which places higher value on the process by which the laws are enforced than on the particular outcomes of the process. The notion that it is preferable for ten guilty persons to go free than for one innocent person to be punished is a classic Stage Five moral principle,[22] and it makes little sense to persons operating at a lower level of moral development.

Kohlberg's theory is not universally accepted,[23] and it would be too smug to simply dismiss critics of the courts as "morally inferior." Nonetheless, our constitutional polity is grounded in the belief that some values—those that we preserve in the Constitution—are superior to others. The importance of "due process" is one such higher value. It falls peculiarly to the courts and the lawyers to insure the adequacy of the "processes" involved in our everyday affairs. But the public opinion polls indicate that a large part of the citizenry may not place the same value on the importance of "due process."

While Kohlberg's theory serves to put realistic limits on our expectations about being able to make wholesale changes in basic public attitudes towards the judicial process, it also offers some direction for public education efforts and some basis for hoping that they can have a positive effect. Kohlberg believed that education can advance moral development. He wrote that everyone is susceptible to moral arguments grounded on the next highest moral development stage.[24] He conducted studies that convinced him that the level of moral development was increasing from generation to generation.[25]

Therefore, perhaps, judicial leaders in their public relations activities could endeavor to explain, with practical examples, how fair processes produce better results. If the courts' and the organized bars' public education efforts were designed to teach the importance of the due process values on which the judicial system is based, they might serve gradually to expand the base of public understanding and support for the courts.

The litigants' view

This discussion of the "public's" opinion of the courts discloses an oddity about our perspective and research on courts. Most of the data on public perceptions of courts is based on surveys of the public-at-large, not upon surveys of litigants. Few researchers, and no courts, have set about systematically asking litigants—both winners and losers—what they think of the court system. A commercial enterprise seeking to improve its product asks its customers—those who have tried the product—what they think of it. Shouldn't the courts be interested in learning from their customers (plaintiffs, defendants, appellants and appellees) how the dispute resolution process is working? Even those judicial systems willing to undertake judicial performance evaluation programs (discussed below) seem interested primarily in the opinions of lawyers, supplemented sometimes by those of jurors, police and probation officers, and appellate judges. None survey the litigants. Wouldn't the public-at-large and the legislature be interested in knowing how the persons most affected by the system view it?

The limited research on the topic suggests that our judicial consumers are more sophisticated than we think and more objective than we fear. In the mid-1970s, Jonathan Casper followed the cases of more than 600 men charged with felonies in three large city court systems[26] and interviewed them to ascertain

18. Initial findings of a study by the American Bar Association's Section of Criminal Justice to be published in Fall, 1988.

19. SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS, *supra* n. 5, at 155, 316 and vi. Roughly two-thirds of all crime are not reported. Although clearance rates vary by type of crime, roughly one-fifth of all crimes reported to the police are solved by arrest. Only half of all arrests lead to criminal prosecution.

20. Kohlberg, THE PHILOSOPHY OF MORAL DEVELOPMENT: MORAL STAGES AND THE IDEA OF JUSTICE (New York: Harper & Row, 1981).

21. *Id.* at 237.

22. *Id.* at 154.

23. *See, e.g.*, Gilligan, IN A DIFFERENT VOICE (Cambridge, MA: Harvard University Press, 1982), who argues that women have a different moral perspective from men, invalidating Kohlberg's central thesis of a universal hierarchy of moral values.

24. Kohlberg, *supra* n. 20, Part One, *Moral Stages and the Aims of Education.*

25. *Id.* at 231.

their perceptions of the fairness of the system. He found that the felons' sense of the fairness of their treatment was as much a product of their perception of the fairness of the procedure followed as it was of the sentence imposed. Many sentenced to long prison terms reported that they had been treated fairly. A sense of injustice was more likely to arise from an offender's perception that he was sentenced more severely than others similarly situated than from the severity of the sentence itself.

Tom Tyler, in a more recent study, interviewed defendants who had appeared in traffic and misdemeanor court in Evanston, Illinois. His findings are similar. Judgments about the outcome of the case are distinct from judgments about fairness. "While favorable outcomes are associated with judgments of fairness, those who receive favorable outcomes... will not necessarily feel the outcome is fair, and those who receive poor outcomes will not necessarily feel the results are unfair."[27] Of greater importance, the defendants' attitudes toward specific judges and the courts in general were affected by their perception of the fairness of the process, but were not directly affected by their perception of the favorableness of the outcome.

Lawyers' ratings

The American Bar Association has promulgated *Guidelines for the Evaluation of Judicial Performance*.[28] They suggest criteria by which to measure a judge's performance and an evaluation process that can gauge a judge's compliance without impairing the independence of the judiciary. A shorthand summary of the eight categories emphasized in the guidelines is:

- Integrity, including freedom from bias; ability to decide issues based on the law and the facts without regard to the identity of the parties or counsel, or the popularity of the decision, and without concern for or fear of criticism; impartiality;
- Knowledge and understanding of the law;
- Communication skills, including clarity of rulings; sensitivity to nonverbal communications;
- Preparation, attentiveness and control over proceedings, including willingness to hear from every person with a legal interest in the proceedings;
- Management skills, including devoting appropriate time to all pending matters;
- Punctuality, including prompt disposition of pending matters;
- Service to the profession and the public; and
- Effectiveness in working with other judges in a multi-judge court.

Notice the ironic distinctions between lawyers' standards (and the litigants studied by Casper and Tyler) and those of the public-at-large. The lawyer is more concerned with the fairness of the process than with the outcome of the case. A lawyer will say, "I do not mind having lost a case, so long as I got a fair hearing and the basis of the ruling was understandable." Further, the lawyer believes that an essential attribute of fairness is a judge's willingness to *disregard* public opinion in applying the law to a case.

Alaska, New Jersey, Connecticut and Vermont currently have the most sophisticated judicial evaluation processes. Connecticut has released aggregate data on how lawyers rate judges in the three areas studied in that state—demeanor, judicial management skills, and legal ability. The data shows overwhelming approval of the performance of most judges by most attorneys. Samples of the questions asked of attorneys following specific court proceedings and the aggregate responses are:

- Conducted proceeding with dignity—96 per cent said "consistently"
- Attentive—96 per cent said "consistently"
- Arrogant—90 per cent said "never"
- Showed bias against a party or attorney—95 per cent said "never"
- Showed bias on the basis of race, sex, ethnicity or religion—99 per cent said "never"
- Was close-minded—87 per cent said "never"
- Was willing to learn about the difficult aspects of the case—76 per cent said "consistently"
- Punctual and prompt in ruling—81 to 94 per cent (depending upon the particular question) said "consistently"
- Explained rulings—79 to 81 per cent (depending upon the question) said "consistently"
- Encroached improperly upon the role of the attorney or the jury—85 to 95 per cent (depending upon the question) said "never"
- Not prepared—95 per cent said "never"
- Demonstrated knowledge of substantive law—87 per cent said "consistently"
- Demonstrated knowledge of procedural law—90 per cent said "consistently"
- Unable to analyze difficult or complex aspects of case—83 per cent said "never'
- Completeness, balance and clarity of jury charge—92 per cent said "excellent" or "satisfactory"
- Clarity and completeness of decision—8 per cent said "unsatisfactory"
- Prompt rendering of decision—96 per cent said "yes"[29]

In Connecticut, the lawyers are very satisfied with the performance of the state's judges. It is probably so in every state. But even this result is not unquestionably positive.

Does it demonstrate that judges are too lenient with lawyers—giving them unnecessary extensions of time and countenancing dilatory and wasteful practices in the courtroom—in order to curry their favor? They have an obvious motive for doing so in states where judges must regularly stand for election. The desire for approval within the legal profession, however, probably makes these pressures universal.

The National Center for State Courts (NCSC) has demonstrated that trials take much longer in some states than in others and in different courts within the same state; the NCSC researchers believe that the judges' relative willingness to assert themselves in controlling attorneys accounts for much of the difference.[30] Judicial willingness to confront, and possibly to displease, lawyers is probably essential to efficient case management. (Interestingly, in this and previous studies involving judges' wresting

26. Casper, *Having Their Day in Court: Defendant Evaluations of the Fairness of Their Treatment*, 12 L. & Soc'y Rev. 237 (1978).

27. Tyler, *The Role of Perceived Injustice in Defendants' Evaluation of Their Courtroom Experience*, 18 L. & Soc'y Rev. 51, at 69 (1984).

28. American Bar Association Special Committee on Evaluation of Judicial Performance, Guidelines for the Evaluation of Judicial Performance (Chicago: American Bar Association, 1985).

29. Aggregate data for the period September 1, 1984, to July 18, 1986, provided to the ABA Special Committee by the Connecticut chief courts administrator.

30. Sipes, "On Trial: A Multi-jurisdictional Analysis of the Length of Civil and Criminal Trials" (Draft report, August 31, 1987).

Table 1 Median case disposition time in representative general jurisdiction trial courts (sample of cases disposed of in 1985 in days)

	Felony cases	General civil docket
Portland, OR	55	253
Detroit Rec. Ct., MI	58	NA
Dayton, OH	61	178
San Diego, CA	77	691
Phoenix, AZ	78	133
New Orleans, LA	83	366
Oakland, CA	87	616
Minneapolis, MN	88	NA
Wichita, KS	115	160
Cleveland, OH	121	298
Bronx, NY	121	NA
Providence, RI	122	525
Miami, FL	123	186
Wayne County, MI	133	624
Pittsburgh, PA	149	406
Jersey City, NJ	163	379
Newark, NJ	300	623
Boston, MA	NA	789

control from attorneys over the way in which cases will proceed in court, a large majority of the lawyers affected approve of the change after it has been implemented.)

It is also possible that the high ratings of judges by lawyers merely show that judges and lawyers manage the courts for their mutual convenience, at the expense of litigants, witnesses, victims, and the public, who do not understand the procedures, or even the language, of the court.

Finally, what the lawyers tell the judges may not be what they tell their clients. In a fascinating analysis of the communications between lawyers and their divorce clients,[31] Austin Sarat and William Felstiner find that lawyers gradually undermine a client's initial expectation of justice as described in civics textbooks and appellate opinions—a process that will "impartially sort the facts in dispute to produce a deductive reading of 'truth'," that will "follow its own rules,...proceed in an orderly manner, and...be fair and error free."[32] In its place, the lawyer, consciously or unconsciously, paints a picture of an unpredictable process, where the rules are unknowable and inexplicable, judges act erratically, the outcome of the case may be more dependent on the lawyer's personal acquaintance with the other system actors than on the law, and compromise (not legal vindication) is the most productive course of action. The authors conclude:

> The interests of the legal professional in this instance depart from the interests of the legal system. This lawyer constructs a picture of the legal process that fixes the client's dependency on him as it jeopardizes her trust in any other part of the system. The consequences of this for the client's view of law in general or participation in its legitimation rituals seems quite remote from his concerns. His talk, the image of the legal process that he constructs, is the talk of a cynical realist. The legal process he presents inspires neither respect nor allegiance.[33]

These findings call for close study by the organized bar and legal education. There must be ways that lawyers can deal productively and candidly with their clients without undermining confidence in the justice system.

"Objective" criteria for measuring performance

We want our courts to provide speedy justice. We have some measures for speed. The Conference of State Court Administrators (COSCA) and the American Bar Association have established similar, but not identical, standards for the time it should take to obtain a trial court decision in different types of cases. In general, the ABA standards call for most

- felony criminal cases to be decided within 120 days of arrest;
- misdemeanors to be decided within 30 days of arrest or citation;
- juvenile cases to be decided within 30 days of filing;
- general civil cases to be decided within 360 days of filing;
- summary civil cases (e.g., small claims and landlord/tenant disputes) to be decided within 30 days of filing;
- and domestic relations cases to be decided within 90 days of filing.[34]

We know that there are places in this country where trial courts are unacceptably delayed. The Los Angeles County Bar Association has sued the Superior Court of Los Angeles County, contending that the current five year waiting time for trial of a civil case deprives the lawyers, and the citizens of the county, of due process of law.[35] In a recent study of the time taken to dispose of cases in 18 general jurisdiction trial courts around the nation, the NCSC found that 13 of 17 have median disposition times within three days of the ABA standard for felony cases. In only one of them was median felony case disposition time more than double the standard. Only 6 of 15 had median civil case disposition times within the ABA standard, but only two were at, or close to, double the standard (see Table 1).[36] Keep in mind that the median represents the time required to dispose of the fastest half of the cases. The ABA time standards require than 90 per cent of the cases be decided within the standard. The COSCA standards apply to all cases. Consequently, median disposition times do not present a complete picture of the court system's compliance with time standards, and, in fact, show their performance in a markedly favorable light. The American Bar Association is also developing time standards for the appellate process, suggesting that most appeals should be decided within one year.[37]

In our best court systems, both the trial and appellate standards are being met (at least in terms of median times). The federal courts report the median time for cases to complete both trial and appeal. In the fastest federal circuit (the Fourth Circuit, which includes the states of Maryland, North and South Carolina, Virginia and West Virginia) half of all cases proceed from filing in the trial court to disposition in the court of appeals in 18 months or less.[38]

Clearly, those courts that are meeting or exceeding applicable time standards have reason to be proud of their performance. It is not so clear, however, that those failing to do so should bear similar blame. Experience shows that effective judicial leadership can dramatically reduce delay and backlog through sound management, firm resolve, and hard work. But courts need basic resources—adequate judges, staff, facilities, equip-

31. Sarat and Felstiner, *Law and Strategy in the Divorce Lawyer's Office*, 20 L. & Soc'y Rev. 93 (1986).
32. *Id.* at 125.
33. *Id.* at 128.
34. American Bar Association, Judicial Administration Division, National Conference of State Trial Judges, Report to the House of Delegates recommending amendments to the *ABA Standards Relating to Trial Courts* (August, 1984).
35. Los Angeles County Bar Association v. Eu, CV-87-07789, United States District Court for the Central District of California, filed Nov. 19, 1987.
36. Mahoney, *Attacking Problems of Delay in Urban Trial Courts: A Progress Report*, 1 St. Ct. J. 7-8 (Summer 1987).
37. American Bar Association, Judicial Administration Division, Appellate Judges Conference, Report to the ABA House of Delegates with recommendations for amendment to the *ABA Standards Relating to Appellate Courts* (December 1987).
38. Annual Report of the Director of the Administrative Office of the United States Courts, Table B4 at 152 (1987).

ment and procedures—as well as will power. A court without sufficient judges, or lacking modern automated support systems, will not be able to sustain a good record of service over time. No standards currently exist to define the level of resources that the public should provide to courts to ensure the level of services owed by the courts to the community. The American Bar Association is planning to revise its Standards of Judicial Administration soon. It should consider adding some quantitative measures of the various kinds of resources that a court should be provided to handle various types and sizes of caseloads. The task is enormously difficult but its potential worth justifies the effort required.

Even if we are not able to hold our courts accountable for the speed with which they decide cases, we can at least measure it.[39] The other part of speedy justice is "justice." Only philosophers and saints have been able to define, let alone measure, the "justice" of a court's decision.

It may be easier to identify "injustice" than "justice."[40] It is undoubtedly true that, despite all of the safeguards built into our procedures, the decisions of judges and juries reflect some of the biases and prejudices of our culture. Does anyone truly believe that a homosexual parent has the same chance as his or her heterosexual spouse of obtaining custody of their child? Wealth and poverty are not irrelevant in our judicial processes. Even the physical attractiveness of litigants can play a part in the outcome of a case. These factors would have no place in a completely just court system.

As Floyd Feeney has pointed out, there can be little doubt that racial and sexual discrimination in court proceedings and case outcomes has decreased dramatically in the past quarter century, due as much to changes in the larger society as to greater sensitivity on the part of judges and court administrators. Whether they have been eliminated altogether remains in doubt.[41]

We need to recognize that there is also an unavoidable tension between "speed" and "justice." At some point, court processes become so "speedy" that lawyers do not have adequate time to prepare their cases, and judges do not have time to discover and weigh the unique facts of each case. When justice ceases to be individualized, for most of us, it ceases to be just. On the other hand, it is now a truism that justice postponed too long—in the search for perfection or for any other reason—is also inherently unjust. As a practical matter, judges must therefore continually weigh the relative importance of reaching a "perfect" decision in the immediate case against the need to reach and decide the other cases waiting in the queue of undecided matters.

The NCSC is embarking on a major, multi-year Large Court Capacity project to develop detailed performance standards for large general jurisdiction trial courts, seeking to identify what they must accomplish to be considered effective, efficient, equitable and satisfactory to the citizenry. That project may add significantly to our ability to define both "speed" and "justice," and to provide the courts with specific, less global, operational standards by which to measure their progress and reconcile inherent conflicts between those two objectives.

Other possible measures?

There are other standards by which to judge the effectiveness of the courts.[42] Some have suggested, for instance, that the development of private dispute resolution processes, the most widely-known of which is California's "rent-a-judge" program, represents a vote of "no confidence" in the regular courts. Most judicial leaders applaud the development of alternative dispute resolution programs and have used the court's coercive powers to increase their use in many jurisdictions. Moreover, any thoughtful observer must concede that such programs handle only the most minuscule part of the nation's disputes, and the ever-growing caseloads of the courts show that there is no reduction in consumer demand for their "product."

Conclusion

Two themes run through this discussion—the search for standards by which to measure the performance of courts and the search for ways to improve the courts' public image. It may be that an answer to the first theme provides at least a partial answer to the second.

State and local court systems now have a good deal of information from which to develop their own performance standards. A number of states have adopted time standards for disposition of cases by their trial courts. Idaho also has time standards for the appellate process. Some states have promulgated standards for managing their jury systems. The NCSC Large Court Capacity Project will be assisting large general jurisdiction trial courts to develop standards governing other aspects of court processes.

At least in theory it should be possible for a court system to devise standards that reflect the interests of most, if not all, of its various constituencies.[43] Data regarding the courts' compliance with those standards can be compiled and released to the public, as Connecticut has done with its aggregate judicial performance evaluation results.

Promulgation of reasonable standards, coupled with the expectation that the public will be told how well they are being met, can serve as a powerful motivating force for court personnel. When performance is measured, it improves. It is altogether likely, therefore, that the results made public will reflect well upon the courts. If the information is disseminated skillfully, it should serve to improve the court's public image.

A court system setting reasonable standards, seeking more effective ways to meet them, sharing with the public data on the extent to which its operations meet the standards, and showing a willingness to re-examine the standards over time should merit the approval and respect of the lawyers, litigants, legislators, researchers and public. □

39. Our research methods for measuring and understanding court delay have become considerably more sophisticated. *See, e.g.*, Flemming, Nardulli and Eisenstein, *The Timing of Justice in Felony Trial Courts*, 9 L. & POL. 179 (1987) and Luskin and Luskin, *Case Processing Times in Three Courts*, 9 L. & POL. 207 (1987).

40. Feeney, *supra* n. 3, at 159.

41. On the issue of the effects of race in criminal sentencing, compare Petersilia, RACIAL DISPARITIES IN THE CRIMINAL JUSTICE SYSTEM (Santa Monica, CA: The RAND Corporation, 1983) with Klein, Turner and Petersilia, RACIAL EQUITY IN SENTENCING (Santa Monica, CA: The RAND Corporation, 1988).

42. *See, e.g.*, Cook and Johnson, *supra* n. 1.

43. The exception may be single-interest groups, like pro-and anti-abortion lobbies. It will probably be inappropriate for a court ever to maintain and report a substantive "scorecard" on case outcomes favorable and unfavorable to a particular political interest group.

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