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THE PROFESSIONALISM ISSUE

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Professionalism: Why Is It Important?

By Justice (Ret.) J. Gary Hastings

On February 23, 2015, AOL.com reported that Stephen Hawking identified human aggression as the “greatest threat to humanity.” How does this tie in with the concept of professionalism?

Our justice system exists to resolve disputes peaceably, without resort to self-help. The system is centered on “the rule of law”: “[T]he expression of the rules of the game which all men play—that of getting along together as members of an organized society.” (Harry J. Rathbun, *The Anglo-American Legal System* (Stanford, California; Stanford University Press, 1941, p. iii.) “Public confidence in the judicial institution is one of the essential elements of the preservation of the rule of law.” (David M. Rothman, *California Judicial Conduct Handbook*, West Group, § 1.20, p. 5.) Thus, retaining the public’s confidence is essential to our system of justice.

The National Center for State Courts just released findings from a national survey that concluded, “Courts remain the most trusted branch of government” and “Court users express confidence in fairness of proceedings...” (www.ncsc.org/2014survey.) But the analysis of the findings presented to the NCSC by GBA Strategies on December 4, 2014, noted the following:

Public opinions of the courts are soft and can shift quickly based on external factors or high profile media stories. While we have seen consistent improvement on perceptions of the courts,

it is important to note that the movement we have seen is found in what we call the “soft” measures—somewhat agree, etc.—with no significant increases in intense feelings on either side. Our earlier research for the National Center for State Courts, which included focus groups with voters in multiple states, made it clear that most voters do not think about the courts regularly and do not hold firm opinions of the courts one way or the other. What we see in our current survey is that voters are increasingly inclined to give the courts the benefit of the doubt, and that is an important development in a still difficult political environment.

While the gains in this survey are encouraging, we must underscore that they do not have deep roots. High-profile events such as the grand jury decisions in Ferguson, MO, and Staten Island (which took place after this survey was conducted) will undoubtedly have an effect on many voters’ attitudes toward the courts, but it is impossible at this time to gauge what that effect will be, or how long-lasting. (See “Analysis of National Survey of Registered Voters,” pg 1, linked in www.ncsc.org/2014survey.)

While voters will form impressions about the justice system through reports of high-profile cases, many also become involved directly with the justice system as parties and jurors and will be more intimately exposed to the process. What is important to the public and those who are involved directly with the system?

Tom R. Tyler, a psychology professor, reported on studies focusing on what the public expects from our courts in “What Do They Expect? New Findings Confirm the Precepts of Procedural Fairness” (*California Courts Review*, Winter 2006). Tyler concluded that procedural fairness (procedural justice) was more important than the actual outcome of cases (distributive justice): “People react, more than anything else, to whether or not they believe the courts are using just procedures in dealing with conflicts that come before them.” (*Id.* at p. 73, italics in original.)¹ He identified four factors upon which members of the public focus to evaluate procedural justice:

Voice. People want to have an opportunity to state their case to legal authorities. They are interested in having a forum in which they can tell their story; that is, they want to have a voice.

Authorities’ neutrality. People react to evidence that the authorities with whom they are dealing are neutral; that is, make decisions based on consistently applied legal principles and the facts of the case, not personal opinions and biases. Transparency and openness about how decisions are being made facilitates the belief that decision-making procedures are neutral.

Respectful treatment. People are sensitive to whether they are treated with dignity and politeness and whether their rights as citizens are respected.

Trust in authorities. People focus on clues about the intentions and character of the legal authorities with whom they are dealing. People react favorably to the judgment that the authorities are benevolent and caring and are sincerely trying to do what is best for individuals.... (*Id.* at pp. 73–74.)

Another study comparing the Red Hook Community Justice Center in New York with a traditional centralized criminal court basically confirmed these findings. This was reported by M. Somjen Frazer in a research report submitted to the U.S. Bureau of Justice Assistance in September

¹ For a more extensive discussion of the concept of procedural fairness, see “Procedural Fairness: A Key Ingredient in Public Satisfaction,” a white paper of the American Judges Association authored by Judges Kevin Burke and Steve Leben, September 26, 2007.

of 2006, “The Impact of the Community Court Model on Defendant Perception of Fairness: A Case Study at the Red Hook Community Justice Center” (www.courtinnovation.org/sites/default/files/Procedural_Fairness.pdf). These factors were considered important to the perception of fair treatment by defendants:

- **Attitudes toward the judge.** Did the judge treat the defendant fairly?
- **Communication within the courtroom.** Did the defendant’s lawyer listen to him and were things explained to him?
- **Treatment in the courtroom.** Did the court staff and prosecutors treat the defendant respectfully?
- **Overall fairness of the court experience.** Did the defendant believe his case was handled fairly?

The factors described by Tyler and Frazer will exist where all actors within the justice system—lawyers, judges, court personnel, and law office personnel—exhibit professionalism in the resolution of legal disputes, whether criminal, civil, or otherwise.

In the September/October 2011 issue of *The Bench*, Justice Donald W. Lemons set out the building blocks of professionalism in his article “Professionalism: Beyond Ethics:”

- respect for the law and the system of justice
- integrity and trustworthiness
- maintenance of competence and excellent work product
- leadership and community service
- provision of pro bono services
- civility and courtesy.

Respect for the law and the system of justice, integrity, trustworthiness, maintenance of competence, and excellent work product are essential to a system based on “the rule of law.” Civility and courtesy are essential in providing “respectful treatment” to the parties. And all of these building blocks are important in allowing a “voice” to the parties.

Why is professionalism important? Because our system of justice depends on it. ♦

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