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Rule of Law Symposium

Understanding the International Rule of Law as a Commitment to Procedural Fairness

Judge Kevin Burke*

An international commitment to the rule of law has in recent years become the mantra for many lawyers, judges, and human rights activists. What rule of law means exactly is far more problematic than it appears at first blush. Surely rule of law means judicial independence, but judicial independence is not an end in and of itself; rather it is a means to the end of creating an effective judiciary. Judges need to be independent, fair, and accountable for achieving fairness for every litigant they see. In essence, the rule of law should be defined by a commitment to procedural fairness in court.

Some of the current discussion about the rule of law does little to help courts respond to criticism, constructive or otherwise. There will always be debate and occasional tension between the branches of government. There will always be tension between lawyers and judges and, not infrequently, tension between the public and the judiciary. Those debates—and even those attacks—can strengthen courts. In response to the criticism of courts, too often defenders of courts note how much work courts do. But as former UCLA basketball coach John Wooden said, we should “[n]ever mistake activity for achievement.”¹ To ensure that the discussion about the

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1. THE 101 GREATEST BUSINESS PRINCIPLES OF ALL TIME 64 (Leslie Pockell,

international rule of law is directed toward achievement, not just slogans, the dialogue needs to become focused on guaranteeing procedural fairness as well as measuring procedural fairness.

Shifting to a focus on procedural fairness has the potential of providing substantial benefits. While there is far more trust and satisfaction with many court systems than critics might lead one to believe, it is easy to feel a bit under siege at times. Changing the focus to fairness can simultaneously improve both judicial performance and public satisfaction, while helping judges avoid preoccupation with judicial critics.

In another context, former Vice President Al Gore wrote that the quality of debate in America has deteriorated, but that the problem is not altogether new:

Why has America's public discourse become less focused and clear, less *reasoned*? Faith in the power of reason—the belief that free citizens can govern themselves wisely and fairly by resorting to logical debate on the basis of the best evidence available, instead of raw power—was and remains the central premise of American democracy. This premise is now under assault. We often tend to romanticize the past, of course, and there was never a golden age when reason reigned supreme, banishing falsehood and demagoguery from the deliberations of American self-government.²

Gore's words are an apt description of the political environment that courts throughout the world face. Despite this political environment, judges must believe that citizens will see through the demagogues and understand what their courts are about. The question is, then, what can judges, lawyers, and others committed to the rule of law do to ensure better understanding and support for courts in the future?

Too often, the political discourse of our time consists of taking the other person's idea, mischaracterizing it, and then announcing profound outrage. This approach, of course, does not enrich the debate. As former Senator Daniel Patrick Moynihan once said, “[y]ou're entitled to your own opinions. You're not entitled to your own facts.”³ Judges need public support to thrive as an independent branch of government. Irrational and inaccurate public discourse about courts undermines public trust and confidence. Although it is not

ed. 2004).

2. AL GORE, *THE ASSAULT ON REASON 2* (2007).

3. Neil S. Siegel, *The Virtue of Judicial Statesmanship*, 86 TEX. L. REV. 959, 968 n.48 (2008).

entirely the fault of courts, some of the irrationality of the debate about courts is fostered by the fact that too few courts present relevant, readily accessible factual information about court performance.

The first goal of the justice system is to provide people with justice. Judges need to decide individual cases and seek to do so in ways that lead participants to accept and abide by the decision. Judges have an opportunity with each case that they handle to ensure that litigants retain and even enhance their trust and confidence in the courts, judges, and the rule of law.

There have always been judges who are intuitively very effective in implementing procedural fairness in their courtrooms. But, until recently, few judges gave it much thought. Most analyses of courts focus on how to get outcomes right, not how to handle procedural matters in a way that enhances perceptions of fair treatment.

The concept of procedural fairness emanates from decades of research showing that how disputes are handled has an important influence upon people's evaluations of their experience in the court system. Research has shown that litigants have a powerful need to express themselves during court proceedings. That need can be a simple expression of "I'm sorry I did this," or a more complicated desire to explain a sophisticated commercial or human rights issue. If enough judges fully embrace the concept of procedural fairness through action, public support for the courts will rise, and there is every reason to expect greater compliance with court orders. So this subject is not merely of importance to judges—it is of great importance to the public as well.

LESSONS FROM EIGHT COUNTRIES ON THE RULE OF LAW

Today the United States is uniquely positioned to make major changes in how we think of the rule of law in the world. If we do not seize this moment, we do so at our own peril. I am an amateur at the analysis of how other countries provide justice. I have traveled to observe the systems of justice in 38 states and Albania, Ireland, Canada, Mexico, China, India, and Egypt, but I make no claim that I am an expert in comparative law. I have been a judge in Minnesota for 24 years. But I do know that the interchange we have with other nations' (or even other states') systems of justice gives us the opportunity to learn

about someplace else, and also to learn more about ourselves.

The first time I went to a foreign country to observe the delivery of justice was a trip to Albania in the mid-1990s. I was asked to monitor a trial for international human rights violations. Five ethnic Greeks were arrested and charged by the Albanian government. The prosecution alleged that the defendants were spies. If convicted, they faced the death penalty. The trial was before a three-judge panel. On paper the rights of the accused in Albania appeared reasonable. The trial attracted heavy security and many international observers. There was fear that this trial could provide an excuse for Albania and Greece to go to war.

The Albanian trial was far from perfect, and yet there was an amazing amount of openness. The trial was televised nationally. The trial was to Albania what O.J. Simpson's trial was to the United States; everything virtually stopped. One could walk down the streets and see people watching it. Even while the trial was being conducted, the presiding judge was willing to talk to me about trial procedures and the challenges facing the Albanian judiciary. The prosecutors and the defense lawyers were also willing to talk to me. There was a degree of transparency that was far greater than one might expect in a similar situation in the United States. In a major spy case in the United States, there is no chance the participants would be as open with foreign observers.

The trial began by the court reading the charges. However, after the charges were read, the presiding judge asked, "Who would like to go first?" My immediate reaction was that obviously this court does not understand the basics of the rule of law. This was the Albanian trial of the decade, with international attention focused on the process of Albanian justice, and the judge was starting the testimony with a question of who would like to go first. Incredibly, the defendants all raised their hands with their lawyers and said they wanted to go first. I carefully took note that this was an obvious defect in their system. The reaction of a prominent Greek lawyer was far more pointed than mine. To an assembled group of reporters he asked, rhetorically, "Did these judges go to matchbook law school?" That comment led to his deportation the following morning.

I talked to the defense lawyers that night and asked about their reaction to the presiding judge's offer to "let them go first." What the lawyers said was, "Look, our clients were going to

testify anyway. We wanted to get our case out first. We wanted the people to know what our clients were going to say. We wanted the judges to know what our clients were going to say.” I left Albania not entirely impressed with that nation’s understanding of the rule of law, but I learned a valuable lesson about the importance of giving people an opportunity to be heard.

A short time later I went to Ireland. At that time in Ireland, like many places in the world, the judiciary had no infrastructure. There were independent judges, but court administration—the back room of the judiciary—worked for the Justice Ministry. It is hard to have a truly independent judiciary if courts are entirely dependent upon the Executive Branch for their infrastructure. My mission in Ireland was to conduct a series of workshops for the newly created Irish court administration, the focus of which was on customer service.

Unfortunately for too many judges, the word “customer” freaks them out. Courts do have customers and should aspire to be the Neiman Marcus of courthouses. If you go to Neiman Marcus and you stand looking lost, somebody inevitably will come up and say, “May I help you?” Unlike Neiman Marcus, if you go into many of the courts and stand looking lost, the security guards will kick you out at the end of the day. Respect is part of the foundation for the rule of law. The atmosphere of respect in a courthouse is created not just by judges, but by all of the court personnel. The Irish understood that and successfully took steps to establish an infrastructure to support the courts that was answerable solely to the judiciary. Creating an atmosphere of respect in the courthouse enables people to feel like they will be listened to and believe that the judges are trying to do their best to serve the community’s needs.

In 2002, I went to India. At the time, the average time for disposition of criminal cases was approximately ten years. As a result, there was an intolerably low conviction rate. India had created a national commission charged with the task of making recommendations to reform a broken system. I was asked to speak to the commission. I remember wandering through the courts in New Delhi and seeing that they were inundated by the volume of cases waiting to be heard. New Delhi made the busiest and most chaotic court in the United States appear quite dignified. People could not go to India’s lower courts and have any sense that they could be heard, and they certainly could not leave with a sense that they would understand why the decision

was made. Chaos prevailed, and there was a great despair about the status of the India courts—despair not just from the lawyers, judges, and officials charged with trying to improve the system, but also despair by the cab drivers and merchants who would openly talk about the state of their courts.

Volume is an impediment to the rule of law, not necessarily because it overworks judges, but because volume can interfere with the ability for a litigant to be heard, to be treated with respect, and the right of the litigant to understand why the decision was made. Crowded dockets, however, are not simply a by-product of a lack of resources. India faces enormous challenges; its overloaded criminal justice dockets preclude any semblance of an effective civil justice system. But India is not alone. For example, there was a time in the 1980s when the City of Newark had a docket problem as severe as India's, with an almost ten-year delay in their docket. A federally appointed special master was making all the bail decisions. As rich as we are, as sophisticated as we believe our country is, we have had parts of our country where the courts operated no better than India's criminal justice system.

Over the years, I have spent considerable time in Canada working with judges. The Canadians are quite accepting of the fact that they are a bilingual country. Canadians have a right to have their trial in French. If someone wants a trial in French, the government will find a French-speaking judge and have the trial in French. It is a fact that can appear to many of us as a rather quaint quirk of Canadian law. It is not. There is a lot our nation can learn from Canada.

I was once part of a consortium of major urban courts in the United States. The topic of the consortium's agenda at a meeting in Los Angeles was about how to build community courts. That morning I walked for blocks in Los Angeles, and in block after block not a single person spoke English. It was a Hispanic neighborhood in which everybody spoke Spanish.

At one point during the meeting I naively said, "You know, we're going to have to confront the idea that at some point, maybe a community court ought to be conducted in Spanish and we will get an interpreter for the people who cannot speak Spanish as opposed to the other way around." Quite a number of the participants were appalled with the idea that in the United States we could have a court conducted in Spanish. I said, "Well, if the Canadians have figured out how to do it, surely we can."

A few years later in Maricopa County, the chief judge decided to set up a small DWI night court. The court was post-adjudication. No statute or rule required the creation of the court. None of the defendants in this particular court could speak English—they only spoke Spanish. Like many drug courts, the idea was to have periodic monitoring by a judge of how a defendant was performing on probation and maintaining sobriety. The difference was that everything would be conducted in Spanish. The judge grew up in the United States—she was a native of Arizona—but her parents were from Mexico and she did not learn English until she started kindergarten. The local prosecutor sued the court to stop the proceedings from being conducted in Spanish even though the potential effect of the lawsuit was to eliminate the court. The lawsuit certainly did not focus on the benefit of allowing someone to speak about their own struggles with sobriety. Language in our nation too often scares us. We cannot afford that fear in the legal system because voice is part of the rule of law. Canada has its own set of challenges when it comes to the rule of law, but it may be more sophisticated in understanding the need for allowing voice in a court than we are in the United States.

I once brought a delegation of judges to Mexico at that country's invitation. According to the Mexican officials, there were approximately 700,000 Mexicans living in Chicago at the time. What they asked us in not very subtle terms was, "do you know what it would do to the City of Chicago's economy if you got rid of those 700,000 people tonight?" Deport 700,000 Mexicans from Chicago and the city would be economically devastated.

Economy is important, but family is vital. The rule of law is rarely thought of as a family law issue, but it is. Mothers, fathers, and children going back and forth across the United States/Mexican border is going to continue. They move to Chicago, work, and frequently send money home. When there is a ruling on a child custody case in a Cook County court, most of us expect that other states will honor that custody order. What if the other state is Mexico? In the long run, we need to acknowledge that an increasing number of people in Cook County will view Mexico as home rather than any of the forty-nine other U.S. states.

Mexico is not going to go away. The United States could build a wall that is one thousand feet high and a million kids

will still have parents on both sides of that wall. The rule of law needs to be practical. Although there are treaties and conventions that purport to address the issue of international family law, they are, to put it charitably, not user-friendly for a poor or middle class self-represented mom or dad. Compliance in family law is driven by procedural fairness. If on either side of the border there is a perception that the family law dispute was procedurally defective, there is every reason to believe that parent will consider fleeing across the border to try again.

In 2004, I went to China. I spoke at the National Judicial College in China. Chinese judges, at least at the time, were paid a base salary plus a yearly bonus. The symposium focused on the question of legitimate performance measures for courts. Part of the interest in performance standards was to rationalize the payment of bonuses, but there was also a deep interest in trying to build a better system of justice. The Chinese method of judicial pay could be roughly characterized as performance pay for judges. Many in the United States like the idea of performance pay for teachers, but for judges it is dangerous. How do we decide who gets the bonus? Performance pay for judges strikes many as the ultimate threat to judicial independence.

China has a different political system than ours and a vastly different judicial history. Today's Chinese judiciary is, at best, ten years old. Many of the judges are not lawyers, but instead are former military officers. The judiciary was far different under Mao, but Mao died in 1976. The Chinese, at some level, understand that it is important to China's economic success that the international business community not have a complete lack in confidence about the Chinese judicial process or fear that their business dispute will end up in a Chinese court system.

I learned from the Chinese that it takes time to build the rule of law. It takes time to build a strong judiciary. But most importantly, it is not the words that are on paper, it is the actions that follow them that are really the most important.

Recently I was in Egypt. There are five thousand judges in Egypt and about eighty million people. The judges sit in three-judge panels. The Egyptians, like the Chinese, Mexicans, Canadians, Irish, and Albanians, know that an effective judiciary is necessary for economic growth. For many countries, it is a struggle to develop a strong and effective judiciary when it comes to the criminal docket. Criminal law raises issues

regarding individual rights and national security, and it therefore often collides with political power and governance issues. Our founding fathers were seen by Americans as patriots. The tea dumpers of Boston were seen by King George III as vandals or terrorists. Civil law is more often than not about money. It is sometimes an easier starting place to introduce a commitment to procedural fairness. Perhaps greed is the bond that can drive us all to elevate the rule of law. The desire for good economic growth can drive judiciaries to become even better than they were before. But in the end, civil, family, and criminal cases must all be procedurally fair.

A system measures what it cares about. If that is true, a case can be made for the proposition that the United States, like most other nations, does not care about fairness in courts. Courts care about efficiency because we regularly measure it. But we do not care about fairness because, until recently, there were few, if any, courts that are prepared to measure their fairness. Courts will put a reference to fairness in a mission statement or their strategic plan, but courts need to put it in their operation. Just like the experience in Albania, it is not the words, but the action that makes fairness part of the rule of law. What is critically needed now is a simple way to measure a nation's commitment to the rule of law.

There are three questions to ask when building a measurable rule of law. First, were the litigants listened to? Second, were they treated with respect? Finally, did they understand why the decision was made?

As the courts of India so painfully demonstrated, volume is an impediment to being listened to. The danger volume poses is not judges complaining about being overworked—that is the wrong paradigm. The danger posed is that litigants are not heard. The rule of law in part must be defined as a right to be heard 100% of the time.

Respect is the second part of the rule of law. The rule of law must create an atmosphere in the courthouse that allows litigants to feel that they are important and their case is not trivial. Respect must occur 100% of the time regardless of the wealth, status, gender, or ethnic background of the people who appear in court.

Finally, people have a right to leave the courthouse understanding the reason for the outcome of their case. Not every litigant has a right to win, but they do have a right to understand why that decision was made. For the rule of law to

become meaningful, there must be universal norms in which all countries in the world, no matter what their particular legal system is, measure and assess whether people leave the courthouse understanding why the decision was made.

A lot of decisions are made from the bench. The judge says what the order is and occasionally may even say why. However, a lot of the decisions are in writing. Candidly, a lot of decisions that judges make are not written very well. They are written in legal language which often is not understandable to the litigant. Courts around the world need to understand that they are communicating now in a whole different era. We live in an era when court opinions are posted on the Internet, so judges need to recognize it is no longer just about writing for lawyers. But even in the case of oral orders, *why* is as important as *what* the order is.

If courts achieve the goal of having 100% of people who come to court listened to, treated with respect, and made to understand why the decision was made, the court system, even if it is as crowded as those in India, can become the basis for building an independent, strong judiciary that can withstand a lot of political attacks.

Although in many respects we have a terrific system of justice in our courts, the United States can learn from and build strong systems of justice with other countries. Our nation is in a prime position to talk to other countries, not as the imperialist Yankee who knows everything, but as a colleague who is willing to work with, and learn from, other countries on how to build a worldwide sense of fairness that can support the international rule of law. With a new administration in Washington, D.C. and a person who is perceived more positively around the world than anybody else elected in our lifetime, our nation is uniquely positioned now to make a major change in the rule of law.

A number of people have thought that after 9/11 the world forgave our nation for every sin that we were perceived to have committed, whether we committed it or not. There was great goodwill towards the United States, but it quickly dissipated. We lost an opportunity to build relationships around the world. We cannot afford to do that again, and should take this opportunity to build an international consensus about what the rule of law should mean to all of us.

The academic research regarding the role of procedural fairness in courts shows that this is a universal norm. Regardless of gender or ethnic population, people are driven by

the need to feel like they were listened to. People want to win, but they also desire to understand why judges made the decision in their case. Despite this, most judicial education around the world is entirely focused on getting the outcome right, and little attention is given to getting procedural fairness right. In short, if the judge got the decision right and applied the rule of civil procedure correctly, what more do people want? Actually people do want more than that and they can get it. People want a system in which they can say they were treated fairly.

For judges and many lawyers, the single most difficult concept to accept is that most people care more about procedural fairness—the kind of treatment they receive in court—than they do about winning or losing the particular case.⁴ This discovery has been called “counter-intuitive”⁵ and even “wrong-headed,”⁶ but researcher after researcher has demonstrated that this phenomenon exists.⁷

4. See generally TOM R. TYLER, ET AL., SOCIAL JUSTICE IN A DIVERSE SOCIETY 82–84 (1997) (“[P]rocedural justice significantly affect[s] personal satisfaction with outcomes received from third parties.”); Jonathan D. Casper, et al., *Procedural Justice in Felony Cases*, 22 LAW & SOC’Y REV. 483, 493–95 (1988) (showing that procedural justice substantially and independently influences litigant satisfaction, even in high stakes cases); Jason Sunshine & Tom R. Tyler, *The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing*, 37 LAW & SOC’Y REV. 513, 525–26 (2003) (showing that legitimacy of police forces influences compliance with the law).

5. M. SOMJEN FRAZIER, CTR. FOR CT. INNOVATION, THE IMPACT OF THE COMMUNITY COURT MODEL ON DEFENDANT PERCEPTIONS OF FAIRNESS: A CASE STUDY AT THE RED HOOK COMMUNITY JUSTICE CENTER 3 (2006), http://www.courtinnovation.org/_uploads/documents/Procedural_Fairness.pdf.

6. TOM R. TYLER, WHY PEOPLE OBEY THE LAW 22 (2006).

7. See E. ALLAN LIND & TOM R. TYLER, THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE (1988); JOHN THIBAUT & LAURENS WALKER, PROCEDURAL JUSTICE A PSYCHOLOGICAL ANALYSIS (1975); Jerald Greenberg, *Determinants of Perceived Fairness of Performance Evaluations*, 71 J. APPL. PSYCHOL. 340 (1986); Jerald Greenberg, *Looking Fair Versus Being Fair: Managing Impressions of Organizational Justice*, in 12 RESEARCH IN ORGANIZATIONAL BEHAVIOR 111 (Barry Staw & L. L. Cummings eds., 1990); Jerald Greenberg & Robert Folger, *Procedural Justice, Participation, and the Fair Process Effect in Groups and Organizations*, in BASIC GROUP PROCESSES 235 (Paul B. Paulus ed., 1983); Larry Heuer et al., *A Deservingness Approach to Respect as a Relationally Based Fairness Judgment*, 25 PERSONALITY & SOC. PSYCHOL. BULL. 1279 (1999); Tom R. Tyler, *Psychological Models of the Justice Motive: Antecedents of Distributive and Procedural Justice*, 67 J. PERSONALITY & SOC. PSYCHOL. 850 (1994); Tom R. Tyler, *The Relationship of the Outcome and Procedural Fairness: How Does Knowing the Outcome Influence Judgments about the Procedure?*, 9 SOC. JUSTICE RES. 311 (1996); Kees van den Bos et al., *Evaluating Outcomes by Means of the Fair Process Effect: Evidence for Different Processes in Fairness and Satisfaction Judgments*, 74 J. PERSONALITY & SOC. PSYCHOL. 1493 (1998); Kees van den Bos et al., *Sometimes Unfair Procedures*

People have high expectations for how they will be treated during their encounters with the judicial system. In particular, they focus on the principles of procedural fairness because “people view fair procedures as a mechanism through which to obtain equitable outcomes.”⁸ People value fair procedures because they are perceived to “produce fair outcomes.”⁹ Psychology professor Tom Tyler, the leading researcher in this area, suggests that there are four basic expectations that encompass procedural fairness:¹⁰

- Voice: the ability to participate in the case by expressing their viewpoint;
- Neutrality: consistently applied legal principles, unbiased decision makers, and a “transparency” about how decisions are made;
- Respectful treatment: individuals are treated with dignity and their rights are obviously protected;
- Trustworthy authorities: authorities are benevolent, caring, and sincerely trying to help the litigants—this trust is garnered by listening to individuals and by explaining or justifying decisions that address the litigants’ needs.¹¹

Procedural fairness matters to every litigant who appears before a judge, but “[w]hat is striking about procedural justice judgments is that they also shape the reactions of those who are on the losing side.”¹² People are actually more willing to accept a negative outcome in their case if they feel that the decision was arrived at through a fair method. Significantly, even a judge who scrupulously respects the rights of litigants may be perceived as unfair if he or she does not meet these expectations for procedural fairness.

Procedural fairness does not imply that people are happy if they lose in court. No one likes to lose, but litigants will accept losing more willingly if the procedure that is used is fair. Studies suggest that procedural fairness issues remain

Have Nice Aspects: On the Psychology of the Fair Process Effect, 77 J. PERSONALITY & SOC. PSYCHOL. 324 (1999).

8. TYLER ET AL., *supra* note 4, at 75.

9. Robert J. MacCoun, *Voice, Control, and Belonging: The Double-Edged Sword of Procedural Fairness*, 1 ANN. REV. L. & SOC. SCI. 171, 182 (2005).

10. TYLER, *supra* note 6, at 23.

11. *See id.* at 22–23; David B. Rottman, *Adhere to Procedural Fairness in the Justice System*, 6 CRIMINOLOGY & PUB. POL'Y 835, 835 (2007).

12. TYLER, *supra* note 6, at 23.

important when the monetary stakes are high, litigants are very invested (such as child-custody cases), or where there are important moral or value-based questions at issue. The elements of procedural fairness—voice, neutrality, respect, trustworthy authorities—dominate people’s reaction to the legal system across ethnic groups, across income and educational levels, and across gender.

While the public desires fair procedures, judges and attorneys focus on fair outcomes, often at the expense of meeting the criteria of procedural fairness that are so important to the public’s perception of the court. Perhaps because of this different focus, in California, “[o]n average, attorneys tend . . . to view procedures in the California courts as fairer than do members of the public: an average of 3.0 for attorneys compared to 2.85 for the public.”¹³ Attorneys may perceive procedures to be fairer because they do not pay as much critical attention to them,¹⁴ or because they are more familiar with the court’s typical procedures and thus do not feel as lost during the process.¹⁵

The difference in perceptions between attorneys and the public may be more than just a little problematic because perceptions of procedural fairness have a substantial impact on both satisfaction and compliance for the public. However, it is not a difference that affects only judges and litigants; it is perhaps the inherent dissonance that exists between all decision makers and decision recipients. Social psychology professor Larry Heuer conducted an experiment in which college students were randomly assigned to be either the decision maker or the decision recipient. He found that the “decision recipients [were] oriented primarily to procedural information, while decisionmakers [were] oriented primarily to societal benefits.”¹⁶

Judges and lawyers are trained to think about, and hopefully provide, due process. Litigants, witnesses, and courtroom observers are not trained in due process, but they do

13. JUDICIAL COUNCIL OF CAL., ADMIN. OFFICE OF THE COURTS, TRUST AND CONFIDENCE IN THE CALIFORNIA COURTS A SURVEY OF THE PUBLIC AND ATTORNEYS 25 (2005), available at http://www.courtinfo.ca.gov/reference/documents/4_37pubtrust1.pdf (last visited Mar. 8, 2009).

14. See Rottman, *supra* note 11, at 840.

15. See JUDICIAL COUNCIL OF CAL., *supra* note 13, at 11, 18.

16. Larry Heuer, *What’s Just About the Criminal Justice System? A Psychological Perspective*, 13 J.L. & Pol’y 209, 218 (2005).

form opinions. The new admonition, if procedural fairness is the core performance of adherence and fidelity to the rule of law is, are your constituents treated fairly in our courts?

But how do courts measure fairness? The box score for the rule of law might look like this:

Trial Court: Measuring Fairness

- The judicial officer listened carefully to what I (or my lawyer) had to say.
- The judicial officer appeared to be a caring person.
- The judicial officer treated me with respect.
- The judicial officer gave reasons for his or her decision.
- The judicial officer made sure I understood the decision.

If we concentrate on fairness as the essence of what the rule of law is, we create opportunity for all nations to learn from each other. We can compete in a constructive way to find solutions for the historic challenge of how civilized people can peacefully and honestly resolve disputes. A generation of social science research tells us a lot about litigants. Those millions of people who came to court had expectations that the court would “get the right result” and, for the most part, courts did get the right results. Moreover, what the social scientists tell us is that those people who knew they might not win, although disappointed, can accept and obey court orders with which they disagree. Their willingness to comply with orders, however, is driven by their perception of how they were treated in court, whether they were heard, and whether they understood the order or expectations of the court.