

Improving Courtroom Communication: A Multi-Year Effort to Enhance Procedural Justice

Project overview

The Improving Courtroom Communication project is a collaboration involving the Center for Court Innovation, National Judicial College, and the U.S. Department of Justice’s Bureau of Justice Assistance. The initiative builds on research showing that when litigants believe the court process is fair, they are more likely to comply with court orders and the law generally. This concept – called “procedural justice” – refers to the perceived fairness of the procedures and interpersonal communications that defendants and other litigants experience in the courthouse and courtroom. It is distinguished from distributive justice, which refers to the impressions derived from case outcomes (*i.e.* whether the litigant ultimately “won” or “lost” the case).

Leading researchers on this topic, including Tom Tyler of Yale Law School, have identified several critical dimensions of procedural fairness:

- (1) *voice* (litigants’ perception that their side of the story has been heard)
- (2) *respect* (litigants’ perception that the judge, attorneys, and court staff treat them with dignity and respect)
- (3) *neutrality* (litigants’ perception that the decision-making process is unbiased and trustworthy and
- (4) *understanding* (whether litigants comprehend the language used in court and the decisions that are made).¹

The elements of procedural justice have been tested in a range of court settings – small claims, family court, and criminal court – as well as other criminal justice contexts, such as police stops and prisoner reentry. The results suggest that when the dimensions of procedural fairness are present, litigants consistently report greater trust in government and are subsequently more likely to be compliant. For example, litigants in problem-solving courts typically rate their perceptions of fairness higher than litigants in traditional courts and recidivate at significantly lower rates.²

For many litigants, victims, and members of the public, navigating the physical space of the courthouse (to say nothing of its rules and procedures) can be daunting and stressful. And once in the courtroom, technical jargon often restricts the conversation to all but the most seasoned criminal justice players. For the typical user, it is not uncommon to watch a case unfold and have only the vaguest idea of what actually transpired. As Malcolm Feeley, author of the seminal *The*

¹ Tyler, T.R. 1990. *Why People Obey the Law*. Yale University Press New Haven. *See also* Frazer, M.S. 2006. “The Impact of the Community Court Model on Defendant Perceptions of Fairness: A Case Study at the Red Hook Community Justice Center.” Center for Court Innovation. Researchers have also identified *helpfulness* (whether litigants perceive court actors as interested in their personal situation to the extent that the law allows) as a key dimension, but this project has incorporated helpfulness into the dimension of *understanding* for most purposes.

² Wales, et al (2010) “Procedural Justice and the Mental Health Court Judge’s Role in Reducing Recidivism.” *International Journal of Law and Psychiatry*, 33(4), 265-271.

Process is the Punishment (1982), has observed: “I’ve sat in courtrooms in Sweden and Germany and had a better sense of what was going on, even with only a smattering of the language, than I do in many American arraignment courtrooms.”³

Courtroom actors do not deliberately attempt to cause confusion or foster disrespect, of course – they are simply trying to communicate complex, technical information as quickly as possible. Moreover, there are numerous real-world obstacles to effective courtroom communication, including overwhelming caseloads, poor acoustics, legal requirements, courthouse traditions, and increasing cultural and linguistic diversity among court actors.⁴ All of these factors combine to undermine comprehensibility and litigants’ perceptions of fairness.

Failing to address communication shortcomings in the court context can have potentially far-reaching consequences. Defendants may not comprehend the implications of their pleas – particularly sentencing requirements or the potential collateral consequences of a criminal conviction. Victims may not feel that their concerns were taken seriously. These factors reinforce the impression that the process is designed to suit the needs of the professionals rather than the public.

In an effort to address these problems, the Improving Courtroom Communication project aims to enhance perceptions of fairness and trust in the justice process by creating practical “how to” recommendations and tools for judges and other court actors. The initiative has leveraged the expertise of judges, court administrators, attorneys, legal theorists, and linguists to develop and test improved communication strategies. To date, the project has included:

- Convening a national working group
- Developing and piloting a one-day training in four jurisdictions nationally
- Conducting a quasi-experimental pilot evaluation
- Creating an online learning system on procedural justice
- Compiling and pilot-testing an evaluation toolkit
- Developing a menu of promising communication practices

Below is a summary of the work of the Improving Courtroom Communication project over the past few years, as well as some of the lessons that have been learned. All of the project publications referenced below are available at www.courtinnovation.org/proceduraljustice.

◆ National working group

The project launched in January 2011 with the convening of a multi-disciplinary working group to explore how procedural justice principles might be promoted through enhanced communication strategies in the context of a busy criminal courtroom. Working group participants included:

- Greg Berman – Director, Center for Court Innovation
- Kevin Burke – Judge, Hennepin County (MN) Family Justice Center
- William Dressel – Former President, National Judicial College

³ E-mail correspondence on file with the author.

⁴ Porter, R. 2010. “Procedural Fairness in California’s Civil Courts.” Center for Court Innovation.

- Malcolm Feeley – Professor of Legal Theory, University of California Berkeley Law
- Mark Juhas – Judge, Los Angeles County (CA) Superior Court
- Judy Harris Kluger – Chief of Policy and Planning, New York State Unified Court System
- Noreen Sharp – Former Special Deputy Court Administrator for the Maricopa County (AZ) Superior Court and former Division Chief Counsel of the Arizona Office of the Attorney General
- Alfred Siegel – Deputy Director, Center for Court Innovation
- Larry Solan – Professor of Linguistics and the Law, Brooklyn Law School
- Robin Steinberg – Executive Director, The Bronx Defenders
- David Suntag – Judge, Vermont Judiciary
- Kelly Tait – Communication consultant and instructor, University of Nevada
- Tom Tyler – Professor, Yale Law School

Over the course of a two-day conversation, the working group sought to outline a set of promising practices in improved courtroom communication, organized around the key elements of procedural justice: voice, respect, neutrality, understanding, and helpfulness. Examples included encouraging judges to provide a brief introduction for the courtroom audience at the beginning of each court session; demonstrating respect for defendants’ time by starting court on time; and ensuring that defendants leave court with easy-to-understand written and oral instructions of the next steps in their case. The working group also discussed signage and other physical modifications as well as techniques to engage security personnel in advancing procedural justice. Whenever possible, the group sought to anticipate and address possible concerns, such as efficiency and cost.

The working group also provided input regarding the content of a training on improved courtroom communication. In particular, the group emphasized the importance of selecting a prospective pilot site in which the administrative judge is fully supportive of the project – and could encourage the support of other key players. The working group later contributed to a national solicitation process to identify possible training sites.

◆ Curriculum development and pilot trainings

Guided by the National Judicial College, project staff developed a curriculum that built upon new and existing training materials on the topics of procedural fairness research, verbal and nonverbal communication, and cultural competency. The Improving Courtroom Communication curriculum, “Enhancing Procedural Fairness,” is one of the first of its kind. It attempts to translate the principles of procedural fairness into concrete practices that can be incorporated into a busy criminal court context.

The training includes five modules:

- I. **The Role of Procedural Fairness**, including research findings on the impact of procedural fairness in various justice system contexts;
- II. **Verbal Communication**, including how written and oral communication in the courtroom affects perceptions of fairness;
- III. **Nonverbal Communication**, including how body language, tone, and other nonverbal communication affects perceptions of fairness;
- IV. **Considering Special Populations**, including how communication can be adapted to meet the needs of court participants who may require special attention; and
- V. **Implementing Procedural Fairness**, including group brainstorming and the development of an individualized action plan by each participant.

The curriculum was piloted in Milwaukee, Wisconsin, in April 2012. In preparation for the pilot training, project staff worked closely with court system leaders in Milwaukee to tailor the curriculum to local needs. Advisors included Milwaukee Chief Judge Jeffrey Kremers, District Court Administrator Bruce Harvey, District Attorney John Chisholm, and First Assistant State Public Defender Tom Reed. Project staff also helped local leadership think about other court-wide efforts that could complement the project's objectives, such as improving courthouse navigation and signage. The modules themselves were facilitated by Professor Tom Tyler, communications expert Kelly Tait, and Chief Judge Jeffrey Kremers, incorporating a mix of lecture, demonstration, and group discussion.

The curriculum was later adapted in three additional jurisdictions in early 2014, following a national solicitation. Over 25 jurisdictions applied to be part of this second round of trainings. The selected jurisdictions were the Delaware Justice of the Peace Court, 8th Judicial District of Colorado (Larimer and Jackson Counties), and 11th Judicial Circuit of Florida (Miami-Dade County). Project staff engaged each jurisdiction in a planning process that included site visits, interviews and focus groups with key system partners, and the collection and analysis of baseline data. Faculty for these trainings included Chad Schmucker, president of the National Judicial College; Alex Calabrese, presiding judge of the Red Hook Community Justice Center; William Dressel, past president of the National Judicial College; Fern Fisher, Deputy Chief Administrative Judge for New York City; Rosa Peralta, former research director of the National Legal Aid & Defender Association; George Yeannakis, special consultant to Team Child; and Donna Ginn, a diversity training consultant.

Each of the trainings included a mix of judicial and non-judicial court staff, including police officers, court administration, prosecutors, public defenders and defense counsel, and representatives from probation and corrections.

Participants in the training were encouraged to develop an individualized list of communication strategies they would work on, such as crafting a new and improved script for opening court, announcing the purpose of the proceeding after the case is called, and introducing themselves to defendants and audience members every morning. On an agency- or system-level, outcomes included the creation of a video peer review process in Delaware, the re-drafting of handouts from the clerk's office (e.g. "Most Common County Definitions"), the re-design of courthouse maps in Fort Collins, and a commitment to continuing procedural justice training efforts for judges and other court staff in several locations.

◆ Pilot training evaluation

Researchers conducted a quasi-experimental evaluation in Milwaukee to measure two key impacts: changes in judicial perceptions and behavior and changes in defendant perceptions and behavior (namely, compliance with court orders and compliance with the law generally). Local researchers conducted interviews with defendants from January through August 2012, supplying pre- and post-training data about defendants' perceptions of their court experience. Researchers also tracked defendants' compliance with court orders (*e.g.* successfully completing a term of probation or paying a fine) and their compliance with the law generally (*i.e.* incidence of re-arrest). This was supplemented by structured observations in the courtrooms of seven Milwaukee judges to evaluate which communication practices were employed both before and after the training. Lastly, pre- and post-training surveys and a structured focus group were conducted to measure participants' attitudes and perceptions about procedural justice.

The study showed that the training succeeded in changing the behavior of participants. In particular, it increased training participants' use of 14 out of 17 communication practices, such as making eye contact with defendants, using plain English to explain procedures and decisions, and asking if defendants or their attorneys had anything to say before decisions were announced. The study was also consistent with previous research, showing that existing, high levels of procedural justice were correlated with favorable perceptions of the process. The study did not find, however, that the changes in judicial practice after the training produced a statistically significant improvement in defendant perceptions; perceptions started high and remained high.

Feedback solicited via participant focus groups and surveys was overwhelmingly positive. “[The training] reinforced for me things that I intuitively understood were important to do,” said one judge. “It gave me additional incentives to continue to improve because there is a value to it.” Participants suggested that presenting research is particularly helpful in convincing skeptical audiences to give procedural justice proper consideration. “If you really want to change behaviors, you have to show the benefits,” said one participant. “[Judges will] see fewer cases, and they’ll feel better about what they’re doing.”

◆ Online learning platform

To expand the reach of the Enhancing Procedural Fairness training curriculum, the Center for Court Innovation developed a free, multi-module online training platform that features a range of audiovisual materials on procedural justice. Content is presented by project faculty, including Professor Tom Tyler, communications expert Kelly Tait, and Chief Judge Jeffrey Kremers, as well as live courtroom communication demonstrations by other judges. The platform also includes supplemental content such as pre- and post-training quizzes and additional readings.



ONLINE LEARNING SYSTEM

Chief Judge Jeffrey Kremers, Milwaukee County

◆ Evaluation toolkit

Building on the tools developed for the pilot project evaluation in Milwaukee, the Center for Court Innovation adapted a set of evaluation tools that could be used by judges and other court personnel to assess their procedural justice efforts. These tools include a defendant survey, a courtroom observation form, and a courthouse assessment. The defendant survey asks court users to reflect on their experiences with the judge and other court staff, as well as with navigating the courthouse. The courtroom observation form and courthouse assessment, on the other hand, can be completed by court personnel directly and are geared to provide a snapshot of current practice and flag opportunities for improvement. Researchers pilot-tested these forms with two jurisdictions to gauge their accessibility and ease of use. Each form in the toolkit comes with a user guide and instructions for how to analyze and use the data collected without the assistance of a research partner.

◆ “Practical Tips for Courts”

The Practical Tips for Courts document provides a user-friendly distillation of communication strategies designed to promote perceptions of fairness. Each of the suggested practices is tied to one or more of the critical dimensions of procedural fairness: voice, respect, neutrality, and understanding. The document covers practices from improving courthouse signage to ensuring that defendants have a voice during sentencing hearings. The goal is to encourage practitioners to commit to improving their daily practice, even in the midst of large caseloads and stressful environments.

Lessons Learned

After working closely with four jurisdictions and training several hundred practitioners, several lessons have emerged for future training and implementation.

1. Focus on the research

Providing an in-depth look at the research – both in terms of procedural fairness and improved communication techniques – was crucial to winning over skeptical audiences.

2. Address efficiency concerns

Large caseloads are an all-too-common concern in court systems, putting considerable pressure on court staff to process cases as efficiently as possible. The resulting “assembly-line” mentality, as described by Judge Kevin Burke and Judge Steve Leben, doesn’t create an environment well-suited for respectful treatment.⁵ Procedural justice trainings should emphasize that new communication practices can enhance system effectiveness by improving compliance and reducing re-arrest rates. Ideally, future research will document the time saved by employing various procedural justice strategies.

3. Tap into peer networks

While many judges already employ effective communication techniques in their daily practice, there is often some room for improvement. Group brainstorming during the training sessions gave participants an opportunity to share with one another what works for them. Informal

⁵ Burke, K. & S. Leben. 2007. Procedural Fairness: A Key Ingredient in Public Satisfaction. The American Judges Association.

competition among judges motivated the spread of new practices; for example, when one judge posted new and improved courtroom signs outside his courtroom, other judges followed suit.

4. Encourage a system-wide discussion

System-wide changes – such as changing court security protocols or courthouse signage – are no small feat given fiscal and bureaucratic obstacles. But inter-agency discussion among the judiciary, court administration, prosecutors, defenders, and other players can be a valuable step in laying the groundwork for future change. For all of the pilot jurisdictions, the one-day training was an opportunity for local practitioners to work in a multi-disciplinary setting with their colleagues, and the training jump-started broader conversations about how to improve the delivery of justice.

5. Provide planning and follow-up

Implementing improved practices – whether changing how a judge talks in a courtroom or how an entire agency conducts business – requires more than a one-time conversation or an annual training. The project’s intensive work with four training sites demonstrated the immense value of engaging with the topic in the months leading up to and following the one-day training. These efforts included monthly meetings with a range of invested stakeholders, the collection and analysis of relevant data, and the coordination of procedural justice efforts with other existing programs (*e.g.* leadership committees and cultural competency training efforts). Embedding procedural justice reforms in these and other institutionalized practices can help it endure and flourish over time.

Next Steps

Procedural justice is slowly but surely moving from the margins of the justice system into the mainstream. The concept is the cornerstone of a number of recent federal grant programs, not the least of which is the Department of Justice’s new National Center for Building Community Trust and Justice, a multi-faceted initiative focusing on improving police-community relations. The topic has also been featured at some of the country’s largest and most influential criminal justice conferences, including those of the International Association of Chiefs of Police and the American Probation and Parole Association.

Building on this momentum, more can be done to develop training methods that are both cost-efficient (*e.g.* online trainings and peer-to-peer networks) and able to achieve enduring changes in court practice. An important first step would be a commitment to measuring current practices – through courtroom observations and/or surveys of court users – to get a clear picture of local challenges and priority areas. And recognizing that the conversation to date has been largely concentrated on law enforcement and judicial training, the field should invest further in translating procedural justice practices for other audiences, such as prosecutors and community corrections.

The legitimacy of the justice system is a national concern. The justice system depends upon the active participation of the citizenry in order to function properly. Procedural justice has the potential to drive significant reforms of local justice systems and to help improve the legitimacy of the system, particularly in the eyes of minority populations. Hopefully, in the days to come we will see continued experimentation as reformers around the country test how enhanced communication practices and other environmental improvements can help change the behavior of defendants and promote public trust in justice.

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Interested parties may track the project's progress at
www.courtinnovation.org/proceduraljustice.

Specific inquiries may be directed to info@courtinnovation.org.
