

CENTER

FOR

COURT

INNOVATION

Procedural Justice: Practical Tips for Courts

by Emily Gold LaGratta

About the Center for Court Innovation

The Center for Court Innovation is a non-profit organization that seeks to help create a more effective and humane justice system by designing and implementing operating programs, performing original research, and providing reformers around the world with the tools they need to improve public safety, reduce incarceration, and enhance public trust in justice.

About This Report

This project was supported by Grant No. BJA 2010-DB-BX-K050 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the U.S. Department of Justice's Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking. Points of view or opinions in this document are those of the author and do not necessarily represent the official positions or policies of the U.S. Department of Justice.

October 2015.



BJA
Bureau of Justice Assistance
U.S. Department of Justice

Procedural Justice: Practical Tips for Courts

Research shows 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, as distinguished from distributive justice, which refers to the impressions derived from case outcomes (*i.e.* whether the litigant ultimately “won” or “lost” the case). Numerous studies have linked procedural justice to increased compliance with court orders and reduced recidivism.¹

This resource was developed as part of a multi-year collaboration involving the Center for Court Innovation, National Judicial College, and the U.S. Department of Justice’s Bureau of Justice Assistance, with guidance from a national advisory board of judges, court administrators, academics, and others. “Practical Tips for Courts” is a compilation of communication strategies that can be used to promote perceptions of fairness. Each of the suggested practices is tied to one or more of these critical dimensions of procedural justice: **voice** (litigants’ perception that they have an opportunity to be heard), **respect** (litigants’ perception that the judge and other court actors treat them with dignity), **neutrality** (litigants’ perception that decisions are made without bias), and **understanding** (litigants’ comprehension of the language used in court and how decisions are made).

This resource is not intended to be comprehensive but rather a sampling of the types of interactions that can enhance perceptions of fairness. For more information about procedural justice and the Improving Courtroom Communication project, please visit www.courtinnovation.org/proceduraljustice.

¹ See, e.g., Tyler, T.R. 1990. *Why People Obey the Law*. Yale University Press New Haven: London; 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*. New York, NY: Center for Court Innovation; Papachristos, Andrew V., Tracey Meares, and Jeffrey Fagan. 2007. “Attention Felons: Evaluating Project Safe Neighborhoods in Chicago,” *Journal of Empirical Legal Studies*.

Courthouse environment

Security screenings

Ensure that all security measures, such as checkpoints and/or metal detectors, are administered with respect. Court officers should be encouraged to convey procedures orally and through signage that uses clear and respectful language.

Signage

Examine facility signage throughout the courthouse for comprehensibility. Signs should use an easy-to-read font type and size, written in plain language, and be posted at eye level. Limit the use of all capital letters and bold typeface, except for short titles and phrases.

Information desks

Clearly designate the hours of the information desk. Re-route court participants to another source of information when the desk is closed. Anticipate and address frequently asked questions with pre-printed materials.

Accessibility

Clearly designate handicap-accessible entrances and elevators. Ensure that oral and written instructions have ADA compliant versions for the visually and hearing impaired.

Décor

Opt for landscape pictures or other culturally neutral images.

Feedback

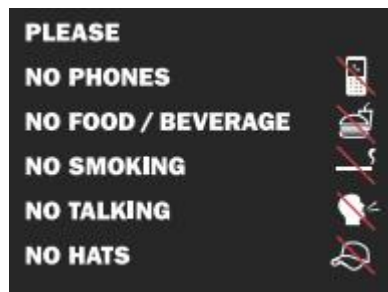
Provide court users with an opportunity to offer regular feedback via a comment box or other method. You may also consider asking community members to help audit the navigability of the courthouse.

Courtroom management

- **Post clear courtroom rules**

Rules should be simple, clearly posted, and consistent throughout the courthouse.

EXAMPLE:



Efforts should be made to use respectful language. Whenever possible, rules should be communicated in images and words, using Spanish or other common secondary languages as needed. Court staff should enforce rules using a respectful tone of voice.

- **Explain the reason for late starts**

Court sessions should begin promptly at the time scheduled to demonstrate respect for everyone's time. Thank audience members for being on time. If court does not start on time, court staff should tell the audience the reason for the delay and the anticipated start time.

EXAMPLE: *"Thank you for being here on time. We will begin court as soon as your attorneys have arrived. I appreciate your patience."*

- **Explain the order in which cases will be called**

Giving information about the order in which cases will be called demonstrates respect for those who are waiting, including friends and family who are hoping to see a detained defendant. Consider explaining why certain cases are called first to reduce the risk that the practice will be perceived as showing favoritism or bias.

During each court appearance

- **Introduce yourself**

Judges should introduce themselves at the beginning of proceedings, making eye contact with litigants and other audience members. Court staff can recite the basic rules and format of the court proceedings at the beginning of each court session. Written procedures can be posted in the courtroom to reinforce understanding.

- **Greet all parties neutrally**

Judges should address litigants and attorneys by name and with eye contact. They should demonstrate neutrality by treating all lawyers respectfully and without favoritism. This includes minimizing the use of jokes or other communication that could be misinterpreted by court users.

- **Address any timing concerns**

If court will be particularly busy, judges should acknowledge this and outline strategies for making things run smoothly. This can help relax the audience, as well as make the process seem more transparent and respectful.

EXAMPLE: *"I apologize if I seem rushed. Each case is important to me, and we will work together to get through today's calendar as quickly as possible, while giving each case the time it needs."*

- **Explain extraneous factors**

If there are factors that will affect a judge's conduct or mood, they should consider adjusting their behavior accordingly. When appropriate, judges should explain them to the audience. This can humanize the experience and avoid court users' making an incorrect assumption.

EXAMPLE: *"I am getting over the flu, so please excuse me if I look sleepy or uncomfortable."*

EXAMPLE: *“Ms. Smith: I’m going to ask the prosecutor some questions first, then I’ll ask your lawyer some questions. After that, you’ll have a chance to ask questions of me or your attorney before I make my decision.”*

□ **Explain the court process and how decisions are made**

The purpose of each appearance should be explained in plain language. The defendant should be informed if and when she will have an opportunity to speak and ask questions. Judges and attorneys should demonstrate neutrality by explaining in plain language what factors will be considered before a decision is made.

□ **Use plain language**

Minimize legal jargon or acronyms so that defendants can follow the conversation. If necessary, explain legal jargon in plain language. Litigants should be asked to describe in their own words what they understood so any necessary clarifications can be made.

□ **Make eye contact**

Eye contact from an authority figure is perceived as a sign of respect. Try to make eye contact when speaking and listening. Consider other body language that might demonstrate that you are listening and engaged. Be conscious of court users’ body language, too, looking for signs of nervousness or frustration. Be aware that court users who avoid making eye contact with you may be from a culture where eye contact with authority figures is perceived to be disrespectful.

□ **Ask open-ended questions**

Find opportunities to invite the defendant to tell his/her side of the story, whether directly or via defense counsel. Use open-ended questions to invite more than a simple “yes” or “no” response. Judges should warn litigants that they may need to interrupt them to keep the court proceeding moving forward.

EXAMPLE: *“Mr. Smith: I’ve explained what is expected of you, but it’s important to me that you understand. What questions do you have?”*

□ **Explain sidebars**

Sidebars are an example of a court procedure that can seem alienating to litigants. Before lawyers approach the bench, judges should explain that sidebars are brief discussions that do not go on the record, and encourage lawyers to summarize the conversation for their clients afterward.

□ **Stay on task**

Judges should avoid reading or completing paperwork while a case is being heard. If they do need to divert their attention, they should think about explaining this to the defendant and the audience. In general, judges should take occasional short breaks to keep themselves focused.

EXAMPLE: *"I am going to take notes on my computer while you're talking. I will be listening to you as I type."*

□ **Personalize scripted language**

Scripts can be helpful to outline key points and help convey required information efficiently. Wherever possible, scripts should be personalized – reading verbatim can minimize the intended importance of the message. Judges should consider asking defendants to paraphrase what they understood the scripted language to mean to ensure the proper meaning was conveyed.

EXAMPLE: *"Ms. Smith: I'm going to read you the three things I must consider at sentencing. It's important to me that you understand these factors. After I finish, I'm going to ask you to summarize those three things in your own words."*

Tips for certain types of proceedings

Certain types of criminal proceedings may present unique obstacles to enhancing procedural fairness. Judges should consider the following:

Bail hearings

- Ask defendants to repeat back their understanding of any orders of protection. The order should be provided in clear, plain language and typed in a large font.
- Explain immediate next steps related to probation intake or pre-trial release mandates. Consider having staff or volunteers direct defendants to the intake office.
- Ensure that instructions for a defendant's next court appearance are given clearly – both orally and in writing.
- Call and/or send written reminders of subsequent court dates. Research shows that court date reminders using procedurally just language (*e.g.* respectful tone, clear expectations) are more effective than those that only emphasize the consequences of failure to appear.

Plea hearings

- Consider ways to give voice to defendants, either directly or via their attorneys, during plea allocutions and/or sentencing hearings.
- Go beyond rote plea colloquy questions to ensure true understanding. Consider asking defendants to repeat back their understanding of what rights they are surrendering by pleading guilty.
- If a defendant seems unsure about his desire to plead guilty, offer a short recess so he can discuss with counsel and reflect on the terms of the plea. Also, consider having a clear, planned response for a defendant who wants to take a plea but also asserts that he is not guilty.
- If defendants must disclose any mental illness/medications to ensure they are of sound mind when making a plea decision, this should be clearly explained. Whenever possible, ask questions privately.

EXAMPLE: *"It's important to me that you understand your rights. For this reason, can you tell me whether you take any medications to clear your mind?"*

Sentencing

- Explain what factors will (and will not) be considered during sentencing, making it clear that while the defense attorney and prosecutors will have their say, their recommendations will not necessarily be followed.
- Describe the benefits of compliance and the consequences of non-compliance when outlining a sentence. Ask defendants to repeat back what is expected of them. Convey to defendants and to the audience that it is in everyone's best interest if the defendant is able to successfully complete his sentence.

- Provide a written summary of sentencing requirements in plain language. If the sentence includes probation or other community-based referral, briefly explain the intake process and what to expect going forward.
- Demonstrate interest in the defendant getting the help she needs to avoid future offending. Direct defendants to voluntary service providers or referrals that may be able to support them in getting their lives on track.

Addressing special populations

□ In-custody defendants

- Be aware of holding area conditions and acknowledge the effects of detention on defendants (*e.g.* hunger, fatigue).
- Consider opportunities for defendants to acknowledge and/or interact with family members in the audience; if not possible, explain why contact with family members will not be allowed.

□ Court users with limited English proficiency

- Focus on respectful and non-intimidating body language with limited English proficiency court users.
- Work to ensure that interpretation services are provided when needed.

EXAMPLE:



□ Defendants with social service needs

- Make connections with local service providers. Invite reputable providers to make presentations to judicial and other court staff during lunch meetings or other trainings.
- When appropriate, refer court users to additional services on a voluntary basis. Making voluntary referrals can be a way to show helpfulness, even if court users opt not to avail themselves of those services.

□ Other challenging populations

- Anticipate challenging or stressful populations – such as distraught family members or individuals with behavioral disturbances – by preparing scripts or other plans to respond appropriately.