



# Conversations About Procedural Justice

Foreword by Emily LaGratta and Tom Tyler

# TO BE FAIR

## Conversations About Procedural Justice

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## Foreword

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Recent years have revealed a sobering reality: many Americans do not have a high level of trust and confidence in justice. Our justice system faces many challenges but none are more urgent than this. The whole system runs on trust. Without it, it is impossible to solve crimes, convene juries, or promote compliance with court orders.

So how do we advance a conversation about public trust?

One starting place is to spend a couple hours observing our justice system in action. Sit in the waiting area of a busy police precinct, observe a high-volume court, or tour your local jail. It doesn't take long to see how people might walk away from these experiences feeling disrespected and dissatisfied. Most of these spaces are not designed to promote positive interactions between justice officials and the public. This is bad news, particularly for those interested in burnishing the tarnished image of justice among black Americans and other minority groups.

The research tells us that when the public feels that they don't have a voice in the process or understand their basic rights, they are less likely to comply with what the system asks of them. And they are less likely to obey the law going forward. The system, in effect, is setting itself up for future bad outcomes.

The good news is that the inverse is true: when people trust system actors and view them as legitimate, they are more likely to follow the law. Respectful traffic stops that are transparent about procedures, for example, can build trust and increase future compliance. When court users understand what happened and feel respected during a court appearance, however brief, they too feel more trusting of the system and more likely to comply with the court's orders.

This concept is called procedural justice. Procedural justice research shows that how people feel they were treated by system actors influences compliance with the law, regardless of whether they “win” or “lose.” Of course, people prefer to win—but they accept losing more readily when they are treated fairly.

Research studies have boiled procedural justice down to a handful of key elements:

- Respect for people and their rights
- Voice (or an opportunity to tell their side of the story)
- Neutrality of decision-making, and
- Promoting understanding of the process.

Unlike some other evidence-based approaches, procedural justice is relatively low-cost and easy to implement. Being respectful—making eye contact, offering a smile—doesn’t cost a dime. Adding transparency measures to show how decisions are made—based on law, not personal opinion—are pretty straight-forward and uncontroversial.

But of course, there are plenty of obstacles. Asking lawyers to focus on something beyond winning and losing is among them. Balancing respect with security is another.

This book is a collection of stories from the field—judges, lawyers, court managers, probation officials, and others who are testing this concept and confronting challenges on the ground. These conversations provide a sampling of what procedural justice looks like in practice: from changing courtroom dynamics to tweaking hiring and training strategies to improving the built environment. They are inspiring in their range and, at times, simplicity.

Of course, this collection is not complete. We fully expect that readers will have their own promising practices that are deserving of mention. And we want to hear from you! Please provide feedback and ideas to us per the instructions on the last page of this book.

So this text is just a starting point to tell the stories of procedural justice and continue a dialogue within the field about building public trust. It is not enough for us to be fair. We must also be seen as fair. We would like to dedicate this book to the many professionals who donated their time and to the countless others whose stories have not yet been written.

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**Emily LaGratta** is the director of procedural justice initiatives at the Center for Court Innovation. In this role, she provides training, site assessments, and assistance with site-based planning and implementation efforts. She is the author of several publications on the topic: “Procedural Justice: Practical Tips for Courts” (2015); “Police & Community: Strengthening Legitimacy” (2015); “Measuring Perceptions of Fairness: An Evaluation Toolkit” (2015); and “The Case for Procedural Justice: Fairness as a Crime Prevention Tool” (COPS Office *Dispatch*, 2013). She is a graduate of Pomona College and the University of Wisconsin Law School.

**Tom Tyler** is the Macklin Fleming Professor of Law and Professor of Psychology at Yale Law School and a professor (by courtesy) at the Yale School of Management. His research explores the role of justice in shaping people’s relationships with groups, organizations, communities, and societies. He is the author of several books, including *Why People Cooperate* (2011); *Legitimacy and Criminal Justice* (2007); *Why People Obey the Law* (2006); *Trust in the Law* (2002); and *Cooperation in Groups* (2000). He was awarded the Harry J. Kalven Jr. Award by the Law and Society Association in 2000 and the International Society for Justice Research’s Lifetime Achievement Award in 2012. He holds a B.A. in psychology from Columbia and an M.A. and Ph.D. in social psychology from the University of California at Los Angeles.

# ANA BERMÚDEZ



Ana M. Bermúdez is the New York City Department of Probation's first Latina and second woman to be appointed commissioner. A graduate of Brown University and Yale Law School, Commissioner Bermudez began her professional career representing children in family court cases at the Legal Aid Society. Prior to being named commissioner, she served as probation's deputy commissioner of juvenile operations from 2010 through 2014. Prior to 2010, she was the director of juvenile justice programs at the Children's Aid Society. She has also worked at The Center for Alternative Sentencing and Employment Services.

## How did you first hear of procedural justice and what were your initial impressions of the idea?

When I first heard the term I thought, this is a really important concept not just for the justice system, but for many other aspects of life: government, business, education, just to name a few. The term also resonated with me because its tenets reflect how I've tried to conduct myself in all of the roles I play: as a lawyer, manager, and parent. The principles of restorative justice have been a major influence in my life for years, and the concept of procedural justice is so closely related it's a natural fit. The common theme is that we are most effective when we work with people, as opposed to doing things to or for them. This is true in working with clients and with staff. When you treat people with dignity and respect, you get that back from them. For some, the fact that I call our clients "clients" has been criticized as "soft on crime." There seems to be this popular belief that if we don't constantly refer to them as criminals and juvenile delinquents then we won't hold them accountable. But we believe that being smart on crime involves recognizing people's humanity—treating them with fairness and respect by following procedural justice as this approach is the most effective at generating the behavior change and compliance we're seeking.

## How have you worked to implement the concept within the probation department?

We occupy a very distinct role in the system where we have to be able to generate the behavior change necessary, for those who need

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When you treat people with dignity and respect, you get that back from them.

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We believe that being smart on crime involves recognizing people’s humanity.

it, to get people out of the system. Adhering to procedural justice is critical to our ability to succeed in our work. So we’ve implemented it on several levels: programmatically, with our client engagement; in a managerial fashion, in terms of staff; and in our physical spaces.

First, programmatically, in terms of how we interact with clients: staff are trained in what’s known as Motivational Interviewing, which is grounded in acceptance, empathy, respect, and recognizing the self-efficacy and autonomy of the people we work with. In conjunction with this method, staff are also trained in using restorative practices and principles to hold people accountable. This requires probation officers to constantly engage with people on probation regarding the decisions they make, the impact of those decisions, and their plans for making sure a situation is rectified or a success can be continued.

Second, in terms of how we manage staff, I try wherever possible to bring transparency into staff interactions, or when it’s not transparent, at least explicitly acknowledge that it isn’t. I try to model the following for our managers: if you’re the boss, you get input from people about a decision or project you are contemplating with brainstorming and discussions, while explicitly noting that not all input will be used. You then communicate your decisions with an explanation of your rationale for the choices you made and then you review the expectations that derive from the decisions, especially

if the decision changes or updates rules or policies. Research in management practices shows that explaining decisions to people—even if the explanation is simply saying, “I can’t discuss it”—goes a long way in gaining compliance with initiatives and building trust in the leadership.

Finally, we have manifested procedural justice in the physical spaces where we work, which was a major initiative of former Commissioner Vincent Schiraldi. We’ve redone some of our waiting rooms to have posters and magazines to look more like a doctor’s office than a probation department or a government entity. We engaged our clients and staff in repainting and designing posters. We put computers in there for people to do job searches. We also established multi-service centers called NeONs—Neighborhood Opportunity Networks—in some of the communities in which many of our clients live. These spaces have become a comfort zone for clients and for other community residents as well. We have brought in other services, which are available to community residents who aren’t under our supervision: arts programming, municipal ID application stations, and health insurance, just to name a few. And in many of the NeONs, there are no metal detectors in the lobby because we believe that safety is created by procedural justice—by having a relationship with people, by treating them well.

Also, each NeON has a local stakeholder group and through that we’ve been able to create an arts initiative that is very local. Small arts organizations and individual artists can get grants to run programs for both our clients and other community members. This not only provides access to arts programming, but also gives local stakeholders control over the process of deciding what programs make the most sense for their own communities. And having the arts programs run in our physical spaces transforms those spaces into something beyond just traditional probation offices—they are safe, vibrant, and truly community-based spaces.



### What kind of feedback have you received about the waiting rooms and NeONs?

In a video interview, one of our young adult clients who participates in our NeON Arts program put it best, describing the “before and after” of our physical and philosophical transformation: “Nobody wanted to go to probation. I’d see people in there like, ‘ah, I just want to get out, I can’t wait to go back to the neighborhood.’ Nobody wanted to be there. You’d go there, see your probation officer, maybe take a test, you’re out... It didn’t really help, not like what NeON is doing now, coming up with programs and a lot of creative ideas to get in touch with our creative sides.” And other community members appreciate our NeONs because of the services we bring in and because it’s a safe, comfortable space. When we first opened our Bronx NeON, next to a well-used shopping strip, elderly women started coming in our front area to take a breather. We couldn’t ask for more genuine, positive feedback than that.

### What are the challenges associated with using procedural justice as a management strategy?

I think my managerial style is consistent with the concept, but I’m always struggling with making decisions quickly and efficiently while incorporating people’s voices and taking the time to discuss the rationale for my decisions. I think managers at my level convince themselves that they can’t do that because of constraints or whatever, but if you don’t do it, then you don’t get the benefit of people being more invested in the work and receptive to complying. What you may gain in time you will lose in implementation.

### Are there political or public relations obstacles to implementing procedural justice?

I think that in our business, procedural justice practices and principles can be interpreted as “soft on crime.” If I do have to confront something head-on, I just personalize it. I say, “Imagine if this was your child or your cousin or your uncle, would you want them to be treated like a number, or instead, to be given the time of day they deserve?” That is sometimes the most effective strategy. To borrow

from Bryan Stevenson, it is important to remember that each person is more than the worst thing he or she has ever done. None of us want to be known solely for the worst things we have done, and we don’t want our family members to be seen in that light, either. Nor should neighborhoods be defined solely by their worst statistics. So if we can shift the narrative about people involved in the criminal and juvenile justice systems, and about the neighborhoods they live in, we can move in the direction of gaining more understanding of how absolutely critical procedural justice is to the design of a fair and effective system.

### Can you share an example of procedural justice in action with clients?

I have a tiny story, actually. These are the little moments, right? We had a group of young people working far out in Brooklyn, and they all had to take a long train ride to get there. It became a problem because the train station was going to be shut down. The New York Police Department offered one of their vans to transport the kids to the site. Instead of springing this on the kids and assuming they would be fine with traveling in the police van, the project manager called all of them and said, “Look, we have this opportunity, but it’s a police van. It could have negative associations for you, being in a police vehicle. How do you feel about that?” The kids were able to express their opinions but ultimately said, “That’s all right, we’ll take the van.” Something really special happened. The young people showed up, they rode with the police officers, and in

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Imagine if this was your child or your cousin or your uncle, would you want them to be treated like a number?

the process, they established a different relationship with the police officers. In turn, the police officers saw these kids showing up on the weekends, contributing to their community.

Another client strategy is that we are trying to train our officers to relate differently to people coming in to probation. Instead of just coming at them with, “What’s wrong with you?” or, “I’m going to file a violation if you don’t do x or y,” we’re training them to ask, “What happened?” and “Are you okay?” first, before asking them to reflect and commit to an improvement plan.

#### Are you seeing any impact on clients at a broader level?

Along with not getting re-arrested, there is a change of attitude right now in how young people on probation interact with probation officers, and I think it’s born out of this process of procedural justice and the esteem-building that goes along with it. If you’re treated with respect, then you show respect. It’s huge for young people. Disrespect is the fuel to much of their system-involvement. It’s foundational.

#### How do you implement procedural justice at the institutional level?

A major component is relentless communication around it, and modeling it with our senior leadership so that they can in turn do the same with their staff. We have monthly senior leadership meetings, held in a circle, where participants can weigh in on decisions that have to be made and where I can explain decisions that were made. I also meet with staff in our field offices and do case reviews for all shooting incidents, whether our person got shot or they were arrested for being the shooter. As much as possible, I run these reviews from a learning perspective. The probation officer definitely gets the message that we’re disappointed about what happened, but as with our clients, we separate the deed from the doer. For instance, I always open the meeting with, “We’re not here to decide if you’re a bad probation officer or supervisor; we’re trying to figure out what happened, what we can learn from it, and how we move forward so that this does not happen again.” I have heard that staff in these situations who have

been called in for case reviews have been spreading the word to their colleagues that, while it’s not a pleasant process, they felt like that were treated with respect and were able to learn from their mistakes.

Part of the way to embed this is through role-modeling and training. New probation officers get trained in motivational interviewing and restorative justice, and later we do booster sessions. We have a training unit. It’s just part of the vision. It’s part of everything we do at this point.

#### What advice would you give leaders elsewhere who may be interested in procedural justice?

The challenging thing is how to convince people that there is a need to change the way they’ve been doing business for years. This is especially challenging if people feel like the results of their work are good or good enough. I think there are a few keys to success. First, find thought-partners in similar organizations who have implemented systematic change to see what worked for them. Second, figure out how the changes you are trying to make are actually consistent with your existing organizational culture, and highlight those consistencies in messaging to all staff. And last but not least, develop an implementation plan in collaboration with your managers, since they are best positioned to know what will resonate most effectively.

# JANELLE BRUNIN



Janelle Brunin is the district administrator for the Eighth Judicial District of the Colorado Judicial Branch, which encompasses two counties in northern Colorado. She began her career with the district in January 1995 when she worked in the clerk of court office and as support staff to a judicial officer. She was promoted to administration and served as deputy administrator before assuming her duties as district administrator in October 2009. Prior to working for the Colorado Judicial Branch, she worked as a commercial loans collection officer and paralegal. She is a graduate of Regis University.

## What has the implementation of procedural justice looked like in Colorado courts?

We have been enthusiastic about taking up the cause of procedural justice. It seems to make sense to everybody. When people experience difficulties within the justice system, it clogs up the courts and no one benefits, nothing happens. Under the chief judge's leadership, the state courts came up with self-help centers where court staff could walk people through the court process. Eventually, the legislature funded what are called self-represented litigant coordinators. At the local level, where I work, we went to Larimer County and requested money and space in our building to build a self-help center. If you build it, they will come. And they really came. Our self-help staff member was so inundated we got a second self-represented litigant coordinator. It has been extremely successful. That was one of the ways we implemented procedural fairness here.

## Did your efforts receive any pushback?

Not really. Fairness is something people in the justice system should be striving for. If you can point out something like, "This is an unfair practice and someone is at a disadvantage," who could have a reason not to jump on board for changing the practice? Once you have made clear how some of these things are impediments to people receiving access to justice or fairness, how can you argue with that?

## You helped organize a training for a variety of court partners on procedural justice. How did you frame it to ensure it was well received?

I think people see things depending on their own point of view. While district attorneys may see procedural justice in one light, public defenders and the defense bar see it in another. Law enforcement may see it in yet another light, and so on. We asked everyone to keep an open mind. We said, "This is something that could really benefit people. It could benefit the court system as a whole." We tried to communicate the goals with a positive attitude. We wanted it to feel important to people and have them feel like they are a part of it and were making a difference.

### What was the impact of the training?

A lot of things came out of the training. First, I think it opened our judges' eyes to another person's perspective. Judges made a commitment to really slow down and take just a moment to explain, "This is what's going to happen in the court today," and give people a little bit of background. It's amazing how just a little bit of knowledge like that can make a person feel more confident about what's happening in court. Once you explain it to judges, they say, "Of course, it makes perfect sense, but we're so busy getting through the courts' business that we weren't taking time to really consider the people that were involved in it and what their feelings were about it."

Second, we created resources to help litigants understand the process. Now when people come into our high-capacity arraignment courtroom, they're given maps of the building. We also took a look at some of our existing resources and tried to improve them. We bit the bullet and spent about \$15,000 putting in docket monitors that are centrally located and easy to find. We also went through our frequently used legal jargon and technical terms and provided definitions for them. We put out some general information. We devised flowcharts and handouts to assist people with handling evidence in court.

Finally, we did some follow-up court observations. We gave the judges and magistrates a score, considering whether or not they made eye contact, whether or not they explained things well, how their demeanor was, etc. We found that a lot of our judges were becoming a little more aware of what they were doing in court and how it was being received by the public.

### How about court users: have they noticed the changes?

I get responses from the public about the service they receive. They tell us that our people are knowledgeable, friendly, pleasant, and that they never make them feel like they're not important.

I think the population that benefits from procedural justice the most is the population that doesn't have an attorney. We serve a highly educated community. And a lot of times people will say, "I can go pay an attorney \$2,500 or I can put my thinking cap on and do this myself." Once they find out we have information available and that we're cheering them on and steering them in the right direction, people are more than happy to come in and do it themselves.

### Has procedural justice aligned with your court's access to justice efforts?

Definitely. I can tell you it really ignited the efforts of our Access to Justice Committee. We ended up compiling a list of attorneys that will take a sliding scale for certain types of cases. It energized our pro bono program. All of a sudden we had a lot more interest in folks being part of that work.

### What do you think is the biggest obstacle to implementing procedural justice?

I would say it's just a lack of resources. Developing templates, forms, information, handouts, processes—it all takes time. It takes a tremendous amount of effort just to keep up with the information. But there are savings too: procedural justice can help keep the court moving fairly expeditiously without a lot of problems along the way.

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Fairness is something people in the justice system should be striving for.

# KEVIN BURKE



Kevin Burke is a district judge in Hennepin County, Minnesota. Judge Burke was elected for four terms as chief judge and three terms as assistant chief judge. He has also served as the chair of the Conference of Chief Judges and as chair of the Minnesota Board of Public Defense. In 2003, he received the William H. Rehnquist Award from the National Center for State Courts. Judge Burke teaches at the University of Minnesota and University of St. Thomas law schools. He serves on the Board of Directors for the National Association of Court Management and is a past board member of the National Center for State Courts, the American Judicature Society, and the Institute for the Reform of the American Legal System. He is the current treasurer of the American Judges Association and the group's former president.

## First things first, why do you use the phrase “procedural fairness” instead of procedural justice?

A problem in advancing the issue of procedural fairness in courts is, in part, a marketing issue. In marketing, branding is important. My experience in talking to judges is that “procedural justice” doesn’t work as well as “procedural fairness,” and it is also problematic when you use the two terms interchangeably. The American Judges Association white paper that Judge Steve Leben and I wrote always used the word “procedural fairness.” That was a conscious decision.

One of the things that judges often say is that court administration is only interested in the quantity of cases we do, or the time we take, and they’re not interested in the quality of judicial decisions. Procedural fairness tells these judges, “Well, no, this is about fairness in courts.” What you measure is what you care about, and we know you care about fairness in your courts. We need to get courts to measure their fairness. The National Center for State Courts CourTools #1 is about access and fairness, not access and justice.

My vision is to get courts to focus on, “Do the parties coming into court have voice? Are they being heard? Are they understanding the process? Are they understanding the orders?” So, the bottom line is the language that we use is really important.

## So when and how did you first hear of procedural fairness?

In the mid to early 1990s, I read a piece that Professor Tom Tyler had written. It was about what gets people to obey judges’ orders. I was Chief Judge in Hennepin County at the time. We are a 62-judge, general jurisdiction court. There were not a lot of judges at that time who ever read academic works on procedural fairness. Even to this day, when I do presentations I’ll ask, “How many of you know who Tom Tyler is?” and, as important as he is to the field, most judges do not know who he is. I became quite interested in Tom’s work. At one point, I went to New York University to meet with Tom, and I brought the court administration leadership from Hennepin. When I ran for

re-election as Chief Judge, I ran on a platform that, if you elect me we're going to implement procedural fairness in our court. We got a silent shopper for our court. The silent shopper was a professor who spent a month in Hennepin District Court, then created a report that was frankly quite devastating about her observations of how we come across to people. We did a lot of videotaping of judges, which gave us another opportunity to self-evaluate. We also did some work on listening skills. We tested our listening skills and brought in academics to work with the judges to improve their listening skills.

Listening skills training does get people to stop and say, "Well, I can't make a really good decision if I don't actually hear people." One component of being an effective listener is to help the speaker. If somebody is feeling intimidated by the process or in the courthouse, their voice isn't going to be heard and you may not hear something that might make a difference.

#### How do you define procedural justice in your own words?

Obviously my branding message needs work, but to me, procedural fairness is ensuring people have a sense that they were heard and having people understand what the order is and why it was issued. If you go back to the early social science research on procedural fairness, explanations were a big factor. Judges need to think: "How could I explain this to a litigant?" When judges attend education programs on substantive law, they need to ask: "How can I explain this concept to someone?" If you can explain it well, you learned it well.

#### Big picture, how do you think this topic fits within the conversation about needed justice reform in this country?

It's simple: if you don't practice procedural fairness, it's difficult to get re-elected. In the high volume areas like traffic, misdemeanors, and family law, courts that do not adhere to procedural fairness principles are like a forest that is dry and has had no water. As a result, the conditions are set for a forest fire. Courts that do not focus on procedural fairness are vulnerable to a judicial election forest fire.

Courts are a branch of government in a toxic political environment. In this sharp-elbowed political environment, courts need a strategy and a message that resonates with the public. One effective strategy is to tell our critics, "We have a litigant's bill of rights or like Alaska, we have the Pledge of Fairness." If you look at the eroding public trust in government, it's mostly focused on the other two branches of government, but it's too close for comfort. We have a responsibility, as court leaders, to build public trust and confidence in our courts. Procedural fairness is a bedrock part of that effort.

#### How else do you make the pitch for why other judges should prioritize procedural justice?

The first reason is that procedural fairness is the right thing to do. But the another good reason is that procedural fairness increases compliance with orders. Better compliance with court orders reduces workload. What if court leaders said, "Here's our strategy: In 24 months we're going to set a goal to get 10 percent better compliance with our orders." Higher compliance with orders is like getting a 10 percent increase in the court budget. Procedural fairness will not get everybody to comply, but I think that if you look at most of the research, it is pretty reasonable to expect serious improvement in compliance with orders.

#### In your experience, have you found that defendants are more likely to obey the law when they perceive they have been treated fairly?

Sure. But that is not just my own experience as

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What you measure is what you care about. We need to get courts to measure their fairness.

a judge. Why are the outcomes in various drug courts so successful despite the fact that they have different styles? Some had sophisticated treatment. Some had pretty bland kinds of treatment. Some courts took very hardcore, chemically dependent people and others were so timid that Mother Teresa couldn't get in if she had a small amount of marijuana. But if you analyze all the evaluations of these programs, almost all them really did get better compliance with orders. The environment of drug courts is one where the defendant has a voice, is treated with respect, and does not view the judge as up there yelling, "You better not do dope or I'm going to throw you in jail." Therapeutic court judges have a different kind of style. It is very respectful, trustworthy. They are consciously or unconsciously very much driven by the principles of procedural fairness.

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**Volume is a challenge, but it's not an excuse for inferior justice.**

**Can you share any specific examples from your courtroom that highlight this point?**

When I got the Rehnquist Award, I told the Chief Justices of the United States and the Bar Leaders about a young man by the name of Isaac. Isaac was a gang member. He was about 20 or 21, and was in the drug court that I ran at the time. One afternoon I returned to my chambers and Isaac was back in the "secure area" outside my chambers, obviously upset. I asked, "What's up, Isaac?" He said, "My mom sent me down here." I asked, "Well, why?" He said some guys shot at his mother's house where he was staying early that morning. He was going to go with his uncle and his friends, get some

guns, and go back and find these guys. His mother said, "Isaac, before you do anything with your uncle I want you to go down and see Judge Burke." An African American mother who I had never met thought she could send her son to meet a white judge at the courthouse and that I might be able to convince her son not to kill somebody that day. I sat with Isaac for a couple of hours and talked. Isaac didn't kill anybody that day. I don't think he actually killed anybody ever, but the point was the situation certainly had that potential. If judges do it right, we will create examples that will dampen some of the racial disparity that's plaguing our country, and some of the economic disparity as well. Judges have to step up, do it right, and be advocates for systematic change.

I've had other instances where I see people I haven't seen in 10 or 15 years who will say, "I'm still trying to do good, Judge." Judges can connect with people and can have a positive impact. I had a very young woman in 1995 or 1996 who came into the drug court I presided over, and over the objection of the prosecutor, I didn't send her to prison. She is now one of the prison psychologists in Minnesota.

**How do you address the concerns of judges and other court professionals who feel that they don't have time to implement these practices?**

A certain number of judges will say, "This all sounds well and good, but I don't have the time to do that." My response to that is, I'm not a retired judge. I'm not a full-time consultant. I have calendars too, and so I understand the concern. We did a study in Hennepin a number of years ago to see whether people within five minutes of the bail or sentencing decision understood what the order was and why it was issued. Our study was based on the concern that 40% of the American public, according to one public opinion poll, believed that judges' orders are not understandable. I don't think judges are that bad, but what if we are? We interviewed defendants five minutes after the bail or sentencing decision. A number of judges got 100 percent of the defendants who understood what the order was and why, but some got

90, some got 80, and one got 60 percent. For those who claim they do not have the time to implement procedural fairness, the judges who got 100 percent went to lunch just as early as everybody else. It's not an acceptable excuse that judges don't have time to do it correctly.

For those whose assignment is high-volume traffic cases, you know how important those assignments are. All of us have heard of Ferguson, Missouri. The bottom line is that a little limited-jurisdiction traffic court can do a lot of damage to the community. Volume is a challenge, but it's not an excuse for inferior justice.

#### What other strategies are there for training judges as opposed to other court stakeholders?

I think you should start with the judges. If you start the other way around and the judge isn't committed to procedural fairness principles, it isn't going to work. Procedural fairness—voice, respect, making sure people understand, effectively communicating what the decision is and why it was made—is also a management strategy for running a court organization. Court employees need to have voices, be treated with respect, and trust court leaders. If the judges are jerks to the employees, the people at the counter are going to take that out on the people who appear at the counter. Judges, whether in New York or Wyoming, need to aspire to lead a courthouse that has the feel of Neiman Marcus. If you go to Neiman Marcus and stand there looking lost, somebody will come up and say, “Excuse me, ma'am, may I help you? Excuse me, sir, may I help you?” If you go into many courts in the United States and you stand looking lost, the security guard will kick you out at the end of the day.

#### How do you respond to pushback that procedural justice practices aren't part of the job?

The most prevalent push back today remains, “The volume is hard for me to deal with.” More recently, I haven't had judges say, “That's not my job. My only decision is how to get the rule of law right.” I

think that we've turned that corner. But a major challenge is to get courts to understand that volume is not an insurmountable challenge.

#### How do you think judges can lead the cause on this topic for other court staff to follow?

You have to talk with the judges and bluntly say, “If you're going to get the staff to do it, then we've got to watch our own behavior.” Judges already model behavior in the courtroom; they also need to model behavior throughout the courthouse. There's some recent data which indicates that judges are getting a little bit better in procedural fairness issues, but court staff are not making as much progress. So, I think that we need to spend more time with everyone in the courthouse on procedural fairness.

The more that people understand why we're doing this, the more effective staff training will be. First, procedural fairness is the right thing to do. Second, this is a strategy for dealing with budget issues. Court leaders may not get you more money for the budget, but if we get better compliance with orders, we're all better off. There inevitably will be conflicts. We need to teach judges how not to use the computer. If a judge starts getting a little bored with what somebody's saying, the temptation is to check the computer. Now you've lost eye contact. You're daydreaming. Getting the people who are the techies to understand procedural fairness and what implications the machines in the courtroom have or don't have is very important.

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One of the things that judges often say is that court administration is only interested in the quantity of cases we do, or the time we take, and they're not interested in the quality of judicial decisions. Procedural fairness tells these judges, “Well, no, this is about fairness in courts.”



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**If you look at the eroding public trust in government, it's mostly focused on the other two branches of government, but it's too close for comfort.**

**Are there specific strategies that you have developed or have advocated to adapt practice of procedural fairness to very specific populations such as people with mental health issues?**

Those populations require judges to be very sensitive to their use of language. People who are mentally ill do not have a communicable disease and they're not hard of hearing. Raising your voice is not an effective technique in dealing with the mentally ill. Judges need to be militantly patient with a person who is mentally ill. Judges need to be singularly focused on making sure that I use language that the person may connect with.

**What strategies do you recommend when addressing court users with a first language other than English?**

In the Hennepin County study regarding “did people understand the orders,” we learned that the Hispanic population who had interpreters actually understood what was going on in court better than people who were born in Minnesota and whose first language was English. You ask, “How did that happen?” The answer is, if you've lived here for any length of time, you may understand some English or may even be close to being completely fluent; the interpreter for that population, then, reinforced what you've actually understood.

The language we use in court is often not understandable to non-lawyers. Language can therefore be problematic when using an interpreter. “Your honor we are requesting

that you suppress evidence.” How do you translate that? The better way of expressing this might be a lawyer saying, “Your honor, we are asking the court not allow this evidence in the trial.” With the latter, the interpreter's got a better chance at effectively communicating what is going on. Judges, in dealing with a population with language issues, need to use language that has the highest probability of being effectively translated into the other person's language.

**Do you think different types of interpreter training would help?**

Training interpreters is good. Certifying interpreters is better. I think training would help but I think that the biggest thing is to get judges and lawyers to focus on improving their skills. Judges and lawyers might go through exercises in which there is an interpreter for them. You find a Ukrainian interpreter and then, “We're going to do this little experiment where everything is in Ukrainian.” What comes out of an experience like this is, “I don't understand any of this.” Now you get a sense of what it feels like for too many people in our courts.

**A lot of the work on procedural fairness has been focused on criminal defendants, but how do you think it can be applied to working with victims and witnesses in the courtroom?**

The dilemma for victims is, at what point should courts give voice to the victim without undermining some fundamental structures of the criminal justice system? Namely, the defendant is presumed innocent. While I passionately believe in the victim's input, in the end, it's really not the victim's call as to what's going to happen to the defendant. The victim should have input, but it's not a private civil lawsuit where they should be the driving force.

**Given the scope of what procedural justice attempts to do, what are some tangible ways its success can be measured?**

Courts need to measure whether the person leaving the courthouse understood the court's orders and the rationale behind why it was issued. Courts also need to measure, “Did I feel I was heard during this court proceeding?” The data gives us the opportunity to make a

more compelling case with budget authorities. An effective message could be: “The judges are spending less than a minute on these cases and your constituents—the people who vote for you—leave feeling like they weren’t heard.” The message that the judges are overworked is a pretty tired message of court budget advocacy. Everyone in the public sector is overworked, and there is not a lot of sympathy for the overworked public employee.

### What are some of the obstacles to the widespread adoption of procedural justice?

Getting court administration to collect data that is reasonably accurate, and making sure judges don’t feel threatened by it, are obstacles—but they’re important. A good example is the data collection in Utah. That data shows that the judges in Utah who have embraced the idea of procedural fairness, and practice procedural fairness, have the people in Utah thinking quite highly of the courts.

### What advice would you give a jurisdiction that’s just starting to think about this topic?

Read the American Judges Association white paper that Judge Steve Leben and I wrote. It has a large number of recommendations. The video camera is a great way to gain insight in how a judge comes across. A silent shopper is also useful. A local professor of communication from some community college or something like that, whose expertise is not the law, can spend time in court and give valuable feedback. Go sit for a morning with a colleague, take notes, go to lunch and give your colleague feedback.

### What are the next steps to furthering the work of procedural justice across the country?

We are on a pretty good path, but we need more champions. We need to try to figure out how to get the National Association of Court Management involved because they are a strong and influential organization. The Center for Court Innovation, the American Judges Association, and the National Judges Association have each

contributed a lot. Getting the American Bar Association and the National Association of Women Judges to take a leadership role would be terrific. Adding the National Council of Juvenile and Family Court Judges would be even better.

# ALAN DAVIS



Alan G. Davis took the bench as the fourth chief magistrate of the Delaware Justice of the Peace Court in July 2005. In that capacity, he acts as the head of a court composed of 60 judges, presiding at 14 locations throughout the state. The court's trial jurisdiction includes most traffic cases, many criminal misdemeanors, municipal and county code violations, specified civil jurisdiction up to \$15,000, and landlord/tenant possession actions. Prior to becoming chief magistrate, he practiced law in the Georgetown, Delaware firm of Henry Clay Davis III, P.A. as a litigator. He also served as chief minority counsel for the state House of Representatives. He has taught criminal law and procedure at Delaware Technical and Community College and clerked for the judges of the Superior Court of Delaware for Sussex County. He holds a bachelor's degree from the University of Virginia and received his J.D. from Delaware Law School (formerly Widener University School of Law).

## How would you define procedural justice?

Are you familiar with the 1980s movie *Road House*? Patrick Swayze is the new head bouncer for a bar that has a big problem. He brings in all of his bouncers and says, "We're going to talk about how we're going to run this joint." So he gives them a couple of rules and says, "The most important rule is, be nice. When they want to fight with you, be nice with them. When they want to make a scene, be nice. If they're causing a scene, start to walk them out the door, but be nice while you're walking them out the door. If you need help, get a second person and you'll both be nice."

It strikes me that part of procedural justice is about being nice to people. It doesn't cost anything. It doesn't hurt anyone. It doesn't take a whole lot more time to explain things to people and give them an understanding of what you're doing and why you're doing it. It's one of those things that makes a whole lot of sense and you wonder, "why haven't we been doing it this way all along?" I mean, we can do it in a challenging place like the bouncers in the movie. It's hard to be nice to people who call you names. But you get a whole lot more compliance. You get a whole lot more understanding and acceptance from people when you're nice to them.

## How do you think procedural justice is related to the goals of the justice system and how do you respond to critics of the concept?

I think it's so integrally related to the goals of the justice system that you can't separate the two. This is a method for delivering justice. It's not that you can't deliver justice in another fashion, but if your goal is to have compliance, the tenets of procedural justice are the only way to ensure that the vast majority of people understand what you're doing. I have harsh critics within our own court as well as the judicial branch in Delaware. My point to critics is that, firstly, you may have a very different clientele who are looking for a different result from what we're delivering and I can see where the old authoritative way of doing business can work in that setting. But it doesn't mean that it wouldn't work in that court either. That's the way I respond to critics.

### How do you engage court staff in the practice of procedural justice?

We have three main legs of our court: the judicial leg, the administrative and clerical staff leg, and our uniform services. All three of those legs participate in procedural justice training. From front line security officers to people behind the bench, each arena has a slightly different approach, but the principles are all there.

### How do you approach the conversation of introducing someone to procedural justice?

We like to appeal to folks' common sense. Our Justice of the Peace Court, as a court full of non-lawyers, I think they're a little more receptive to it because they mostly come from a non-legalistic background. It's nothing earth-shattering. This is just good common sense and I think people respond well to that.

### What was your experience of being trained in procedural justice?

One thing that came out of it, that I think was fantastic for us, was time was set aside to record judges' normal arraignment procedures, and that has actually flowed into a self-evaluation process. Now that self-evaluation process is offered to all of our judges and is mandatory for new judges. Seasoned judges have also taken advantage of it.

I've noticed that judicial training conferences are increasingly dealing with the tenets of procedural justice. We are also evaluating our physical premises—elements like the signage and the ambience—and security staff has been charged with evaluating its own areas to ensure they're as user-friendly as possible.

### What does procedural justice look like in your courtroom?

Let's pretend that we're in a civil case. I have two self-represented litigants in front of me. When I walk in the door, the first thing I do is say, "Good morning Mr. So-and-So." I identify the parties. I call them by Mr. or Ms., then I say, "So, has anybody ever been in a trial situation before?" Usually they say no. Then I say something like, "Have you ever seen the Judge Judy show?" Everybody's like, "Yeah,

I've seen the Judge Judy show." I tell them it's nothing like that. "Just so we're all on the same page, everybody's going to have a chance to talk. No one's going to talk over each other."

Next, I go through the process of how a trial works. I explain the process and make sure everybody understands or at least says they understand it. Sometimes they don't. From there we start out and I try to be as patient as possible, especially with people who have not had experience. I'll coach them a little bit. If they're asking questions of a witness and they start to testify on their own, I'll say to them, "I just need you to understand you'll have all the time in the world to tell your story. I just need you to ask questions of this person." I realize this is a hard concept. People don't usually communicate by asking questions and being frustrated by the answer without being able to respond to it. "You will be able to make a note of it," I tell them. "I suggest you make a note of anything that you want to suggest isn't correct in their testimony."

We muddle through the trial but usually it's a whole lot more structured than if we just kind of open the door and say, "You need to make an opening statement. That's absolutely correct, but not very helpful if people don't know what an opening statement is. Nor is it helpful simply to say, "No, you have to ask questions. This is your time to ask questions." Well, okay but why? A trial is a very weird thing for someone who is not in the system. It's not how people communicate. It's not how people get the truth out.

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**It strikes me that part of procedural justice is about being nice to people. It doesn't cost anything. It doesn't hurt anyone.**

### How are you working to spread the concept?

We're trying to do two things: use adult teaching concepts about procedural fairness and provide practical steps towards application. We use video evaluations of courtroom staff to assess their performance of, say, arraignment procedures, and find ways to achieve maximum clarity.

For instance, we have a mix of lawyers and non-lawyers who are judges. In some ways, I'm asking the lawyers to speak at a level that can be understood by more of the general population. I'm asking the non-lawyers to use their own expertise, whether they were bankers or farmers, to help them understand that their interactions make a difference and that they can promote better understanding rather than inflaming the situation.

We also have to account for the differences between judges' roles and those of other court players. For instance, the transaction that takes place between a security officer and someone who is being asked to remove clothing items to get into the courtroom is different from a judge who is trying to get compliance over a longer period of time.

### What kinds of effects have you witnessed as a result of prioritizing procedural justice and treating people with respect?

As one example, I was just teaching ethics to our newest judges yesterday and another judge brought up an example of a frequent litigant in her courtroom. She said, "I always make a point of addressing him as 'sir', making sure he understands what is happening." At the very end of the hearing, even though the outcome was not in his favor, he took the time to say to her, "I want to thank you for calling me 'sir.'"

### How do you use procedural justice when working with self-represented litigants?

Approximately 97% of the population in our court is self-represented. The challenge is when you have one person that's represented and one

that's not. You have one person who is somewhat of a master of the system and they are right when they make an objection; they are right when they challenge the introduction of certain evidence; they are right when they want to take certain liberties that are available to them. From the perspective of someone who is not a master of the system, or at least accustomed to the system, it can be challenging. I think in some ways it puts an onus on the judge to use these principles even more stringently. I find that when I'm dealing with that situation, I do a lot more explaining to the unrepresented party. When you have two unrepresented parties you can be fair to everybody by sort of letting them go within some broad constraints. When you have somebody who on one side can be hyper-technical and correct on procedures, you tend to have to take more time to explain to the person who is not integrated into the system why you're doing what you're doing.

I think explanations help. It's a confusing situation for somebody in that position. I can't say that it's 100% effective. In fact, I find myself sometimes, looking at the lawyer and saying, "I recognize your objection. I'm going to let this piece of evidence in for whatever weight it might have." That's sort of my way of telling the lawyer that it doesn't have any weight, but that I'm going to let this person feel better about introducing it. Sometimes the lawyers get it and sometimes they don't.

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At the very end of the hearing, even though the outcome was not in his favor, he took the time to say, "I want to thank you for calling me 'sir.'"

### How do you think procedural justice principles apply to victims and witnesses in the courtroom?

I think it's important for victims, in particular, because they have little power in the system. It is exceedingly important for them to have people explain to them not just what's going on but why it's going on. It's the people on the periphery of the justice system who can be the most frustrated.

### What are some of the obstacles your court faces when it comes to enhancing perceptions of fairness?

I think helping people understand how to apply techniques rather than just the principles is a challenge sometimes. I think of my clerks, in particular. They deal with some people who can be pretty nasty to them. Litigants may be fine with the judge, but then deal with the clerk in a really bad manner. It's hard to keep being nice to people who aren't nice back.

I think some of the other challenges are getting judges in courts who deal primarily with represented individuals to adapt to a population that is increasingly non-represented. I think that is a challenge in a broader sense, not just for our court.

### What advice would you give to other court leaders interested in implementing procedural justice?

It depends on whom I'm speaking to. For example, judges can be troublesome, especially judges who say, "I've done it this way my entire life, why should I change?" Courts are inherently conservative in how they approach things. I would tell them: "You're not being a good judge if you don't evaluate the impact of what you're doing." Then I'd ask them a question: "Would you want your mother to appear before your court?" It's a pretty powerful question. Take someone you really care about; do you think they would get a fair shake in your courtroom? I think judges need to be shaken up in order to understand that the public we're dealing with today is different from what we used to deal with. You have to earn people's respect rather than just say,

"I'm the judge." Even if it's in a very short period of time, you have to convey to them that you want to deal with them as a human being and, more likely than not, they're going to respect you for that. Judges need to be provided with tools to help them reevaluate the circumstances they're living in these days.

I think court administrators and court managers are important players to get involved in this. They want as smooth a system as possible. That's their goal. They're a natural audience and I think they're much more receptive to the discussion.

# BRENDALYN EDWARDS



Brendalyn Edwards is an assistant attorney general with the U.S. Virgin Islands Department of Justice where she serves as the acting director of gaming enforcement. Prior to this, she served as an assistant general counsel for the Eleventh Judicial Circuit of Florida. She is a graduate of the Florida State University College of Law and George Washington University.

# LINDA KEARSON



Linda Kelly Kearson has served as the general counsel for the Eleventh Judicial Circuit of Florida since 2001, supervising 26 staff attorneys and providing counsel and legal analyses to the chief judge and administrative office of the courts. She has also served as an assistant city attorney with the City of Miami. Ms. Kearson is a graduate of Hampton University, University of Northern Colorado, and the University of Miami School of Law.

**What does procedural justice mean to you?**

Linda: Procedural justice means making sure that everybody follows the rules and that the rules are evenly and consistently applied to all those who access the judicial system. I think it's important that everybody plays by the same rules.

**How and why did you first become interested in procedural justice?**

Linda: We felt the need for procedural justice training in Miami Dade County. As the General Counsel to the courts here, it has always been important to me to make sure that what we're dealing with people in a professional and humane way. This is a diverse community. We have many cultures and ethnicities in Dade County. One size doesn't fit all down here. That's why it is so important that we stay on our toes, that we are mindful of the fact that we are dealing with different people.

**Can you elaborate on that?**

Linda: Well, I'm an African-American female. Quite frankly, there have been times in my career where I have not been viewed as being equal as some of my counterparts. I've had other colleagues say the same to me. I'll give you an example. A young lady, an African American attorney, came to court and sat at the counsel's table. The bailiff came in and said, "All those who will be testifying please stand up. You need to be sworn in." She was the attorney and there was no need for her to stand up. But the bailiff went to her and insisted, very rudely, that she stand up. You can imagine how uncomfortable it

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It was a real eye opener for judges to hear practitioners say to them, "You know what, this is what I have experienced in various courtrooms." People don't realize that they can be offensive.

was for this attorney, not to mention her client. The judge apologized to her profusely, but this is an indication of why perception matters.

### Are there ways in which procedural justice can actually speak to and change racism?

Linda: You can't change people's minds. But it is important to change behavior and the way that they relate to people. If you have someone on the bench or in the administration who doesn't believe they have to be fair towards a particular person or group of people, then that is a blemish on the entire system. If you can change behavior, then that is a step in the right direction.

### How did you incorporate a focus on race issues into the procedural justice training you coordinated in Miami Dade?

Linda: We included a session called "Beneath the Blindfold: The Importance of Cultural Competence in a Court Setting." It talked about making sure that cultural differences or not, you still provide competent service.

### The training you coordinated on this topic was multi-disciplinary. What effects do you think that had on its impact?

Linda: I think the training was particularly helpful because we had judges communicating with other practitioners and court staff, when otherwise their trainings and interactions outside of the courtroom remain segregated. It was a real eye opener for judges to hear practitioners say to them, "You know what, this is what I have experienced in various courtrooms." People don't realize that they can be offensive. Judges could hear individuals telling them, "Your demeanor was off-putting." I think the very nature of the training itself was helpful. I think that because there was a mixture of various stakeholders it made it more effective.

### What are the challenges of organizing a multi-disciplinary training that brings together different stakeholders?

Linda: I think one challenge is just the schedule of it because you

want to have a wide array of participants. You have to make sure you have ample time to plan so that you get participation. Funding is always a challenge. While we talk about having internal trainings, it is more effective if you have experts in the field do it. But that typically costs money.

### How do you tackle skepticism and resistance to this approach?

Linda: We try to make it sexier. We try to present a novel approach to addressing the subject matter. If you come at them with the same language that you've used year in, year out, they're going to say, "Enough. We've already done this." If you can come up with a different approach, that is how you get the skeptics involved.

Brendalyn: I think having specific feedback from surveys and observations was also helpful for some judges. You need to be able to tell them, "This is what I observed in your courtroom," rather than just speaking broadly about a concept that they can just brush off and say, "Well that doesn't apply to me because I don't do that." The survey and observation information made them face the issue head-on.

### Did skeptical judges eventually come around after the training?

Linda: The judges we enlisted were willing to do it, but they all made it clear: "I'm only doing this because you're asking me to do it." Once they completed the training, though, they

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You can't change people's minds. But it is important to change behavior.



realized the benefits. I would say that we had at least 99% positive feedback from those who participated. It was very meaningful.

### Can you talk about judicial diversity?

Linda: We have a bench of 123 judges and it's not very diverse, especially in comparison to the population that the bench represents. That speaks to procedural justice. If you have people on the bench who are representatives of the community, then procedural justice will naturally follow. The perception is that if you look like me, then I will get a fair shot.

### Are there other ways that the court engages with the community?

Linda: We partner with a social and education organization to hold a legal education forum for young teenagers who are expecting children. The purpose of that is to show these young parents that the court system can work for them, as opposed to their perception that the court system works against them. That's just one activity amongst others that we do. We bring in these young people every year and we take them to various aspects of the court system so they can see how they can utilize the court system for their benefit, that it's their system.

We also have town hall meetings where judges actually go out into the community, maybe four or five, and they talk about various aspects of the court system. Those are things I think are important for us to continue doing because you take the criminal justice system to the people and they see judges and other staff people out of the court setting. I would recommend to other jurisdictions that they have town hall meetings, that they have partnerships with the community. You have to talk about the importance of the court system and how it can work for everyone. You have a dialogue.

### Are there any specific tools that you recommend for procedural justice?

Linda: We talked about having a survey after various court sessions to get feedback, but once somebody leaves the courtroom, it's very difficult to get them to answer a survey. Nobody's going to go online

later to respond to a survey. We need to get them while they're leaving the courtrooms.

Brendalyn: I would like to work on crafting some kind of survey for litigants, not so much attorneys. It is more helpful to get responses from the actual people who experience the justice system.

### What advice would you give to courts that are interested in procedural justice training?

Linda: Before any actual training, it is important to gauge where the judges think they are. Do a pre-training survey and then a post-training survey because people's perceptions of their own performance can be skewed. Also have a variety of presenters talk about topics that are relevant to your court. Presenters shouldn't lecture, but actually give anecdotes and examples of real-life situations. That isn't necessarily comfortable, but if you're able to get people out of their comfort zone and into the real world, I think you'll learn more about them than if it's just what they want to hear or just what they want to do. You also need to have the participation of your stakeholders. It cannot just be for the people in the court system, it can't just be the judges, it can't just be staff. It has to involve the prosecutor, the defense bar, volunteer bar associations, people in the community. And make sure you schedule enough time to explore the concepts. You cannot have a couple of hours of discussion and expect it to be impactful. Lastly, it has to be in a comfortable environment. People need to feel relaxed in order to engage.

# LISA FALGIANO



Lisa Falgiano is the court administrator for the Toledo Municipal Court in Ohio. She joined the court as deputy court administrator in 1999 and also served as the court's human resource officer from 2003 until 2010. Ms. Falgiano began her career as a judge advocate for the U.S. Army and served for nearly five years at Fort Bragg, North Carolina. She recently transferred to the Individual Retired Reserve after 22 years of service. She holds a B.B.A. in International Business and Economics from Temple University and a J.D. from the University of Cincinnati, where she was an Arthur Russell Morgan Human Rights Fellow. Her previous positions include technical advisor to the U.S. representative to the United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities, and managing attorney, Central Pennsylvania Legal Services.

## When did you first hear of procedural justice?

I first came across procedural justice in doing research for a program to remind litigants of their court dates. I always think of it as the moment the light went on for me. It blew me away. It gave a framework to what I had been thinking about but didn't have words for, and the things that I had found successful in dealing with people that I didn't know had actually been proven to make a difference in terms of outcomes for courts. For a lot of people here in Toledo, they've been doing things a certain way because that was how they were raised, or that's the kind of person they are, or that's what their faith requires, and they just never had words for it. Procedural justice validates what they're doing, and why it makes a difference.

## How would you describe procedural justice in your own words?

To me, the overarching concept is respecting individual dignity. Everyone has a path that they traveled to get where they are at that moment, and you don't know what it is. You can't have your interaction with them influenced by your interpretation of a story you don't know.

## What opportunities are there within a busy court calendar to hear defendants' stories?

I think you have to start with training judges and staff to listen for clues that something else might be going on than what is apparent on the surface. It might be simply giving time during a docket for someone to present their side. I have one judge who has been very involved in

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As a municipal court, we have a very high volume. Sometimes it can feel like a machine.

our efforts to enhance perceptions of fairness. He says he can tell the difference when he doesn't give people that opportunity because if there are ever instances where people have to be removed from his courtroom for disruptive behavior, chances are he'll look back and say, "I didn't give that person an adequate opportunity to talk about what happened." Sometimes just allowing people that voice helps them let something go and move on.

### How was procedural justice first implemented in your court?

As a municipal court, we have a very high volume. Sometimes it can feel like a machine. I am very cognizant of that. I always knew it was important to see individuals and not just cases, or addictions, or mental health problems. When I became court administrator, I sat down with my staff and I said, "These are the values I have. Even if we have bad outcomes, if you adhere to these values, I will support the decisions you make." One of those values was respecting individual dignity. These people are our neighbors. They're the people we stand in line behind at the store. They're the people we go to church with. These people are us. You have to treat everyone with respect. It doesn't matter if they give it to you, it doesn't matter what they want, or whether they're being reasonable. It simply has to be our way of doing business.

There was an editorial in our local paper that described coming to court as Dickensian. That vibe, everyone feels it. That's not just my perspective from the inside, that's the perspective from the outside. How do you change that?

As an example, we instituted changes in our check-in procedure for our traffic court. Before defendants got called in alphabetical order. It didn't matter if you weren't here, we called your name anyway. It didn't matter if you were the first person here. So we started a process where people check in first with a staff member who will see if they're in the right place. If the defendant says, "I think I want an attorney," the person they're checking in with might say, "Okay, your case would qualify for a public defender, or if you need to hire an attorney you need to make

sure the magistrate knows that." It gives people an opportunity to have this brief interface, so that we could change their experience.

Then we started to call cases in the order they checked in. We started to recognize people for their effort to be on time. Then we stopped calling cases for people that didn't come. It was a better use of the time of the people who were there, and it honored their efforts. It was just a more respectful environment. We looked at failure to appear rates. We saw some improvement in the sixteen weeks that we ran it as a pilot over the prior year. It also increased the number of cases we were able to resolve in the first appearance. You could see the data. It was there.

### How has procedural justice caught on with other staff?

We have judges who handle their dockets in a very specific way to make sure they're giving people a voice. I have one judge in particular who really takes time on license cases to talk to people, to help them break the process into steps and understand what they have to do when they leave, and then will congratulate them on the progress they've made when they come back. I ran the percentage of fines that get paid from that judge's docket. If you look at all of our judges and the percentages of fines that get paid, hers are above average. I think it's because she is willing to spend time with people and it makes them more compliant. At the end of the day it gets us what we need: compliance.

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There was an editorial in our local paper that described coming to court as Dickensian. That vibe, everyone feels it. That's not just my perspective from the inside, that's the perspective from the outside. How do you change that?

### What are some of the obstacles you've experienced in trying to expand the use of procedural justice?

There's an issue with stamina that can come up in training different groups of staff. It can be hard to keep your momentum. We're trying to train everybody, which logistically can be a nightmare. We want to do it well, so we have to pay attention to details. We have to pay attention to how we mix people, when we schedule the training, and how the training is introduced to staff. Then we have to be prepared to manage a setting where you have really diverse education and experience levels and still want to start a really robust dialogue.

### You organized an interdisciplinary train-the-trainer training on the topic. What was that process like?

We were able to partner with the Center for Court Innovation to put together a session that would permit us to train a team of trainers: the judge's division staff, which includes the probation department, the assignment office, our law clerks, our court reporters, our civil bailiffs, our mediation program, and our administrative staff. We also included the clerk's office and their civil and criminal branches, our security, the public defender's office, and the prosecutor's office. The hope is once we train about three hundred people, we will put together a training for the bar that would be free. We would have continuing legal education credit available so that we could get the legal community to understand what we're trying to do.

We've also started talking about what our values are. What are the things that inform the way we do business? We found that the themes that came up were related to procedural justice: respect, thoroughness, professionalism, communication, and so on. Procedural justice has two faces: an external and an internal face. The external face is how you treat your court users. But we also realized there is an internal face. It's really hard to tell staff we have these values and then not practice them internally. You have to give staff voice. You have to give staff respect. When we disagree, people have to have the room and the safety of being able to disagree, so that you come to better outcomes.

### What's next for procedural justice in Toledo?

We plan to complete our training of all three hundred staff. Then I think we'll consider incorporating the concept into leadership development. Our leadership development program isn't mandatory, and it's a combination of participants' own time and court time. As part of that leadership development, people could do projects that focus on a combination of management and line staff teams to look at our operations and identify areas for improvement through the lens of procedural justice.

### Based on your experience, what advice would you give to another court just starting to look at this?

I think first and foremost, having buy-in from judicial leadership and senior management is critical. You can have a great idea, but if you don't have support for it, you don't have the legs to make it happen. If we could do it over again, we would make sure at every event we ran to have in attendance one of our judges and someone in leadership from the organizations that participated. When we conducted classes with those people in the room, people noticed and it created a lot of positive feedback.

Enthusiasm that can be contagious is also key. When I'm excited about something, and I can convey that, I think that helps with the buy-in. I also think that contributes to getting early supporters who can turn around and share that enthusiasm with their staff or other court players.

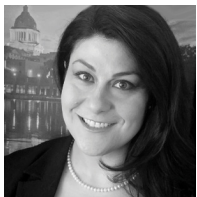
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If you're going to try to make procedural justice a priority with how you interface with court users, you have to have already made it a priority with how you conduct business with your staff.

I think the internal/external alignment is critical. If you're going to try to make procedural justice a priority with how you interface with court users, you have to have already made it a priority with how you conduct business with your staff. Then being able to connect the idea to the data helps get backing from people who might be reluctant or don't necessarily agree with the concept.

The last thing I would say is stamina. This is not easy. I think if you really think procedural justice is important, you have to figure out a way to have the stamina to see it through. If you can find some procedural justice geek to bounce ideas off, that helps with stamina. I think it also helps you come up with better ideas on how you're going to implement this, and how you're going to navigate the barriers you're inevitably going to encounter.

# LEAH GARABEDIAN



Leah Garabedian is the chief criminal justice strategist in Harris County, Texas. Prior to this, Ms. Garabedian was a public defender and criminal defense attorney in Missouri. She is also the former defender counsel for the National Legal Aid and Defender Association and former senior program manager with the Justice Management Institute.

## Why is procedural justice important?

We have to start somewhere, and I believe that procedural justice allows us to start from a place that has substance. It has research behind it and has a real measure of impact. When we don't adequately fund and politically support the function of defense, what we end up with is a system that is unbalanced. We don't have a check on those other factors. Similarly, if we have a prosecution function that does not also view itself as serving the defendant, serving the community, and serving as a check on the power of law enforcement, that's when things become unbalanced. That is a very, very heavy burden, but it's a critical one. So you have to start somewhere.

## So what does procedural justice mean to you?

I practiced as a defender in Southeast Missouri, and most times, I was the only woman in the courtroom. The courtroom players, including the jury, were entirely white, but the defendants were generally black. It was a smaller jurisdiction, but we still had quite a good amount of cases. They would bring all defendants over in orange jumpsuits—regardless of their risk-level—with shackled hands and feet. Showering was very difficult for them so they were all rather pungent, and they did not like it. They were chained together. My vision for a better system is that clients, even if incarcerated, are allowed to wear their own clothes in court, like they do in Europe, that they're only shackled if there is some sort of flight concern or dangerousness concern - which, as we know from the data, is going to be an incredibly small proportion of people.

If you allow defendants to dress like human beings and act like human beings, you're going to see them as human beings. We should call them by their names, not just numbers in a row. My vision is also that everyone talks to each other in energetic and positive tones because they care about this. That communicates something to clients—that you don't use a ton of legalese and shorthand because you're just trying to get through the day and you're just trying to run through the docket. It's that everyone tries to say their piece. Every break is explained.

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**My vision for a better system is that clients, even if incarcerated, are allowed to wear their own clothes in court, like they do in Europe.**

Every piece of the process is explained, and people are allowed to ask questions.

Anybody that sees a skinny, scared little eleven-year-old in shackles and orange jumpsuit and thinks that somehow that is a good thing, or a necessary thing, or an even remotely humanly acceptable thing should not have a bar license and should not be allowed in a courtroom. I can't stomach it. The first time I saw it, I cried for two days. It is unconscionable. It happens all the time.

While we can all be on the same page and we can have defense attorneys, prosecutors, judges, and sheriffs who get this, believe in it, and want to bring it about, there are still hugely powerful forces that do not agree, and that will continue to put eleven-year-old, skinny little kids in orange jumpsuits and shackles and make them walk into a courtroom without their parents.

**You mentioned the role of prosecutors. As you think about your counterpart in court, what's your specific vision for how prosecutors can deliver procedural justice?**

First and foremost, prosecutors who are good at this have a sense of humility. They recognize that they are serving the community, which means serving the accused person, as well as the person who is making allegations against them. If you as a person have been the victim of a crime, and the prosecutor and the police officers do not listen to your story and they do

not try to protect you, why should you ever trust a system that was so random in the way that it dispenses justice? Research shows that that lack of trust can lead to criminal offending on their part, too. Good prosecutors are mindful about who all of these people are and how they all relate to each other. It's also being aware that a white, middle-class victim is not worth more than a poor person of color who has a criminal record. A prostitute who has been beaten and sexually assaulted is no less worthy of justice than a rape victim who is a white, middle-class woman. As a prosecutor, you have an obligation to ensure that you are not just trying to win a case. You are trying to dispense justice in a way that's fair. This is not a contest. This is somebody's life.

**That requires a culture shift in some places, right?**

Yes, it's so important to have the right people coming to this work. We must attract and hire those who want to serve the people—all people.

**Do you think this vision or concept of procedural justice can help unite court professionals of disparate or adversarial roles? If so, how?**

I think a focus on fairness strengthens the sense that we're all here for a common purpose, even as adversaries. I've seen some of the best bailiffs in my life change the tenor of a courtroom. When you have bailiffs, especially bailiffs in smaller communities or where they know lots of people, they work the room. They talk to everybody. They ask court users if they can help. They help them find their name on the docket. They help them find the right courtroom if they're in the wrong place. They work with the prosecutor and the defense attorney to make sure that things flow smoothly.

Similarly, the court clerk has a relationship with everybody, so that he or she can articulate court users' needs. And the judge can also give equal voice and respect to both attorneys. I've sat in courtrooms where the judge is basically talking to the prosecutor the whole time. The defense attorney might as well be a stump.



I think a focus on fairness strengthens the sense that we're all here for a common purpose, even as adversaries.

But when everyone plays the right part, everybody is working together for that common purpose of helping people navigate the system and feel respected. All of this still allows for zealous advocacy—that doesn't have to change the tenor of the courtroom. It certainly doesn't mean that you make an argument without first explaining it to your client. Everybody gets it, and everybody's on the same page.

**Training is one part of helping court players implement these practices. What else can be paired with training to maximize the impact of procedural justice efforts?**

There has to be institutionalized data reporting and accountability measures. Without follow up, mentoring, and accountability, nothing happens. I think that every single actor within a criminal justice system should be measured. If you're not measuring it, you can't articulate exactly what the problem is. Then, from a policy standpoint, I think there has to be some accountability - something like an oversight commission.

I think we as defenders are often fighting for our clients to get services that they need to help reduce their likelihood of coming back into the criminal justice system—as opposed to just focusing on the immediate issues or case at hand. To me, that is an aspect of holistic and community-oriented defense. If you are doing your job right, you are helping your client for the long-term. You're helping their life outcomes so that they do not become justice involved again. Therefore, we should all have an eye on

levels of re-offending. From a judge and prosecutorial and even law enforcement perspective, if we continue to have high recidivism rates, we're doing something wrong. We're not fixing the underlying issues.

In addition to being data driven, I think we have to be better about attracting the right people to work in the criminal justice system. Are you attracting people that are trying to be trial lawyers or are you hiring people who are here to be public servants? We need to recruit people who are here to serve their communities, to make them safer and more just. Many trial lawyers don't have a client-centered approach.

We also need to attract more balanced judges. We need more judges who come from a social work and mediation background, who have been public defenders, and who really understand the plight of impoverished people and those trapped in cycles of violence. At the end of the day, that's what needs to change. This is a huge culture shift that needs to start with who we bring into these roles.



# ASHLIE GIBBONS



Ashlie Gibbons is a public defender in the Newark Municipal Court of Newark, New Jersey. He has worked with Newark Community Solutions' alternative sentencing program since its inception in 2011. Mr. Gibbons is a graduate of Seton Hall University School of Law and is licensed to practice in the state of New Jersey.

**Understanding is one of the key dimensions of procedural justice.**

**What tactics do you use to help your clients feel like they understand the criminal justice process?**

I use a “question and answer” approach when speaking with my clients. Actually, I prioritize the questions more than the answers. The questions are far more open-ended as opposed to looking for a specific fact. I find myself getting to know more about an individual that way—their upbringing and family situation. What brings you to the courtroom? What led up to this experience? This assists me in tailoring an approach to enhance communication with the client.

I find that when I have a better understanding of the person, their experiences, their background, and cultures, all those things put together make communicating much easier for both of us. After the initial series of questions, a level of trust or a bond has begun to develop and as we go throughout the experience, I find that clients have bought into me. They see that, “Okay, we’re doing something just a little different here, but it appears to be in my best interest, so I like this.”

**How do you balance the tension between giving your client a voice and ensuring that they are not incriminating themselves in court?**

I remind clients that they have a right to remain silent when we’re in court. But despite this, they often want to know that what they tell me is going to be heard. They often have things they want me to convey to the judge, regardless of whether it is legally important or not.

We know that individuals coming into our courtroom are apt to speak when perhaps they shouldn’t. And yes, it may also be incriminating. However, often what they share is somewhat helpful or even exculpatory, even if it may include an admission or statement against interest of some sort.

**Are there other factors that support your clients having a voice?**

The easiest way to give voice is simply to allow them to speak, so how the judge presides over the court plays a large role. In my private

practice, if I were in Superior Court and a client felt compelled to speak, I let them know, emphatically, that doing so is not in their best interests because the experience is far different from, say, Judge Victoria Pratt's courtroom. Working with a considerate judge who will go off the record to ensure that a defendant continues to see the fairness of the court process makes it a little easier when this type of situation presents itself.

Judge Pratt also sets a tone that is more open and exploratory than many other courts. From a defendant's perspective, it's refreshing and allows me to show my client that, regardless of what your past experiences in other courts may have shown, there is no presumption of guilt here. For example, can they help by giving us some facts that are not going to be contained in the police report that would show that they're not guilty? There is an opportunity for a defendant to color the facts without harming himself or herself. We try to highlight some familial history or educational history that lets the judge know a specific life event or familial event that may give rise to a police encounter and police report. The focus is on what may have happened in the defendant's life that may have given rise to the case bringing him or her before the court. Then, more importantly, how can we prevent it from happening again? This experience is much different than it is literally fifty feet down the hall in another courtroom.

**In your experience, have you found your clients are more likely to comply with the rules or obey court orders when they've been treated with respect and perceive the process to be fair?**

I can say overwhelmingly yes. When my clients are treated fairly and know exactly what is expected of them, they comply. I don't have any statistics, but I would say greater than two-thirds of my clients would be in the compliance category as opposed to the non-compliance category, and I think that has a lot to do with how they are treated.

**What sort of pushback have you received when talking to other colleagues about procedural justice?**

I think the number one retort that I get is that it's a lot of work. And

there's a bit of truth to that. My colleagues in the public defender's office often say, "I'm not going to be talking with a client for three to five minutes about something that is not specifically factually related or not exculpatory. There's no need to do that." I try to tell them that any way they can better understand their clients means, by definition, they're a better advocate for that client. I'm not only saying with regards to the person's guilt or innocence; I'm talking about total or whole perspective advocacy.

**What do you see as the role of procedural justice in improving the court's legitimacy?**

Procedural justice helps foster a sense of fairness in the whole system. Among many court users, the police are seen as the antagonist or at least a large part of the problem. When you come to the courtroom and experience officers in a non-threatening manner—going out of their way to help defendants—that experience goes a long way to develop better relationships between police and the community. That's what I observe on a daily basis. It's one of the greatest collaborative things that a courtroom utilizing procedural justice experiences can do to foster a sense of fairness.

**Can you share a client story illustrating the idea of procedural justice?**

There's one story that I often share. There was a defendant whose criminal history was very lengthy. At the time, he had about twenty-seven shoplifting convictions, which means in New Jersey he would face a mandatory minimum of

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**When you experience officers in a non-threatening manner—going out of their way to help defendants—that experience goes a long way to develop better relationships between police and the community.**

ninety days in jail, plus an enhancement for any subsequent convictions beyond the third. I approached the municipal prosecutor and said, “Listen, I think this guy needs a chance,” and he said, “Why?”

I shared with the municipal prosecutor that I had spent an inordinate amount of time talking to the guy. What I was able to glean from my conversation was that he was never given a chance by a judge to voluntarily enter into a detox or in-patient rehabilitation program. I asked him specifically what he meant by that. What he meant was he had been ordered by a superior court judge to go to detox several times, however, they were all court-ordered. Every time he had gone to a detox or inpatient facility, it was because a judge had ordered him to go. I said to him (let’s call him Larry), “Larry, I’m holding the several pages that make up your criminal history. I’m sure you know what’s in there. The one question I have for you is, you’re not shoplifting to go sell this stuff at some kind of art fair or something. Was it by habit or necessity? I suspect you have an ongoing addiction.”

He said, “Of course.” I said, “Okay, so if we treat the addiction, does the shoplifting go away?” He said, “I’ll be honest with you, I haven’t gone past the 8th grade.” So I said, “Okay, if we treat the addiction, the educational component lets me know that it will be hard for you to get a job to pay your rent and function as a productive member of society.” He said, “If I don’t get an education, I’m not going to make any money,” and I said, “Exactly,” that’s what I’m saying also.”

To make a long story short, we placed him in the Newark Community Solutions program. He did go voluntarily to detox. He came out clean and voluntarily entered an inpatient long-term rehabilitation. He remained clean and sober for about two years. It was approximately eighteen or nineteen months before we saw him back in the courtroom. That’s a much longer time for someone who is addicted to remain away from our courtroom as a defendant.

That’s the story or the experience that I share with individuals when they say, “This only works on certain individuals.” I’ll be honest with

you, I was kind of leery about putting him in the program myself. He had twenty-seven shoplifting convictions. What are we going to do with this person? Do you just keep getting the guilty convictions, send him to jail for ninety-plus days, and put him back on the street? No, we spent an inordinate amount of time with him and sent him off to detox and then followed up, got him out of the area to the long-term rehab, and he did quite well.

I want clients to see the correlation between this courtroom process and their lives and realize, “You know, maybe I should extrapolate this experience in this courtroom process to life? I’ll take a more active role in my life. I’ll ask questions. If I’m not as educated as the person who’s asking questions of me I’ll just say politely, ‘Could you rephrase that? I didn’t understand.’” That part of the experience is something that I encourage everybody to do and take away with them.

Whether you’re the butcher in the supermarket or you’re at the dry cleaners or the corner gas station, leave each conversation understanding the same thing that the person you were communicating with understands. If they leave the experience knowing something and you leave the experience knowing nothing, you will miss out. And, you haven’t used your time in the most productive manner.

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My clients see that, “okay, we’re doing something just a little different here, but it appears to be in my best interest, so I like this.”

# JODY HUBER



Jody Huber is the staff attorney for the Justice of the Peace Court in Delaware. Formerly the director of pro se services at the Delaware Family Court, she also served as a law clerk for the Honorable Mark Buckworth and the Honorable Jay Conner. She earned her Master's degree in Social Work from West Chester University of Pennsylvania and a J.D. from Widener University School of Law, where she worked for Delaware Volunteer Legal Services. She is currently pursuing her doctoral degree in Organizational Leadership in Education and her dissertation topic is the use of procedural fairness concepts in the legal classroom. She is a member of the National Association of State Judicial Educators and is the programming chair for the Melson-Arsht Inn of Court in Delaware.

## How did you become interested in procedural justice?

My background is in social work, so even though I'm a lawyer, I approach the law from a different angle than most. Earlier in my career, I worked extensively with people who represented themselves in court—usually not by choice, but because of financial restrictions. Procedural justice really resonated with me. It felt like a combination of the behavioral science and legal work that I had done. In my current job, one of my primary responsibilities is judicial education, so I seized on procedural justice as something new and exciting I could educate our judges about. The rest is history.

## How have you put procedural justice to work in Delaware?

One of the projects we've implemented is intermittent videotaping and peer review of our judges. It's mandatory for new judges within their first year and encouraged for more experienced judges. It has really made a difference. It's fascinating to watch judges watch themselves and see that some of their nonverbal, unconscious behaviors come across in a certain way. For many of them, it's not what they intend. It's not how they think they appear.

One judge said to me, "I'm such a studious note-taker, especially during a trial, but watching myself on video, it looks like I'm not paying attention at all. I never even look up. I'm not making eye contact. I'm so focused on taking my notes. I just never realized that."

## You put a lot of emphasis on peer review—judges offering feedback to each other. How does that work logistically?

Our judges go through an initial ten-week training period called Basic Legal Education. Those who go through training together become a cohort and remain a cohort for a year. Four times over the course of the next year, I meet with them again as a cohort.

They each have to bring five different video clips of proceedings they've conducted. We meet for about three to four hours, and everyone watches the video clips. We have feedback forms that we use to guide

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One judge said to me, “I’m such a studious note-taker, especially during a trial, but watching myself on video, it looks like I’m not paying attention at all.”

the conversation, so their peers and I can provide positive, constructive feedback. Oftentimes, a lot of the feedback comes as self-assessment.

In terms of getting the videotape footage, there is one video camera in each county. They’re available to the judges at any point in time should they want to videotape themselves.

**Have you found that judges are more willing to make changes after watching themselves in this way?**

I have. I can think of one particular judge who has started explaining to litigants that she is taking notes on what everyone is saying, and that she is definitely paying attention—she’s just writing at the same time. I think just letting people know what you’re doing makes a difference because people don’t know our internal processes and without that knowledge they naturally make assumptions.

**How do you adapt your training strategies based on the audience?**

We’re not just training judges, we’re training all of our staff: from managers to line staff. With security staff, it’s interesting because this isn’t something they usually get trained on. They’re used to being trained on de-escalating violence and weapons certification, but it’s really important for security staff to understand the principles of procedural justice. They’re the first face that people see when they come in, and security staff have lots of stories about people who come in angry, high, or drunk. They’re

really seeing people on the frontlines. Interestingly enough, a lot of the security staff were already applying these principles. They understood intuitively that the more they treat people with respect, the more people respect them back.

**Do you see a role for combined procedural justice training to people performing different roles in the courthouse?**

It is difficult to put everyone together in one room and cover a lot of material. When we do that, we try to make it more of an overview than anything else. I have found that when we can break the trainings up into different roles, we can get deeper into the substance. When I have just clerks in the room, I can talk about what is happening at the window and in the lobby. When you have everyone in the room, it becomes more of a general discussion.

The nice thing about the smaller, more specialized trainings is that people can talk about the challenges they face in implementing procedural justice based on their role, and we can strategize together.

**What kind of feedback have you received from court users regarding how they were treated?**

It varies. Probably like most courts, we mostly get complaints, but every now and then you hear positive things. I remember two instances from not too long ago. I had an attorney email me and say, “I was in your court for a landlord-tenant hearing. It was an eviction case. Quite honestly, it was a horrible case. The facts were just devastating. There were lots of tears in the courtroom.” She said, “I just wanted to let you know that your judge handled it in a phenomenal way.” She said, “I was recalling what you had talked about in the procedural fairness training I attended, and I wanted to let you know that whatever you’re doing, it’s working.”

Another story comes directly from a court user. Our court is right off of a bus line, so a lot of our litigants and employees take the bus. An employee of ours was waiting at the bus stop after work one day and

overheard a gentleman talking to everybody else at the bus stop about how he had just come from court. He said, “I got my fine, and I have to do community service, but I just have to say the judge was a really cool guy. The judge talked to me like I was just a regular human being. I was really surprised.”

### Who do you think benefits from procedural justice?

I really think it’s everyone. I certainly think that the public receives a huge benefit through the use of procedural justice, but quite honestly, the court does as well. There’s just no question that, when we really treat people well and when we ensure not just that the process is fair but that people can see it, it makes our work a lot easier. People are less contentious. They’re much more likely to comply with our court orders, especially in a court like ours where most of our criminal sentences are fines and payments and very short incarceration stints.

### What would you say to someone who wants to start offering training in procedural justice?

I would say “dive right in.” When we started, we were in a difficult financial situation. We were coming out of the recession, and there was still no money for anything. I initially sold the training by saying, “Look, here’s a way we can improve our court, get better compliance, and have better outcomes—all without spending any money. We just have to be able to educate our folks and have people implement it.” This is not a million-dollar project, and that’s a big selling point. You don’t need any special technology. You don’t need special courtrooms. You can really start this.

### How do you respond to people’s skepticism about procedural justice?

It’s difficult sometimes. The skepticism is definitely there. I will admit that it’s more prevalent than I thought it would be. I think I was a little taken aback when people said, “No, this is not how the court and the justice system are supposed to work. We are the court, and that’s that.” Whenever I’m leading any kind of training, my approach is always to be very open and honest about the potential hostility. I just

address it upfront. I talk very openly about the difficulties that we all experience in trying to put this into practice.

We are a high-volume, entry-level court: traffic, misdemeanors, landlord tenants, and so on. I talk about how, when I was growing up, my mom always taught me that respect is earned. The trouble with that philosophy is that people don’t really have the time or the opportunity to earn your respect, so you just have to respect them inherently as human beings. You don’t have to condone their behavior or what they’ve allegedly done, but you have to start off by respecting people.

### So how do you create a consensus on this issue among diverse stakeholders?

It’s a matter of helping each group of people see how procedural justice benefits them. I think it’s a fairly easy sell because it doesn’t necessarily cost any money, but it impacts all the different areas of the court: security, the judges, the clerks, and the administration.

By the same token, it doesn’t take away from anything else. By having your security staff be more respectful of people, for example, you’re not making the building or the facility less secure. I think that was key. This does not make the work of a court clerk harder. In fact, it makes it easier.

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I sold the training by saying, “Look, here’s a way we can get better compliance, and have better outcomes—all without spending any money.”

# MACK JENKINS



Mack Jenkins is the senior policy advisor of state initiatives at the The Council of State Governments' Justice Center. Prior to this, he was the chief probation officer for San Diego County, overseeing a department of more than 1,300 staff who provided supervision and services to more than 13,000 adult and 2,500 juvenile offenders. He has served on many local, state, and national boards and commissions, including the San Diego County Community Corrections Partnership, the Juvenile Justice Coordinating Council, California Council on Mentally Ill Offenders, and California Prison Industry Board. He holds a Bachelor's degree in criminal justice from the University of California, Irvine and a Master's degree in criminal justice from California State University, Long Beach.

## How do you define procedural justice?

I really do look at it from a framework of what the criminal justice system is supposed to do. Procedural justice is the element or component that makes sure that the community is involved and not just subjected to the system, so that the community at large can see and recognize what's happening. The goal is to make clearer the steps that take place in the criminal justice system and why they take place, along with working to make sure that those steps are basically fair.

## Have you encountered skepticism about procedural justice from your coworkers or peers?

When I have conversations with other probation chiefs or other department heads at an executive level, I haven't run into skepticism or rejection of the concept. In my experience, the discussion centers around wanting to learn more about how it has been applied, can be applied, or will be applied. As much as anything, those discussions examine and evaluate the concept. Now if I talk about taking that conversation down to the rank and file or the middle level managers, I wouldn't say there is any outright rejection of the concept, but there is a lack of understanding. If I went and spoke to a lot of the officers that work for me right now and I said, "What do you think of procedural justice?" I would get a bunch of quizzical looks.

I haven't done a good job of trying to educate people about it. I think it touches the rank and file in the criminal justice system perhaps in a different way right now than it does leaders. I think it's still an evolving concept in our system.

## What challenges have you encountered while trying to implement procedural justice?

The first one would be coming to a common definition of what it is and then translating that into some practical applications. One of the things that we have started to do here is have a probation community advisory board where we identify community leaders who have an interest in representing their community and engaging

with the probation department. We use that venue to enhance transparency around probation department practices. We explain how probation works with various legal authorities and then explain what our authority is and what it isn't, so that there can be improved understanding and transparency about what we're doing.

### Are there other ways your department has worked to engage the community?

I purposely, as chief, attend community meetings regularly. For example, there's a group here in San Diego County called Black Men United that meets to talk about issues that impact the people of color in San Diego, but also includes some justice system issues. I go to those meetings and bring a representative to share some of what probation is doing and provide input on some of the issues that they talk about.

I've also tasked other managers to do basically the same thing with other community groups. Something that I'd still like to work on, for all new youth who get placed on probation, is to have a student send a letter to all of those parents and invite them to a probation orientation meeting once a month or something like that. At the meetings, we could break down what happened in the courtroom and in the whole process and engage with those parents to try to help them better understand the juvenile justice system and what they can do to help their kids be successful on probation.

Along those lines, every year we also open one of our juvenile halls to the community. We set up informational booths outside to inform the community about the resources that are available for youth and families who are facing different issues, including kids that are displaying behavior problems and are at risk of entering the system. We give them a tour of juvenile hall. The tour includes a step by step process of what happens when a juvenile goes to the justice system. The tour literally starts in a juvenile courtroom and so on, all the way through to their coming out. We average about thirty-five hundred community members each year walking through that tour.

### Does your department ever do any kind of user satisfaction surveys?

We haven't done a user survey but we should. Every probation department should. Every person who's served by our probation department, when they leave that agency, should be asked to fill out an exit survey. I think it should be fundamental to the way probation departments do business. It has to be well done though.

### Are there other ways that get feedback from your clients about their experience on probation?

All of the time. In fact, I just heard yesterday from a youth that I worked with a long time ago. We used to worry that he would either grow up and get killed or kill somebody. He did turn his life around and credits some of the work that I did with him to that end. He now has a college degree and he's trying to work in this field. I helped him get felonies off of his record. He recently just obtained a pardon from the governor. He was asking me for counsel on trying to get a job. Not only do I feel that my relationship with this youth affected his behavior, I know it and the research supports it.

The goal in probation supervision is not just compliance—it's behavior change. The role of the probation officer is to engage positively so that you can get the feedback that I just described. The studies show lower recidivism when you have better engagement. Engagement is the key.

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You have to redefine job characteristics, job performance standards, and the way that people are evaluated.



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Instead of evaluating staff on how many people they arrest, you evaluate staff on how many probationers they got into a treatment program.

#### What are the key elements of good client engagement between a probation officer and a probationer?

One of the first steps is called role clarification. What you do in role clarification is you introduce yourself in a professional, courteous way. You treat people with respect, not as “criminals”. Then you say, “This is my role. I’m going to be your probation officer and here’s what my job is while I’m your probation officer. You’ve been placed on probation by the court and you’ve been ordered to follow or comply with some certain conditions.”

I go on: “Part of my role is to, one, make sure you’re aware of those conditions and work with you to make sure that you do what the court has told you to do. Another part of my role is to take a look at you and your background and see what has led you to this current place and identify some help or assistance that you might need in order to be successful. That means if you do this, I’m likely to do that or if you don’t show up for an appointment, then I’m going to have to respond to that. Now tell me about your role. What do you think is your role while you’re on probation?” The whole thing in a community correction standpoint is engagement and treating people with respect.

#### How can probation officers give probationers a voice in the process?

That’s a fundamental aspect of motivational interviewing. The officers are taught to practice active listening and to listen more than they

talk. What we want to do is use things like open-ended questions, hear what the person has to say, and then try and give guided feedback. The officers are taught things like summarization, and giving affirmations when somebody is talking. You’ve got to ask questions like “How do you feel about that?” or, “Tell me what some of your best strengths are and how can I help you to grow?” Listening is a skillset.

#### How do you get line staff to buy in to the idea of procedural justice?

It’s not a simple task, but the short answer is to train people that this is how your job should be done. You have to redefine job characteristics, job performance, standards and the way that people are evaluated.

Instead of evaluating staff on how many people they arrest, you evaluate staff on how many probationers they got into a treatment program. Then you start training them on the skillsets and competencies that I’ve talked about and change the performance standards to reinforce that. You apply the same principles. You give positive reinforcement for people that show progress on it and then you correct those folks that don’t. You have to change the policies and procedures in your department so it becomes the way that you do business and it’s not person specific.

# JEFFREY KREMERS



Judge Jeffrey Kremers served as chief judge of the Milwaukee County Circuit Court in Wisconsin from 2008 to 2016, following 16 years as a circuit court judge. Judge Kremers has served as presiding judge of the felony, misdemeanor, and civil divisions, as well as associate dean of the Wisconsin Judicial College and a judicial educator on a variety of topics, including criminal procedure and domestic violence cases. He is a graduate of the University of Wisconsin Law School.

## What does procedural justice mean to you?

I would say the most important thing for courts is the need to connect with the people who use the system. Whether it's defendants, victims, witnesses, or the general public who pay for our courts, we need to make sure that what we are doing is understood by them, perceived to be fair and neutral, and that everyone is treated with respect. If you employ the principles of procedural fairness, you are much more likely to accomplish this. If people feel like they are going to be heard in court—not only the ability to speak, but also the expectation that the person they're speaking to is going to understand them and consider what they have to say fairly—then you've added legitimacy to the system. At its core, the legal system is based on the belief that it's legitimate. If you don't have that, then people will not abide by the rules.

## How have you worked to implement procedural justice?

As chief judge, I don't have a courtroom. What procedural fairness enabled me to do was say, "Let's see what our system is doing." We brought training, evaluations, and assessments to Milwaukee. I endorsed it. If the system endorses it, it carries a lot more weight than what an individual judge does. If you get everybody thinking about it, people start to say, "That makes a lot of sense."

## What kinds of practices have you encouraged as part of these efforts?

We encourage our judges to talk to people in court and tell them what is going to happen that day. You want to make sure the courtroom staff—the bailiffs, court clerks, and court reporters—all understand that they are the face of the court. They need to be respectful to lawyers, litigants, witnesses, victims, and the public at large. When they're in the courtroom, they're on the entire time. There's no downtime as long as the doors are open to the public. You want to make sure that signage is appropriate and not overly negative. It should be gender-neutral, and depending on the community, available in other languages than English.

I also think you need to have a feedback process, so you can continually assess how you're doing. You can't just assume it's working if you don't check every once in a while. How are people reacting to what's going on? Do they understand? Ask people who use the courts: do they think they're being treated fairly? If not, why not? Do they think they're being heard? If not, why not? Are they being treated with respect? If they don't feel they are, in what ways are we falling short? Given the turnover you have with judges and court staff, training for these things is not a one-time deal. New judges come. People get old, they retire. They take other jobs. That's true of deputies, court clerks, and everybody else. You have to have a training program in place that takes that into consideration.

#### How does procedural justice impact the delivery of justice itself?

It depends on the case. If I'm sentencing someone who is a serial rapist, and I'm going to send him to prison for functionally a life sentence, we're not going to know whether how I talked to him made a difference in terms of his complying with my sentence. Whether I call him a scumbag or whether I treat him as a human being who did incredibly bad things, he's still going to prison for the rest of his life. But what about the other people in the courtroom during that sentencing, who may be there for a totally different case? They observe a judge talking in two different ways to a defendant. What is the impact on them if they see a judge who is being compassionate but firm, versus someone who is being rude?

We should treat people with respect. We should give them a voice. You don't know what the impact of that will be going forward. They may go to prison for a long time. They may never get out. They also may interact with someone in the prison who does get out. If they say, "I was treated fairly. I don't know why I did the terrible things I did, but the system treated me fairly," that is a far different thing from someone who goes to prison bitter and angry. At the end of the day, we're in the human interaction business. People deserve to be treated with respect. At its core, that is what procedural fairness is all about. I don't care

what title you put on it or what you wrap it up in. If it has a positive impact, then great.

#### What feedback have you received from those who have interacted with you in court?

Anecdotally, in my career of 40 years—first as a prosecutor of sexual assault cases, then as an attorney in private practice, and now as a judge—I've gotten so many letters from victims, witnesses, and defendants who say, "I appreciate the way you talked to me. I appreciate what you did." I go into stores and someone will come up to me and say, "I don't know if you remember me. I'm so-and-so, and you sent me to prison. I just want to say thank you. I was wrong, what I did was wrong. I want you to know what I'm doing now." I believe that it's because of the way I talked to them that they were willing to come up to me. I don't think they would have said that to me if I had treated them in a less respectful fashion.

#### Can you give a concrete example of how you deliver procedural justice from the bench?

When I had a criminal calendar, I was known for giving fairly tough sentences. At the same time, I often heard from defense attorneys that their clients appreciated the fact that I was listening to them. One of the things I've always done during sentencing is ask defendants questions. Then, I work into my sentencing comments something that the defendant told me; something with respect to why their punishment is what it is, related to comments they made. I've always done that, even before

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There's no downtime as long as the doors are open to the public.

I heard the term procedural fairness. I make strong eye contact with defendants in front of me. I've watched other judges staring at the ceiling, back when they didn't have computers on the bench. I think that's very disrespectful. You can watch the reactions of defendants. You can tell that they're thinking, "This guy doesn't care. He's not looking at me. He's not listening to me."

I watched a judge take a guilty plea once. If you read a transcript of that guilty plea, it was perfect. But it was one of the worst guilty pleas I'd ever seen. Why? Because he spent the entire time looking at his computer. He never once looked at the defendant. When the defendant left the courtroom with his lawyer, I overheard him curse the judge: "That judge never once looked at me." I know the defendant experienced what I was seeing. That really resonated for me, in terms of this whole concept of procedural fairness.

#### Are there environmental changes within a courthouse that you think will enhance perceptions of fairness?

Signage is the most obvious and concrete thing you can change in any courthouse. We installed new signage as a result of training in procedural justice. That signage is still there today.

Different judges come in, adapt it, or modify it, but with the same principles in mind. We have moved away from using negative signs. For example, instead of 'No food in the courtroom,' it now says something like, 'Please keep food and beverages in the hallway.' Signage is

important. But if you don't have good signage, you can still overcome bad signage with good practices. Conversely, you can undo excellent signage with bad practices.

#### What are some of the challenges you faced when improving your signs?

There are many challenges associated with improving signage. For one, getting facilities management to make it a priority. They say, "What do you want me to do? Work on new signs, or fix the air conditioning in the building?" They don't perceive it as important. I think we did a good job but still have a long way to go. There is also the issue of expense.

#### How have you applied procedural justice to litigants with limited English proficiency?

Spanish is the second most common language by far in Milwaukee County. We have a sign in Spanish that says, "If you speak Spanish and need the assistance of an interpreter, please let us know." We have a number of forms in the courtrooms that are in Spanish, as well as English. We have a person whose job it is to provide interpreter services in the courts, for any kind of a case: criminal, civil, or family. She has a number of different interpreters on call, whether it's Arabic, Russian, Spanish, Punjabi, or sign language. We always have access to the Language Line if it's a language we don't have an interpreter for. All of our bailiffs and clerks are trained—if they get the sense that someone doesn't understand what is going on, they will try and figure out what language the person needs help with.

#### What is most important to emphasize when training judges on procedural justice?

Judges want their orders to be followed. That means they have to be understood. That means judges have to be able to explain their orders in a way that makes sense to the listener. That requires all of the concepts of procedural fairness: voice, neutrality, respect, and understanding. If judges don't incorporate these concepts, then I would argue they can't really expect their orders to be understood or followed.

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**I watched a judge take a guilty plea once. It was one of the worst guilty pleas I'd ever seen. Why? Because he spent the entire time looking at his computer.**

Also, judges are responsible for how the court system is run. They should care about how someone coming into the criminal justice system is treated from the first interaction that person has with a police officer. If the person comes into the courtroom angry, bitter, or distrustful, it makes it significantly more difficult for the judge to have a positive interaction with that person. It doesn't matter whether it's a victim, a witness, or the defendant. If they come in angry or distrustful, you're already far down a bad road. You have a responsibility as a leader in the court system to make sure your system, from the very first contact to the very last contact, is as fair and respectful as it can be.

#### **How does procedural justice apply to victims?**

Procedural justice is just as critical for victims as it is for defendants. We need their stories. The criminal justice system doesn't work if we don't have victims willing to come to court and tell us what happened to them. If they don't feel the system is legitimate and fair, they won't participate. The same is true for witnesses, jurors, and the public at large. They pay for the system with their tax dollars. If the system is not perceived to be fair, the courts lose legitimacy and support.

#### **What about people with disabilities? Are there specific strategies to accommodate their needs and ensure that they are heard?**

The key is accessibility. You can't assume you're going to recognize every disability because lots

of people walk around with disabilities that we don't recognize or see. You need to make sure that your courthouses, as far as possible, are open and accessible, in every sense of the words. That means from the front door of the courthouse to the jury rooms and the restrooms. Many of our courthouses were built way before the Americans with Disabilities Act was passed, and they're hard to retrofit. You need to do the best you can to make other accommodations. If you don't have a witness stand that is accessible to someone in a wheelchair, then you take the witness stand to them. You take the microphone down to them. There are lots of things you can do physically to accomplish that. You just have to be tuned in. You need to make sure that you're constantly assessing and reassessing accessibility.

#### **What advice would you give to courts interested in implementing procedural justice?**

I'd say the first step is to bring everybody that is part of your system to the table. Get everybody to agree on why this is important. Then, move forward. Try something. Don't let perfect be the enemy of good. You're not going to get it all right. You can't fix everything at the same time. Figure out some things to improve what you're doing. Start with those, and build. Start small and keep expanding, but get everybody to the table.

# STEVE LEBEN



Steve Leben is a judge on the Kansas Court of Appeals. In 2014, he received the William J. Rehnquist Award for Judicial Excellence from the National Center for State Courts. He has written and lectured extensively about procedural justice. He also has been the editor of a national journal for judges, *Court Review*, since 1998. He received his J.D. and his B.S. in journalism from the University of Kansas. He regularly teaches at the University of Kansas School of Law.

## How do you think procedural justice contributes to the administration of justice?

First, our justice system relies upon the support of the people for its existence and effectiveness. We don't have armed marshals to send out to enforce every order we issue. We need to have public respect and support. People's feeling of fair treatment in court correlates strongly with their overall support for the court system. That applies whether it's themselves in court or whether it's their perception that other people who are coming to our court are being treated fairly. It's important for public support.

Second, when you look at it from a judge's perspective, a judge's workload is reduced when people comply with orders. If people don't show up for contempt hearings or probation violation hearings or have multiple appearances when one could have been sufficient, then the court system doesn't operate very efficiently.

The third thing that has occurred to me many times is I imagine myself being in court in another country where English is not the primary language. How would I feel in that setting? Today, we have a large percentage of people who need interpreters in our court proceedings or who have learned English as a second language. Just from an ethical standpoint, I think we owe it to people coming through the court to treat them empathetically. We have to carefully explain proceedings to people who may not fully comprehend the English language.

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### What kind of baseline perceptions do you think court users have of the court process?

People feel intimidated by courtrooms. The National Center for State Courts did a survey asking people about state courts in particular, and almost two out of five people said “intimidating” describes the state court either well or very well. If you are intimidated when you come in, it’s unlikely that you will be able to tell your story in your own words, remember the things you wanted to say, and keep your wits about you. I think a lot of what we need to do to make people comfortable is give them the work environment that we would want and make sure we’re explaining procedures to them in a way they can understand.

### When you were a trial court judge, were there practices you used that align with procedural justice practices?

One of the things I made sure to do when handling criminal cases was any time there was a question about how to pronounce a defendant’s name, I asked the defendant personally how to pronounce their name and then wrote down the pronunciation on the front of the file so that I could get that correct each time that person appeared in front of me. I think we often mispronounce people’s names. I know that because my name is often mispronounced, and it’s always a little off-putting. One of the things you want people to do in your courtroom is have some level of comfort being there. It will be a stressful experience for anybody, but to the extent you can, you want to reduce that. Pronouncing someone’s name correctly makes it clear that you care about the person as an individual, not just as some letters that form a name on the front of a file.

As another example, when I began as a judge, the norm in my courthouse was that no one could bring any beverages into a courtroom. I felt that was counterproductive for the people working there. Many people need a cup of coffee or a soda to get them through a long morning or a long afternoon, and so I always allowed that in my courtroom.

### Can you describe how you’ve worked to engage other court staff in procedural justice practices?

The main thing I try to emphasize to both judges and court staff is that all of this needs to be a team function and a courthouse-wide effort. Court users come in contact with people throughout the courthouse, not just the judge. No one will solve the problem on their own.

### Have you noticed whether defendants are more likely to comply with rules and obey the law when they feel they have been treated fairly?

I have the same kind of anecdotal experiences that many other judges have where individual defendants will come back even years later and tell you how their life turned around based upon what happened in your courtroom. I had one time when I was at a computer store and a guy walked up next to me. “You are Judge Leben, aren’t you?” he asked me. “You sentenced me to jail on my DUI.” I said, “Oh? Well, how are you doing?” He wanted to let me know that even though I had sentenced him to a substantial jail term, which he did not appreciate at the time, it had worked out very well for him. He had not only kept his girlfriend but also stayed sober after he got out. It was his third or fourth conviction for driving under the influence and he understood in hindsight why I had done it. He clearly had felt positively about his relationship with me. That kind of thing makes judges feel good, but without data, you can’t know whether these anecdotal experiences really are telling you something or not.

### Can you share an example of a court process where it’s especially challenging to employ procedural justice?

In my courthouse for many years, we had a day each week of mostly collection or eviction cases. A mass docket was called in a room that wasn’t large enough to hold all of the people. People would be in the hallway. They couldn’t know what the judge was saying, even if the judge had tried to explain what was going on. The attorneys were essentially acting as the judges. Many people were being called for examinations in execution on a judgment, where under Kansas law, the creditor’s attorney could ask them questions under oath about

their assets. The judge would call them and swear them in and then send them off with the attorney. It's a court process, but the judge isn't really involved. I think that sends all sorts of bad messages. That sort of docket would need a complete restructuring to meet procedural justice principles. You run into resistance changing something like that because the docket was designed for the convenience of the attorneys and the court. At the end, though, the impression that people got from attending that docket could not have been a favorable one.

Another example that comes to mind would be a large traffic docket. Those dockets almost always have a lot of people appearing with a very short amount of time available per person. Judges can handle a docket like that in a way to make sure that everyone understands what is going on and knows they have their chance to be heard. However, not every judge handles it effectively, and some can become overwhelmed by the number of cases. They take over a docket that has already been structured in a certain way. Even if some principles are intuitive to a judge, if they don't start thinking about maximizing procedural justice, then those ideals may fall by the wayside.

I had a court clerk tell me recently about a judge who came to the clerks' staff meeting and said, in essence, "you all are here to make the judges happy—not the public, but the judges." One of the things that can happen to judges is they get carried away with themselves. We are often not directly supervised and have a lot of authority. We may or may not have good training for the specific thing we are supposed to be doing, and so we fly by the seat of our pants but want to be in charge. One of the tasks for those who are promoting procedural justice is to focus the courts and its officers on the fundamentals of public service.

#### What strategies have worked for you when training judges and court staff on this topic?

One of the things Kevin Burke and I do is show judges videotapes of other judges on the bench and suggest to them that they videotape

themselves and watch their own videotapes. We did a program for judges in New Hampshire where six agreed to be videotaped for half-a-day on the bench and let us review the footage. They each had to review their own tape and then write comments in response to questions we had for them about their performances. We found that they and their colleagues benefited greatly from seeing a few things on the bench that showed typical judicial behaviors that would be counterproductive and typical judicial behaviors that are very effective. Most judges are not aware of a variety of things they do on the bench.

One of the clips we have used the most is a judge who was handling a very important hearing in a domestic violence case. Throughout this hearing the judge sat signing routine orders in other cases, so he was flipping papers and hardly looking up. He recognized when he saw his own tape, "Oh my gosh, these people would think I wasn't paying attention and didn't care about their case." By watching his own tape, he immediately saw that and was very disappointed. If we don't make eye contact and we aren't appearing to pay attention, we aren't giving people the impression they are being listened to and taken seriously.

Judge Burke and I have worked with Dale Lefever, a now-retired faculty member at the University of Michigan Medical School, where he helped to train doctors on their interactions with patients. They all had to be videotaped and then watched their tapes to see their interactions with patients. The quality of the doctor-patient relationship is critical to having patients do what the doctor recommends for their health. Dale has also worked with a lot of judges. I think he is right that videotape can be a great training tool for judges.

#### Do you use different strategies when you are training judges versus other court officials and stakeholders?

The strategy I use is designed to get each of these groups to work together toward the shared goal of procedural justice. If I am talking to court staff or other judges, I'm talking about ways in which they can



bring each other on board. It is essential for them to recognize their common purpose, which is public service.

These same principles are equally valuable when you deal with the employer-employee relationship. For judges who are supervising other people, if you learn the elements of procedural justice—voice, transparency, neutrality, being sincere and caring to show trust—those things will end up motivating your employees. The same holds for clerk supervisors. If they feel as though they have a voice and are respected by a fair authority, the people being supervised will do better work and be better motivated.

#### Can you describe any of the pushback or skepticism you've encountered when you are training people on procedural justice?

The most common pushback is that it takes too much time. That one can be hard because, in some cases, it probably does. On the other hand, you can think of ways to improve a process within the time available. One thing is to just let everybody know how much time is available and apologize that 53 cases need to be processed in the next 75 minutes. Make an explanation up front of what is going on so that everybody is on the same page. It's also true that the better people feel about the process, the higher their compliance will be and the less likely you are to see them for extra proceedings.

I suppose another form of pushback is that traditionally, judges are very reluctant to consider themselves part of a business that has customers. My sense is that newer judges are less reluctant to adopt a customer-service mentality.

#### How do you think procedural justice principles can be applied to witnesses and victims?

When it comes to driving people's opinion of the court system, to me the most important of the components of procedural justice is voice. People want a chance to be heard by the court system. That certainly applies fully to victims and witnesses. It's important there be

good communication so that they know what is going on and, when their opportunity for input is limited, why those limits exist. That is easier to do with respect to victims because they now have a formal role in most states through victims' rights statutes or even constitutional provisions. Witnesses are more problematic in that they may get called in, asked limited questions, and then not be allowed to say what they came to say. When possible, judges can try to explain directly to witnesses why they are excluded from the courtroom when they are not testifying. If that's explained, we can better hear their voices. But if witnesses are not well tended to, they feel neglected and the testimony suffers.

The other thing I would note is that it's important that victims and witnesses know that the judge is sincere and caring. Someone may be told to show up on a particular day and nothing happens. If the judge can take the time to apologize to them, acknowledging that they had to spend that time unnecessarily, that can go a long way to making them feel better about the process. Something simple like that, even without necessarily revealing why the delay or change occurred, would be helpful in making them feel that they are being fairly treated, even though they are not a party to the case.

#### What are some of the current obstacles to the widespread adoption of procedural justice?

One of the obstacles is that we have more than 30,000 judges in our country. There is no means of getting a message out to all 30,000 of them.

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Any time there was a question about how to pronounce a defendant's name, I asked the defendant personally and then wrote down the pronunciation on the front of the file.

We have a federal court system, then we have a separate court system in each of the 50 states. We have many states that also have municipal courts that are not part of their respective unified state court systems. So this means people experience the judicial system through lots of uncoordinated players. That makes it difficult to get the entire body to adopt a principle and then approve the practices that go with it. What you can do is try to work through as many judicial organizations as possible to spread the message.

**At the micro level, what are the obstacles to implementing procedural justice with each and every case?**

For judges, and probably for other courthouse staff as well, there is an obvious endurance factor that is important to discuss. Obviously, we need to treat court users fairly and get it right. There is a great deal of mental work as well as emotional work that judges and court staff do every day, and that work takes energy. We don't think of ourselves as performers or athletes, and yet on any given day as a trial judge we may have something that occurs at 3:30 in the afternoon in our courtroom that needs our immediate reaction with all our wits about us. I think making sure that our performance is at our top level throughout the day is important, along with the procedural aspects. We can't really concentrate on the procedural aspects if we're not performing well. Judges don't want to overreact to things. It's not productive. I think that the things that improve our individual performance fit very nicely with trying to improve our collective performance on procedural fairness.

# DALE LEFEVER



R. Dale Lefever is an emeritus faculty member of the University of Michigan and continues to work as a consultant for its department of family medicine. He has conducted trainings in such topics as leadership development, strategic planning, court governance, team development, and organizational change. He completed his doctorate in Higher Education Administration and Labor and Industrial Relations at Michigan State University in 1972. Following that he was assistant director of the Office of Medical Education at Michigan State University; associate director of faculty development for the Association of American Medical Colleges in Washington, D.C.; director of educational development in the Department of Family Medicine at the University of Michigan Medical School; and from 1982-2006, assistant chair for planning and program development, Department of Family Medicine, University of Michigan Medical School.

How did you first encounter the idea of procedural justice?

My work with courts began in 1973, training new court administrators. But the procedural justice story starts with Kevin Burke. Kevin and I have been friends for a long time. I worked with him when he was Chief Judge in Hennepin County District Court in Minneapolis in 1992. My interest in procedural justice basically came out of his passion. Kevin is a very innovative, curious individual. He began to ask: When litigants leave our court, do they understand what just happened to them? Do they understand the judgment, and how does their feeling about the judgment influence their adherence or their compliance?

We started there because our desire was to focus on outcomes. It wasn't simply on being nicer or more pleasant. The issue was that people were not abiding by the orders of the court, and the results were more court appearances, more recidivism, and more costs. The process of "delivering a judgment" is ineffective if people are not following it. Certainly, people should be treated well. I think all court personnel should be nice and courteous. But is there some way we could increase the likelihood that a defendant would abide by the court's orders, where a defendant would not take the judgment and throw it in the trash can on her way out the door? That's my interest. Judges have hard jobs. They do wonderful work. They need some feedback if it's not working and suggestions to try something else.

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Procedural justice doesn't replace good adjudication or the rules of criminal or civil procedures and it's not intended to. It's intended to complement and leverage these core efforts and give you another strategy.

### What do you see as the relationship between procedural justice and the actual administration of justice?

Procedural justice doesn't replace good adjudication or the rules of criminal or civil procedures and it's not intended to. It's intended to complement and leverage these core efforts and give you another strategy. If court users are not following orders, what are some of the reasons? There's the core of justice—the actual laws—and then there's the appearance of whether justice was served. For me, procedural justice is the process by which you deliver justice. And that is directly related to the outcomes you desire from that experience.

### How should courts assess their procedural justice practices?

Currently, we measure justice based on activities. We're recording how many people we saw, how many hearings we had, how many trials, and how many dispositions. That's all fine stuff. But for me, procedural justice means figuring out how to measure behaviors and achieve the outcomes we desire. Did we really deliver on what matters? How you do your job is directly related to what you're trying to accomplish.

### How do you get judges to think differently about their roles?

Judges are frustrated by just going through the motions. They don't have time to do things the way they prefer and that has led to dissatisfaction. I've worked with courts in all 50 states and all the federal courts in the United States, and with all the provinces in Canada. I'm not a criminal justice person but I've had the opportunity to see that world as an outsider and it contains a lot of frustration: high volume, lots of activities, and very little on the results side. I think this climate helps prepare the ground for a discussion about procedural justice. Frustrated professionals are often ready to listen to options.

### Do you think procedural justice principles are counterintuitive for court professionals?

Attorneys will say that all clients care about is whether they win or lose. The research says that's not the case. I can lose, but if I feel that I've been treated fairly, that I had a voice, that I've been treated with

respect, I am more likely to abide by the outcome. It's not just the judicial decision that matters, it's the process by which a decision was reached.

### So what do you see as the specific benefits of procedural justice?

You have less recidivism. You have fewer revocations of probation and parole. You have reduced costs to the community and to the courts when you don't have people just going through revolving doors. The efficacy of procedural justice is in those kinds of hard outcomes. People also come to see the courts in a better light. Now, is it important they have greater trust and confidence? Absolutely. Society wants courts to be well-thought of and judges to be well-regarded in their communities. But, as an organizational development and management consultant, my interest is in the increase in the value of the decisions of the court, because now they're being adhered to.

### Have you noticed any changes in how these outcomes are being discussed in recent years?

Because of financial issues, we have to be more effective in terms of how we spend judicial and court resources. Professionals need to focus more on outcomes rather than just activities. "I don't care how many people I saw today. I want to know the outcome of what happened with what I did," has become a common refrain. We are hearing more about the value added and the outcomes than we used to.

### How does this align with changes you've noticed in the healthcare field or in other industries?

By 2017, Medicare will pay physicians and hospitals based on quality of outcomes—not how many patients are seen, but rather their health status. Similarly, most businesses understand that shareholders don't just want to know what your revenues were, they want to know what your revenues compared to your expenses were, your profits? In education, people want to know how many students go to a certain college, what the graduation rates are, how many of the students are employed within three months after graduation, and what is the cost

of education versus the salaries that people can earn? People aren't necessarily satisfied anymore with only hearing, well, this is what we charge and this is how many students we graduated. In fact, several states are now basing their reimbursements of public colleges and universities on more nuanced outcomes. I also work in philanthropy. When someone donates money, they don't just say, "Good luck. Use it how you want." They're going to want to know if you did what you said you were going to do. I think it's healthy and I think the courts are becoming part of that trend.

### Are there any specific lessons from the medical field that you think are relevant to advancing the concept of procedural justice?

When I work with judges, I generally share some data with them from the medical world so they can see that the legal profession isn't the only one struggling with process and outcomes. For example, I work in family medicine. Patients leave our practices all the time with instructions: what to do with medications, with exercise and diet, with making new appointments or getting labs. But on average, only a third of patients correctly follow a doctor's instructions. We used to call this patient compliance, or now we call it patient adherence, but it was regarded as the patient's problem.

When patients leave their doctor not understanding what they're supposed to do next, they're probably not going to do it. If they don't take their medication as prescribed, they're going to be back. If they don't follow the other instructions, their health is going to get worse. When they come back the next time, there is going to be more expense and they're either going to be sicker or presenting more complex symptoms than the first time they came.

In terms of malpractice, where I've done some work with insurance companies, the patients who are not treated well in a procedural sense, for example the communication was poor, are far more likely to sue over the experience than over the outcome. The same thing occurs with the courts. It's not just I won, I lost; it's how I was treated.

Most people who enter either a courtroom or a doctor's office don't understand the language or the culture. This is why there are so many parallels between the legal and medical professions. In practice, this means that people who work in either field have an obligation to communicate with everyone at a level they can understand. Otherwise, optimum compliance is never going to occur.

### What have been among the more effective techniques in getting judges to improve their practices?

Understandably, there are some judges who see what they're being asked to do as social work or psychological therapy and don't see it as consistent with their legal work. Judge Kevin Burke and I have done some training where we've asked 20 judges in high-volume courtrooms to videotape one hour of their work. Just videotape yourself and then watch the recording. Then we'll meet with them personally and go through the tape together.

The thing about videotape is the benefit of self-efficacy. It's not someone else giving you feedback. It's you looking at yourself. Some of the judges are startled—sometimes humorously, sometimes not—to see how many things they could have done differently, how they could have used procedural justice to communicate respect, neutrality, trust, voice, and asking questions about what they understand and don't understand.

When judges see themselves like this they become instant converts, because the most important thing you can do is watch yourself in action and then learn from it. Kevin and I didn't have to do a whole lot of teaching. We did a little coaching on communication and non-verbal cues but the main thing was these people saw what the pace and stress of a high-volume courtroom was doing to them and realized they were not functioning at their best.

Most people are embarrassed to ask certain questions because they don't want to look dumb. I mean, the layperson's world and the

professional's world are just so different in terms of language, culture, and context that, in my opinion, the professional has to take the initiative to help people understand. We can't say, "Well, that's not my problem. If they don't understand, they'll get somebody to help them understand." What we should be thinking is: where the onus for justice rests is a concern of mine. You can meet the legal requirements of your job, or you can be effective, and the two are not always the same.

### Have you had any particularly memorable responses from the judges you've worked with?

I can remember working with a judge who said, "I want to show you my calendar for this afternoon." She said, "I'm doing 15 sentencing in one afternoon. I'm changing people's lives dramatically: separating husbands from wives, children from their parents, employers from employees. I'm making major decisions and I have about ten minutes a case."

She was very honest about the frustration. I said, "Well, you may not have more than 10 minutes. Let's look at how you're using your 10 minutes." We had a discussion about procedural fairness, what we could do, what would help the process. If it did nothing else, I think it allowed her to feel she was doing her best to protect everyone's rights and when she made her sentencing decisions she could look the client in the face and look herself in the mirror afterward.

I've had a number of those kinds of experiences, actually, but they always come from people who care deeply about what they do and want to do better. As for bad experiences, I don't have many because those people drop out early. I mean, we'll invite all 15 judges from a court to do a videotaping and seven people volunteer. I have no idea what happens with the other eight. I don't follow up with them. I don't try to convince them. My focus is on the seven who said I want to do my job better. And it's my job to help them do that.

As for epiphanies, those happen, but really the greatest thing is when people say, "I thought this was a bunch of junk. Now I see

the value." The best outcome you can have is turning a cynic into a convert. Whether you're a teacher, a consultant, or anybody, that's the most rewarding thing. Some people have always gotten it and don't need any help. I like to focus on those who aren't doing well, that care deeply, and then help them do it. It's very rewarding.

### Based on your status as an "outsider" to the criminal justice system, and your experience with both the worlds of medicine and the law, what is your prognosis for the staying-power of procedural justice in the courtroom?

My concern is always, how do you turn a fad into an innovation that lasts? I have worked with courts in certain states that have made a big commitment to procedural justice, but then they hit some financial issues, which naturally occur. But the thing that often gets cut first is the work on procedural justice. So, having done this work now for more than 40 years, I wonder, is this something people will soon look back on and say, "oh right, procedural justice used to be big but I don't hear it mentioned anymore"? The question is, then, are people still doing research? Are they writing? Are they training? Are they still committed to saying the job of being a judge requires these skills as much as any other skill you might learn in law school?

In the medical world, the commitment is clearer. We teach doctor-patient relationship skills in school. It sounds like a soft science. Quite frankly, the patient is your greatest source of information—their individual history, their

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How do you turn a fad into an innovation that lasts?



**Daily reinforcement, practitioner to practitioner, will make procedural justice a core part of the profession.**

family's history—to help you make the right diagnosis. Your communication skills with patients are essential to your clinical work as a physician.

I don't know that the courts and judges see procedural justice the same way. It should simply be seen as a competency you need to have as a judge like any other competency in terms of managing trials or your knowledge of the law. It shouldn't be an afterthought, something you only do if you have the time to do it. I would like to see prospective judges getting the message as part of their training that everything you do will be enhanced by your ability to manage procedural fairness. It is part of what being a good judge is about. The earlier we get this idea into someone's legal culture, the more successful we'll be.

**What advice would you give to a judge or court that is interested in taking a closer look at this concept?**

In general, the justice system is pretty hierarchical. If you're going to make procedural justice an integral part of how you do your business, then the chief judge and other senior judges need to take the lead. This can't be something that only the new judges adopt. Those at the top have to be willing to actually engage in it and then to share their experiences, to demonstrate the efficacy of things.

Then there's always issue of money. If you're going to make a meaningful commitment to

procedural justice, it can't simply be grant-funded. Educating all judges in procedural fairness has to become a permanent item on your budget, not something waiting on external funding.

So leadership from the top; a reliable, internal source of funding; and then the practices have to be reinforced. There have to be ways for people to learn from each other. Most judges are pretty independent: I handle my cases my way, you handle them your way, and neither of us tells the other what to do. That's the culture because judges don't hire each other. They don't have any say over who gets appointed or elected. But this isn't about judges telling each other how to do their jobs. It's about transferring knowledge, trading tips. For example, "here is what I do when I'm working with people using interpreters or here are some of the things I emphasize when I'm working with someone from this population." It's this kind of daily reinforcement, practitioner to practitioner, that will make procedural justice a core part of the profession and reflect our commitment to access to justice.

# BARBARA MARCILLE



Barbara Marcille is the trial court administrator for Multnomah County, Oregon. She has served in a variety of roles for the courts in Oregon, New Mexico, and North Carolina, and holds a degree in Business from Florida State University. Prior to working with the court system she was a client services manager for a high-tech advertising agency in the Silicon Valley.

## How did you first encounter the concept of procedural justice?

I was working for a mediation center that ran a diversion program for juveniles. We were looking for a way to give young people a voice and more participation in their own cases. Participants and their families were unfamiliar with the process and had difficulties understanding what was happening to them and what their options were. I wasn't familiar with Tom Tyler's work on procedural justice at the time, but we began to pay attention to how the court process was being interpreted by those on the other side of the bench.

We noticed that a lot of young people that were brought before the judge weren't making eye contact, or were grinning and seeming disrespectful, and seemed to not take the process seriously. It was radical to think of looking at that from a different point of view. We began to say, maybe this is a coping mechanism or maybe something else that has happened in their lives is triggering this response. What if it's not about being disrespectful or lacking remorse?

When judges and program staff made the effort to communicate more clearly and approach the young peoples' behavior differently, we really did see an impact. If you can help young people understand how the system works, help them participate in their cases, and make sure they're clear on what has just happened and what the next steps are, then you have a higher chance of them following through on what is expected

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There are all sorts of different obstacles—everything from “We don't have time for that,” to “That's not how we've done it in the past.” Those are legitimate objections but there are ways to overcome them.



of them, even if they're not happy with the result. If they at least understand what's happened then they're a lot more likely to feel that the proceedings were fair and to have respect for the judicial system. I think it's important that everybody has an equal opportunity to understand what the process is, what the options are, and to have the same opportunity to participate in the legal proceeding. To walk away feeling like you know what just happened, I think that's critical.

### Have you faced much skepticism in trying to implement procedural justice?

The short answer is yes. There are all sorts of different obstacles—everything from “We don't have time for that,” to “It's not our responsibility,” and even “That's not how we've done it in the past.” Those are all legitimate objections but I think there are ways to overcome them.

### How have you addressed these types of pushback?

When we talk about these types of improvements with our judges and staff that handle our high-volume proceedings, their initial response was, “No way. Can't do it. We just don't have the time.” Typically, they're dealing with quick cases, like small claims or a traffic matter. We've been working with them to understand that, even if the case is small and straight forward, we don't have any idea what litigants' previous experiences have been. There are things we can do that may take a second or two more, but will improve people's perceptions of the experience.

For example, looking somebody in the eye, speaking more slowly, explaining what's about to happen— those types of things add a little bit of time, but if it helps increase the chance that the litigant will comply with what we've asked them to do, then I think that really does move the mark for us. When I've experienced pushback, the more we talked about it, the more staff came around to accepting these ideas to the point now that they're interested in training. And our judges are looking at steps they can take from the bench.

### Have you tried other ways to instill these priorities among court staff and bench officers?

In an effort to get the right people on staff going forward, we started asking questions about judicial philosophy and the tenets of procedural justice in our applications and interviews for pro tem judicial officer appointments. It's a surprisingly new concept to a lot of people interested in becoming judges, and we've realized that asking about it once someone is hired may be too late. We want judicial officers to have a commitment to procedural justice, at a minimum. For many court users, these staff are the face of the justice system they encounter when they come through our high-volume courtrooms. And they take that experience with them.

### What other major obstacles do you see to the adoption of procedural justice practices in court?

Self-represented litigants have a tougher time getting through the justice system. The terminology is difficult, they don't know where to find the rules, the forms aren't always as clear as they ought to be, and so on. That's a large problem for us to tackle and there are no easy fixes. In our court, we are trying to re-work our website and forms to make them clearer. We're also trying to improve signage and have navigators available to assist people with forms and connect them with resources.

### Multnomah County is currently designing a new, more user-friendly courthouse. Can you explain how procedural justice has informed that process?

Our current facility has limitations that make procedural fairness more challenging. The building is more than 100 years old, and it's not easy to find where you're going. The courtrooms are all shaped and structured differently. The public service areas are difficult to find and have long lines. We are taking a lot of these things into account as we design our new courthouse. For example, we're looking at ways to keep people out of the elements as they wait to get into the building, and to have an open, smooth-running entrance area. We're

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**The courtrooms are all structured differently. The public service areas are difficult to find and have long lines. We are taking a lot of these things into account as we design our new courthouse.**

also coming up with new concepts for our high-volume and high public service areas such as the payment and filing windows to make them easier to navigate and more customer-service friendly. The court system does not typically see itself as being in the customer service business, but we make our jobs easier if we take into account some of those principles.

#### **What are some ways that line clerks have implemented procedural justice?**

It's part of the culture shift. In my role in court administration, I see the complaints that come in: the people that are unhappy with the response they got when they called or the interaction they had with somebody at a public service window. A lot of those potential conflicts can be de-escalated at the time or prevented by the approach our staff takes to handling those situations.

Historically, we didn't do a great job of providing training and tools for our line staff on how they might handle these situations. When you're at a public service window at the court, 100 percent of the people you're dealing with are not happy to be there. Nobody wants to come to the court, typically, so our staff are dealing with unhappy people all day long. It's natural to mirror the frustration you see. If we can provide mental tricks, or breaks, and support for our line staff to help them to keep a positive attitude, it makes the workday better for the staff as well as improves the interactions with the customers.

So my message to line staff is procedural justice can really benefit them. If somebody's shouting at you and you can slow down how you're speaking and smile as you're talking to them, often you can get the person to stop shouting and to understand that you are listening to them, and you can change the course of that interaction. Even our staff who have been here a long time and are skeptical about touchy-feely kind of approaches have seen the benefits themselves and realize that they can improve their work experience while also improving the experience of somebody coming to a public counter. Those two goals really rely upon each other.

#### **Have these new priorities changed how you train and manage staff?**

We have been working towards more regular training and requiring staff to participate. This has included trauma-informed care and implicit bias. I think those concepts are making a big difference. We're also trying to make the interactions our workforce has with each other and with other departments more positive, and provide ways among peers to recognize interactions that were well-handled and jobs that were especially well done. We've got a performance recognition program that allows staff of any level to nominate each other for a quarterly award in various categories. Then we have another award category intended to be on-the-spot awards for small acts of kindness or teamwork throughout the course of the day.

#### **Do you think these new performance recognition efforts have had an effect on the work culture?**

I think it absolutely has. Some of the categories for performance recognition are things such as contributing to a positive work environment, thinking outside the box, and leadership. It's great that our staff can see that we value these traits and that they're central to our success. I think, for example, they really like the ability to recognize each other with the "spot" awards, the incident awards. It's a small token, but it's something that recognizes the skills that we want to see in our employees.

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Staff are dealing with unhappy people all day. It's natural to mirror the frustration. If we provide mental tricks, or breaks, and support to keep a positive attitude, it makes the workday better for the staff and improves interactions with customers.

**You have created a public information officer position to engage the wider community. What does this person do?**

We knew it was important to have somebody dedicated to communication work, including the website, signage, and forms. The public information officer takes a holistic approach to improving them and looking at how they work together—a sort of global view of what messaging we are putting out there. The same person is responsible for handling grievances, complaints, and questions from the public. It gives her a good sense of where there is confusion or frustration coming from the public. We then try to address those issues on our website, in our procedures, and in our forms. It enables us to be more proactive as well as more responsive.

**Have you noticed changes in the nature of feedback you've been receiving from court users?**

It actually happens fairly often now that somebody comes to us with an issue and we have been able to turn some of those situations around to where somebody is saying, “Thank you so much. I really appreciate all your help. You've been very responsive.” We can't give everybody what they want and we obviously can't change the outcome of a judicial determination on a case, but if we can make sure that the appropriate steps happened in a case, and we can explain why, or we can correct errors that were made and apologize, then I think people walk away feeling like the justice system served them.

And on a broader community level, I'd like to believe that people that have been in our court walk away with a good impression of the justice system, and that after serving on a jury or having their traffic ticket or small claims case handled, they'll tell their neighbors the process was fair and that everyone received equal treatment.

**Based on your experience, what advice would you give to a jurisdiction that is just beginning to think about procedural justice and implement it in their court?**

Begin with baby steps. You don't have to fix everything all at once. We've been chipping away at things in our court and are starting to see the impact. But we still have a way to go. Look for one thing you can do differently that you're not doing now, or one change you can make to the way you're approaching something. If you see the positive impact of that, then you can help shift the culture in your own organization and get people on board with making more changes.

# TOM McCAFFREY



Thomas McCaffrey is the criminal court administrator for the Fifth Judicial District of Pennsylvania (Allegheny County), appointed in 2012. He is responsible for the operations of the Adult Probation Department, Pretrial Services Department, and the Criminal Court at the common pleas level. He previously worked as the director of the Allegheny County Adult Probation Department and director of the Pretrial Services Department. He is a member of the National Pretrial Executives Network board sponsored by the U.S. Department of Justice National Institute of Corrections and a graduate of the University of Pittsburgh School of Social Work.

## How did you first hear of procedural justice and what were your impressions of the idea?

Back in 2012, we were doing strategic planning for our court and had a couple of different areas we were focusing on. The committee I was chairing focused on the timeliness of court operations and improving programs within the court. This was where the idea of procedural justice came up. We were looking to make changes to the flow of the court. The committee was 10 or 15 people and they did research on procedural justice. I said, “What? We’re already doing a lot of that stuff.”

Some of the things we had been working on included making the court more user-friendly by expanding video conferences. We went through all the court forms and updated them to be more readable. We developed an information-sharing email and created a list to disseminate information. We made recommendation on time standards for criminal cases. We were doing all these things that were completely in line with procedural justice. I thought it was more common sense than anything.

## How do you define procedural justice?

Procedural justice is what your grandmother taught you: treat people the way you want to be treated. In my mind, this is on two levels. On an interpersonal level, it’s about how much eye contact you make, the tone you greet people with, and the communication skills your clerks have, for example. Then there’s a procedural level: we want our forms to be easy to use, a help



Procedural justice is what your grandmother taught you: treat people the way you want to be treated.

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**It's hard to be curt and unhelpful to people when the rest of your court team is completely professional. You stand out like a sore thumb.**

center to guide people through the system, a court user feedback mechanism, and accessible facilities. We have to provide a neutral and professional forum for justice that operates on both of those levels.

#### **How do you see your role as a court administrator in promoting procedural justice?**

As a criminal court administrator, I'm not only responsible for the operations of the criminal court, I'm also responsible for the operations of our pretrial services and adult probation agencies. My role spans the court broadly, in the way any defendant would, from the very first appearance at pre-trial through trial and post-trial in community supervision.

I think procedural justice crosses all of these borders. I want to formulate a plan from the very front end to the post-conviction, community supervision end. I want to manage for outcomes. If procedural justice creates outcomes, that makes it a priority for me as a court administrator.

#### **What were the initial steps you took to implement a court user survey?**

We had a consultant come in to head up the strategic planning and work with us for a year developing the survey. We had three different categories of people we wanted to get a list of feedback from. Obviously, the court users: the litigants, victims, and witnesses. We also included professional users: our system-partners. Lastly, we included our own staff:

judges and court employees. The consultant created the questions and rating system. Respondents rated the court on six key dimensions: accessibility, timeliness, fairness, quality, effectiveness, and external communications.

We had multiple ways of reaching people in locations all throughout the court and it was automated by our information technology staff so no matter where the survey was completed, the data was compiled in one place. This wasn't just criminal court but court-wide. All told, 1,700 people participated in the survey.

#### **Did you receive any pushback regarding the survey?**

The court employees thought we were spying on them, or that if they gave negative feedback there would be repercussions. Even though the survey was programmed to be anonymous, some of them didn't believe it.

But we had good conversations. We had to be careful how we framed it, especially with probation and parole participants. For people on probation, could they criticize their probation officer, could they criticize the court, could they criticize the process without fear of repercussions? We had some conversations about that. We surveyed people coming into supervision and people on their way out. We thought we got a really good sample back.

#### **How did the response rate differ between the different groups?**

It varied, with the lowest rate being the litigants. That makes sense because there is a lot of apprehension. The survey wasn't mandatory. We were just asking if you wanted to give feedback. I think out of the 1,700 respondents, roughly 200 were defendants, victims, or witnesses. About half of the total number that responded were judges and employees. That was by far the biggest category. We have 1,200 employees in the court and we were asking everyone to do it. Then, a little more than a third of the 1,700 were system partners. We got enough respondents from the different categories to draw some conclusions.

**You applied to have your court evaluated on procedural justice practices by the Center for Court Innovation through a grant from the Bureau of Justice Administration at the U.S. Department of Justice. What made you decide to pursue that opportunity?**

I think there is a small group of the managers that work for me who know what procedural justice is, but the majority of folks here don't. That is the reason why we applied to be assessed.

This stuff is really important. It aligned with what we were doing, but we didn't have any overall procedural justice plan or road map. That is what I was really after. If I could get someone to evaluate us to say, "Here's what you're doing well, and these are areas you need to work on," then that creates a road map. It creates an overall procedural justice initiative, instead of doing it piece by piece, something here, something there.

**Did you feel like you needed to take more steps to generate buy-in for the assessment with your staff or the other stakeholders involved?**

I don't know if it was to generate buy-in but I knew we had more steps to take. We had a new strategic plan. We had committees to address areas for improvement. We did that, but then everything died down. For me, I knew we had a lot more to do.

Some feedback from the surveys was never really addressed. One of the findings that emerged was that judges and employees rated the court significantly higher in timeliness than court users and litigants. We thought we were doing a good job, but obviously we weren't. We really didn't do anything to address that, for example. So we had work to do.

When I applied for us to partner with the Center for Court Innovation on the procedural justice assessment, I wanted to get a fresh set of eyes on our operations. I wanted to map out how we could continue to move forward. In my mind, procedural justice isn't something you do once. It becomes part of what we are and what we do. I wanted to make it about long-term, constant improvement.

**Are there other procedural justice efforts you are implementing in the court?**

We developed a court continuance policy in the criminal division because a lot of our cases were languishing and our time-to-trial was horrible. Our time-to-trial improved and the continuances went down. We developed information pamphlets and posters on our seven problem-solving courts to push that information out. We staggered our arraignment schedule, which was a huge deal. Good citizens would be in here at 8:30 in the morning waiting for their arraignments and some of them didn't get arraigned until noon. We made an hourly arraignment schedule. We started early, too—we moved it up to 8:00 a.m. and did it all the way through 4:00 in the afternoon, on the hour.

**A lot of these initiatives are large undertakings. How did you balance these efforts with ensuring the efficiency of the court?**

People being treated properly and the speed of the docket are both important. Especially with high-level cases involving victims, making them wait a year-and-a-half for a trial is horrible. But at what point are you pushing the docket so hard that people might feel they aren't getting a fair shake? I think the pendulum can swing too far.

We hear 20,000 cases a year in our criminal court. Out of those 20,000, about half are on two expedited dockets. They're the lower level, misdemeanor cases. That is something we really try to stay on top of. We work closely with the public defender's office for expedited pleas to make sure of the due process part. We didn't want folks to feel like the court is pushing them to plead to lower offenses if they didn't do it. That is something we always look at.

I don't know if this is something you can ever really solve for good—you just have to keep examining your processes. We don't have a continuing mechanism to solicit feedback from court-users. Once we can get folks that have gone through the expedited dockets and look at how they were treated and if they thought they were being pressured, that will be a good way of policing the process.

**Have you experienced skepticism about procedural justice among your staff?**

We have skeptics. But by and large, the court employees have bought into the whole idea. We frame it as management by outcomes. We're committed to effecting positive change in offenders.

**What advice would you give to your counterparts in other courts who are interested in procedural justice?**

It all starts at the top. The people at the very top of the pyramid have to be engaged with the whole idea. That is where you have to sell it. Once it's being pushed out by the higher-ups, things will happen.

**Do you think that procedural justice can improve relationships among your staff, morale, and the workplace environment?**

I do think it can have an impact. A lot of people just get set in their ways. Once you start bringing these things to the forefront, people feed off each other. It's hard to be curt and unhelpful to people when the rest of your court team is completely professional. You stand out like a sore thumb.

**Do you feel that the procedural justice efforts you've implemented have improved compliance or had other positive outcomes?**

This is something we're hoping to measure. If you take our problem-solving courts, which strive to improve the circumstances of people who come into these courtrooms, the court teams work in conjunction with the defense counsel and the district attorney. Our outcomes in the problem-solving courts are significantly better than our normal supervision for probation or parole. The goal of the whole problem-solving group is to effect positive change. They're treating people differently. A lot of that approach has to do with how you address people and what your goal is with each person. If the outcomes are better in the problem-solving courts, they will be better if we adopt that same approach across the board.

# CLAUDIA MONTOYA



Claudia Montoya is a staff attorney at The Legal Aid Society in New York City. She is an original staff member of the Mentally Ill, Chemically Addicted (MICA) Project, which began providing legal representation and social services for those suffering from serious mental illness since 2002. She is a law graduate of City University of New York Law School and earned her undergraduate degree at New York University.

## What does procedural justice mean to you?

You always want to humanize your client. As an advocate, I try to engage all the applicable systems that my client is involved in, whether it's in court or in the community, to create better outcomes for my client. It is my hope that at the end of the court process, the client is not only disentangled from the criminal justice system, but is in a happier, healthier place in their life. That's procedural justice.

## How important is procedural justice when addressing mental illness?

As an attorney at the Legal Aid Society's Bronx Mentally Ill, Chemically Addicted (MICA) Project, I represent people living with serious mental illness and some degree of substance abuse. I also work with people who live with developmental disabilities, traumatic brain injuries, dementia, and chronic medical conditions. Our clients are charged with everything from violent felony offenses to misdemeanors. Procedural justice is incredibly important for this community because the intersecting mental health systems that our client engage in are often very afraid of clients living with serious mental illness. It doesn't matter what the data says, which is that people living with mental illness are more likely to be victims than victimizers. In my experience, the question most often asked is, "How do we know this person will not harm another?" When the judge, district attorney, defense counsel, social workers, court staff and treatment providers come together for the good of the client, in

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When judges are procedurally just, clients do not want to disappoint them. In fact, they want to please them.



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I would say that fear is the biggest challenge in representing people living with mental illness.

agreeing to the client’s diversion through treatment, that act is a very important factor in empowering the client to succeed in their recovery. It gives the client the sense that he or she is a valuable member of our community. In turn, the client’s recovery is an important factor in creating a safe community.

**One of the core principles of procedural justice is ensuring that a defendant has been heard.**

**How do you implement this with your clients?**

I think the most important thing is to really try to listen to what the person is saying to you and to meet them where they are in their recovery journey. I want the client to feel heard. Secondly, I want my client to know I have compassion for their struggles and that I am their advocate, being there with them every step of the way. It means going the extra mile and asking, “What is it that you need?”

**Have you observed the impact of procedural justice on clients?**

Yes, I have observed it throughout my career. You can feel the difference the minute you walk into a courtroom. Many of our judges in the Bronx love to engage with clients and talk to them about their treatment. The client’s experience improves, along with their perception of fairness. Even when clients are unsuccessful, they’re much more willing to come to court because they know that they will be heard by the judge. Also, when judges are procedurally just, clients do not want to disappoint them. In fact, they want to please

them. On the other hand, when judges are extremely harsh and punitive, it’s a miserable experience for everyone.

**What advice do you have for building trust with mentally-ill clients?**

You have to be more patient and available. You have to engage with other systems that we, as criminal justice practitioners, are not traditionally accustomed to engaging with. For example, with your client’s consent, you should be in touch with the client’s providers, family members, hospitals, and corrections. I also recommend a greater dialogue with the District Attorney’s Office and the court. Also the criminal justice community needs more training in the understanding of mental illness and healthcare systems. The latter is more complicated than the criminal justice system, which, in my opinion, is a very broken system as well. Even though things are very different from what they were 25 years ago, we still have a steep learning curve. There’s just so much to learn. How do we interface with various agencies? How do we engage with those living with traumatic brain injuries, developmental disabilities and chronic medical conditions? There’s just so much work to be done.

**Have you noticed an increased emphasis on concepts like procedural justice and restorative justice over the course of your career?**

Things have definitely changed. When I first started, there were no diversion programs and no mental health courts. As a new attorney, I frequently asked judges and prosecutors “Why can’t we help the client?” That was my mantra. I have a funny anecdote that exemplifies this point. During a homicide trial, I was sitting in the audience waiting for the break to have my case called. A very senior and well-respected judge interrupted the defendant’s testimony to call me up to the bench. And he said, “Ms. Montoya, do you think you can find this man a program?” That was his joke. Compare that to where we are now. We have come a long way. And believe it or not, that judge went on to be a dedicated proponent of mental health courts and treatment. I’ve been here 25 years, which is nothing in the life of a criminal justice system. I do believe and hope that we are going to

move and stretch even more, folding more restorative justice models into the criminal justice system. I do believe it's going to be possible.

**What do you see as challenges when it comes to procedural justice?**

I would say that fear is the biggest challenge in representing people living with mental illness. The other challenge is treatment. How can we create good quality, appropriate treatment plans for clients? This is a major challenge, especially when you have clients who live with severe and untreated trauma along with other chronic medical conditions. In those cases, everybody understands that prison isn't the best solution, yet, unfortunately existing treatment programs don't always meet client needs, or sadly, where programs do exist, clients are sometimes rejected on grounds of ineligibility.

**How do you deal with clients who aren't compliant?**

We have frank discussions. It's not my role to sanction anybody, but it is my role to advise clients as to the consequences of their actions. I have to be direct and try to reach out to them. Sometimes I have to plead with them to try to get them to a safe place. I try to inform, support, and encourage them. I say, "There's a treatment plan for a reason. This is what helps you with your recovery. Remember, you don't want to wind up in prison."

# TOM O'BRIEN



Tom O'Brien is a senior assistant state's attorney in Connecticut. For the past five years he has been the sole prosecutor assigned to the community court in Hartford, Connecticut. He is a graduate of the College of the Holy Cross in Worcester, Massachusetts and the University of Connecticut School of Law.

## How did you first hear about procedural justice?

I started working as a prosecutor in community court about five years ago. That's when I started looking at procedural justice. Because it's a community court and I am the only prosecutor here, I can kind of experiment with things. Procedural justice has been career altering. It's been that substantial.

## What is appealing about procedural justice for you as a prosecutor?

It's the prosecutor who handles every case. But procedural justice can be a difficult sell sometimes to prosecutors because we're under the gun. What I finally realized is that I was getting better results because I took a little more time up front with people. They accepted things far more readily because they had a chance to have some participation in the outcome.

Whenever I go out of state, I try to visit different courts. One time, I went into a court that's extremely busy but was extremely well run. Here I am, a seasoned prosecutor, confused about who was who in the system and the movement of the cases. Even with my level of experience, I found it was unsettling to sit there and try to follow it. Had I been a defendant, I can imagine what the level of stress would be. And what if you have a language problem?

You have to keep in mind that most people coming in are not at all familiar with the court system, and just walking in the building is very unsettling and confusing. Anything we can do

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to correct that confusion is going to help us do our jobs better and get better results.

That, to me, is what procedural justice is: recognizing that at any point in time, your contact with an individual is the most important case you're dealing with in the moment. If you do that, it'll force you to take the time to slow down a little bit. To give the people a voice in what's going on. To explain who you are. You take that time and the process just runs a lot more smoothly.

#### What are some concrete strategies you employ as a prosecutor?

Once we have everyone in the courtroom, what I'll do is stand up in front of the crowd and tell them who I am and what they can expect for the day. I'll tell them right off the bat that my goal is to try to give them a way to earn a dismissal of their charge. Then I'll explain what a dismissal is. I'll tell them that the judge will come out at a certain time. I tell people, "I understand that nobody really wants to be here." I tell them that their time is important and that we'll try to respect that.

As the defendants come forward, I say, "I appreciate your coming to court today." I will say, "You showed a lot of respect for yourself." It's just an absolute truism that the mere fact that they showed up in court means you have something to work with. That means a lot.

If they want to tell me what happened, I give them a chance to explain themselves. I'll ask them, "Have you been here before? Do you have a prior record? Do you work?" Before I make them an offer I say, "I'm going to make you an offer. You may not like it. You don't have to take it. I'm going to try to give you something that will allow you to get out of here without anything on your record."

Part of being a professional is giving an explanation that offers transparency to people. I should clarify why I'm making an offer to someone and on what basis. It took me a little while to see that following the concepts of procedural fairness got me there.

#### How did you come to the point where you actually started to internalize procedural justice and change your practice?

I love doing what I do, but if you do it the same way everyday that's pretty boring. There's no reason to come into work every day if you're going to do things the same way you've always done things. Procedural justice has made my job more enjoyable; I feel more successful in what I'm doing. It's challenging to push yourself. I'm certainly enjoying what I do a lot more and the court seems to be running better because of it. Prosecutors will say, "I serve the community." But the community includes the defendants. Most of us would readily say, "the courts belong to the people," but then they also belong to the defendants as well. You can't allow the defendants to feel like they've been detached from the community. If you disconnect them from that, you're never going to be able to help them get restored back to it. It's such an obvious thing to say but we forget it very often.

#### Are there any specific practices you employ for special populations, such as those with limited English proficiency?

For English language learners, I slow the process down even more. We always have interpreters available to make sure that they are comfortable. I realize how much worse the court process would be if you don't speak the language. You're in a foreign environment to begin with; if you can't follow the language, it's going to be ten times worse.



Procedural justice is recognizing that at any point in time, your contact with an individual is the most important case you're dealing with in the moment.



**You have to try to be aware of biases, and procedural justice is the tool that causes you to become aware.**

#### **How do you address skeptics, whether they're fellow prosecutors or otherwise?**

Defendants expect you to come at them.

I've seen so many prosecutors try to out-puff people. When you treat people professionally and calmly, treating them with respect, that's something they do respect. They don't respect the huffing, the puffing, the antagonistic attitude.

I used to be kind of an in-charge person, a little louder, a little more in your face. Back then I would have said, "I'm doing a great job." I look back five years ago and now I'm embarrassed by the way I did things back then. The outcomes that I'm getting now are the same; I can't say that I've altered my offers for dispositions, but I think people are more inclined to comply.

#### **How do you see other court staff effectively practicing procedural justice?**

At the front door, the marshals set the tone for things, and that carries through to the courtroom. When you walk in that door and the marshals are nice, it takes some of the apprehension out of the process.

#### **How do you get those other staff on board?**

I personally won't tolerate somebody being rude. If I see somebody being rude or disrespectful or dismissive, I'll step in. I think the judges have to set the tone that we expect people to be treated with respect. It affects all of our jobs, because all of us work together.

#### **How do you maintain your approach, day in and day out?**

When I first started doing this, I'd sit in the car before work and say, "Don't bring anything bad in; make it a good day." You have to remind yourself every day. You don't always get it right and it's easy to forget.

Not everyone's easy to deal with. There are people who are less likable than others. You can't allow people to hurt themselves because of their bad behavior. The offer that I make should be a fair offer based on what's in the report and the allegations against the person. It shouldn't be affected by whether I like them or whether they said something nasty to me or were disruptive. Procedural justice guides you to that. It keeps you from being affected by somebody's poor attitude or poor interactions with you.

#### **High caseload is often cited as a challenge to implementing procedural justice. As the sole prosecutor in your court, how do you manage that challenge?**

Prosecutors should take the time to get every case done right. I would want to be treated like that, and I guess that's part of it. That's your jury pool. Any of these people that you're dealing with on any given day, especially at the misdemeanor level, become your jury panel. That goes for the victims and family members in the audience as well. There are family members that want to believe that their daughter, their brother, their husband will be treated fairly.

In Hartford, the racial composition of the defendants is skewed towards Hispanics and African Americans. The defendants better be able to look at the court and say, "Okay, he's treating everyone the same whether they're Hispanic, whether they have an interpreter, whether they're black or white." Procedural fairness cuts through all of that. People are also looking at the implicit biases that go on; the subtle ways that we do things that are not intentional. You have to try to be aware of those biases, and procedural justice is the tool that causes you to become aware.

**How can you tell that procedural justice is having an impact on compliance?**

It happens on a daily basis around here. There are a lot fewer dissatisfied voices. When defendants go to sign up for their community service or meet with the social workers, those staff are surprised by that.

**How can procedural justice improve relationships between court staff?**

If you're taking the time to respect the people that are coming through the court, then you have to respect your coworkers too. When you start having the mission of embedding procedural justice in everything we do, then we're all working together. It makes each department part of a bigger team, and that's how the cohesiveness works. I've had people come through our court who say, "My god, this doesn't even seem like a courthouse."

# ISMAEL OZANNE



Ismael Ozanne is the Dane County district attorney. He is the first African American district attorney in Wisconsin history. He previously helped lead the Wisconsin Department of Corrections which oversees community corrections and the state's prison system.

## How does procedural justice fit into your role and goals as a prosecutor?

The traditional role of the prosecutor is to prosecute offenses, to be an intervention. For serious violent offense that may be all we can do. But if that's all we do as prosecutors, I think we're failing the community. I think we have to actually ask, "Are we making our community safer? Are we getting to the root of why people are coming into the system? Are we getting justice? And how can we help?" We have to be proactive and if possible create a system that works on prevention as well as intervention.

If we cannot prevent an incident, we must have the earliest intervention possible to help people change their behavior so they can avoid the system and hopefully become productive members of the community. Most of us want to see people take responsibility, show remorse, repair the harm, and change something to ensure that they won't re-offend. Procedural justice and restorative justice work to this end.

## What does procedural justice have to do the administration of justice?

I tell people that I'm a constitutional officer. I have sworn to uphold the Constitution of the United States and Constitution of the State of Wisconsin. In simplest terms, it means to protect everyone's rights. That means the rights of victims, and the rights of defendants. I have to ensure that everyone is treated fairly. I usually say, "If you are a victim, the system will never move fast enough for you. You will feel like

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We can see the system is broken because of who makes up our prison populations and the people in the halls of the courtroom, but is there something we can do differently?”

the system is bending over backwards for the defendant. You have to realize, if you were the defendant, you would want us to take every precaution to ensure that we have protected every one of your rights, and that what we did was done correctly. We don't want to have to do it over. We don't want to have to do it a second time."

### Do you consider race and racial disparities to be a part of this discussion?

There's a lot of scrutiny and attention placed on the criminal justice system right now because of racial disparities. This is true in our community in Dane County and across the nation. I don't think all of us are having the difficult but necessary conversations that need to occur, which is how to get violence out of our homes. Everyone's looking at the system and saying, "Something is broken here. We can see it's broken because of who makes up our prison populations, who makes up the people in the halls of the courtroom, but is there something we can do differently?" I think that tough conversations need to start with, "Is there something we can do differently? Is there something that the community can do differently?" We know that many people cycle in and out of the criminal justice system. That is the problem everyone is trying to figure out. How do we ensure that someone, if they have to come in to the system, can get out without it being a hurdle for the rest of their lives? How do we ensure that they can get to a better place? The easiest way to ensure this is through prevention and education, but meaningful early intervention is also necessary, with law enforcement, human services and prosecutors.

The issues of basic fairness, equity, and racial disparities have to be addressed by communities. If not, they create mistrust. The mistrust and inequity causes some victims to not fully cooperate with law enforcement or the prosecution because they see the system as unfair. It also festers and gives some defendants a psychological out to feel that the system is unfair and therefore its rules not worth following.

### Can you share any specific procedural justice practices for working with victims?

The legislature here in Wisconsin has acknowledged the importance of treating victims with dignity and respect. Wisconsin was the first state to create a "Victim's Bill of Rights" for adults and children. In the Dane County District Attorney's Office, we have a victim witness unit that is made up of professional social workers. They interact with victims and make sure that we are responsive to victims. They help educate younger prosecutors on the benefits of treating people with empathy, taking the time to explain things. We do some of that with trial prep and when meeting with victims after a sentencing to explain what has occurred. Our victim witness unit handles a lot of our victim contact. They may say to a parent "Hey, just so you know, if your child is going to come to testify, we have some videos about what it means if a child's going to testify." We can give copies to parents so they can watch them with their kids so they understand the process.

We also show witnesses, especially children, the physical layout of the courtroom and say, "Here's what you're going to see, here's what you can expect. We don't know what the defense counsel is going to do. The reality is, they're probably going to ask you hard questions. They're probably going to be somewhat forceful." I say, "You've got to realize, we need them to ensure that every right is protected for that

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We show witnesses, especially children, the physical layout of the courtroom and say, "Here's what you're going to see, here's what you can expect."



defendant so we don't have to do this again, so we don't have to call you back a second time. We want to make sure nothing goes wrong to cause a mistrial." We have a "Crisis Response" unit that connects victims to resources many times before the case is even referred to our office. Law enforcement knows they can call our crisis response team to help with addressing victim's immediate needs such as emergency shelter or trauma informed care or counseling.

### Are there other special populations of court users for whom you've developed specific strategies to promote procedural justice?

We are looking to identify mental health issues sooner in the process. In the past it has been the role of the defense attorney or another system partner to identify a defendant's mental health issues and raise them with the court. We want to raise the issue with the court in order to get the defendant connected with treatment and counseling as soon as possible and, where appropriate, diverted from the criminal justices system. If we can address the mental health issue and keep the person supported in the community, that is much better for all of us.

We are also looking to increase our ability to serve vulnerable populations such as those whose first language is not English. We have looked to hire more bilingual staff and currently employ bilingual staff as victim specialists, clerical staff, and prosecutors.

Overall, I think when you're dealing with those populations that are vulnerable, or when you're dealing with minority populations, say African Americans, there may be a distrust of the system, and rightly so. To effectively protect and serve these populations we must treat them with dignity and respect. We must also be able to empathize and understand their concerns. This means we must look to educate ourselves on culture, religion, history, and privilege. If a victim doesn't want to speak to police because they fear the potential of deportation for themselves or the offender, we need to address that issue in order for the system to work for us all and make us safer.

### How can courts improve legitimacy among racial and ethnic minorities?

We must find a way. Our county is billed as the worst place for racial disparities in the nation. You can't discount that. I'm the first African American district attorney in the state's history. It took until 2010 for a person of color to get to this position. That is an issue.

When you look at the makeup of Dane County, persons of color are 15% of the population. If you look at the city of Madison, the largest metropolitan center in Dane County, they're 5% or 6%. Shortly after I came into office, we had a spike in our referrals for child abuse and neglect cases. When we looked deeper we found that 54% of those referrals were persons of color. Right there you see an actual disparity. So the first thing we did was educate ourselves on implicit bias, privilege, culture, history, and religious beliefs through sending staff to conferences and trainings. We reached out to the faith-based community to try and engage them in the discussion. We held two statewide conferences on the "Cultural Context of Corporal Punishment." We've had community conversation on positive parenting and the adverse effects of corporal punishment. We created a public service announcement asking parents to choose not to use corporal punishment. The conversation is not always a comfortable conversation but it is necessary. We are looking to address this disparity on multiple levels, culturally, religiously, historically. We're looking to deal with implicit bias, both professional and personal.

We also created a diversion program, as well as a "No Hit Zone" in our public spaces as a way to share information on positive parenting and early brain development. This official stance of the District Attorney's Office through the "No Hit Zone" empowers employees to intervene in a nonjudgmental way if an incident arises before it reaches a point of getting physical. The "No Hit Zone" is a true prevention initiative and a nontraditional approach.

**What kind of feedback have you received from court users about this approach?**

For example, I remember a day in court, a guy came up to me and said, “Do you remember me?” He said: “You gave me a break many years ago. You sent me to diversion. I wanted to tell you, it changed my life. I’m in the courthouse today because I’m mentoring this kid over there and I told him he’s going to be treated fairly, and if we can get him into some programming. It’s going to be great. It happened to me.”

# MELBA PEARSON



Melba Pearson is the deputy director for the American Civil Liberties Union (ACLU) of Florida. Before joining the ACLU, she was an Assistant State Attorney in Miami-Dade County for 16 years. She is a past president of the National Black Prosecutors Association; co-chair of the Prosecution Function Committee of the American Bar Association; as well as the membership chair of the Gwen S. Cherry Black Women Lawyers Association in South Florida. She received her undergraduate degree from New York University and her law degree from Hofstra University School of Law.

## How would you describe procedural justice in your own words?

It's about fairness across the board and making sure that every policy you have in place is affecting everyone equally as opposed to having different impacts on different communities.

To me, my job is always the same: to look at everything equally, to make sure that I'm administering justice across the board, and that no one is being harmed as a result of my actions. So procedural justice doesn't really change my world any because I've always tried to act in a manner that is fair, open-minded, and takes into consideration all angles presented to me.

## How does procedural justice look different when you're dealing with a defendant versus a victim or a witness?

Well, you have to be more sensitive—not that you can't be sensitive to defendants too, because you should be—but you're more sensitive to a victim who has gone through trauma or suffered a loss. This is true whether it be a monetary loss, a physical loss, their own health, or the loss of a loved one. They have a set of needs that you have to address and you have to be conscious of what they want. You've got to listen to them, most importantly, and be able to communicate the process in a distinct and effective manner. Of course it's frightening to them. They've been traumatized. So, you have to be very communicative towards your victims and your witnesses.

Now, it differs from the defendants because as a prosecutor, you're not communicating with the defendant in the same way at all. That's the defense attorney's job. But, if you see that the defense attorney is not communicating with that defendant, you have to bring that to the judge's attention, without throwing the defense attorney under the bus.

At the first appearance, you're reading off the charges to the defendant, you're letting them know the minimum he's facing and the maximum. Sometimes it doesn't hurt to say some of the process and the facts that you'll be using in the trial, without giving away the strategy, but giving

the defendant the understanding. There are times that I've actually sat down with defendants and discussed the plea with them in the presence of their attorney because hearing it from another perspective may change the outcome. When you're hearing from the prosecutor it's like, "Look, I'm just doing my job. It's nothing personal. It's not like I hate you and I'm just trying to jam you up." It's about, "this is the case that's been presented. This is what I need to do to protect the community." So, when they see it's not personal, sometimes it helps.

#### Are there any challenges to implementing procedural justice that are specific to victims and witnesses?

I think part of the problem is people's understanding of what the criminal justice system is versus what it should be. They see "C.S.I. Miami" and "Law and Order." That's not what is happening in our world. So, they get let down.

You'll see somebody who is not willing to go forward and participate in the process because they're afraid or because they don't believe in it. Then you end up telling them, "Look, I'm going to have to bring you in on a material witness spot and potentially take away your freedom because I'm worried about the community." And then that becomes a huge tug-of-war. So, I think the biggest challenge is witnesses and victims being unwilling to participate, or when they do participate, feeling let down by what they see.

#### How do you address the skeptics who believe procedural justice does not work?

The bottom line is that we are in customer service because we're public servants. That's what public servants do: we serve the public. I'm not saying you have to be warm and fuzzy on every single occasion, but you have to at least try to ensure the best outcome in every situation. Not everybody is going to walk away happy and that shouldn't be a measure—the measure is going to be about whether or not people understand the process, if they've been communicated with on a regular basis, and if the best outcome was achieved that could have

been based on the circumstances. Even though we're not in the warmest and fuzziest of circumstances, people have been hurt, people have suffered, and we have to do the best we can to alleviate that in whatever means we can.

#### Do you have any concrete procedural justice practices that you can share?

When I bring victims and witnesses in for the first time, I explain the entire process to them. I start with, "I'm taking the statement today, and then there's going to be the arraignment. After the arraignment, there's going to be something that they call a deposition where you're going to have to go ahead and give your testimony again, but this time to a court reporter for the defendant. This is why the deposition is important for a defendant. And then, you've got to hang in there with me because this is going to take two to three years to come to trial. And if you change your phone number after you move or if you change jobs, you need to call me. We'll call and check in every-so-often, but don't hang up the phone on us. We're just giving you the status. If you ever have any questions or want to know what's going on with the case, here's my number, call me. Here's my email. Here's my victim/witness counselor's email and phone number. Do you need any services?"

I cover what to expect from the criminal justice system. So when two and three years later it gets to trial, they come in, and yeah, they're a little annoyed, but I'm like, "You remember that discussion?" I think a lot of prosecutors

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Part of the problem is people's understanding of what the criminal justice system is versus what it should be.

sometimes are in a rush just to get the statement, figure out what charges to file, and they forget the human element that this is somebody's life.

I also ask them what their sentencing recommendation is. "Tell me what you'd like to see happen and I will take that into consideration." I explain to them, "look, just because you're telling me a certain number, it's not a guarantee we're going to get that because they're a lot of different things in play." So at least they feel engaged and a part of the process.

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**Keep in mind that every decision you make, every action, is affecting someone's life, whether it be a victim or a defendant.**

**How can you get the message across the same way to special populations, like those with limited English proficiency?**

Depending on the situation, I use an interpreter. I'll have someone on my staff translate for me and I go through the same exact procedure as I would with an English-speaking victim or witness. I make sure that they're engaged and they feel comfortable. I also let them know that the court will have an interpreter available so that they can communicate in their native language. I don't want them to worry that they're going to have to polish up their English or will be misunderstood. I take away that fear right from the get-go.

I educate them on the process, especially if they've never dealt with this before or if they're coming from a different country that has a completely different system than we do. And then going into what's going to be expected from the rest of the case is step two. But, you

can't spring that on somebody the week before trial. You have to get them prepared.

**How do you see procedural justice in action in other parts or roles within the courthouse?**

There's this one judge here who is amazing. Her colloquies are so solid. She goes through everything line by line. She asks, "Do you understand the words that I'm using? If you don't, tell me. Interrupt me, that's fine." She really breaks it down bit by bit, in colloquial terms that defendants can understand. So, when they take that plea, they know every ramification. The norm is to try to spend a lot of time to explain. They walk out of there knowing exactly what is going on. So, you're going to understand after walking out of a plea colloquy with her. She's enacting the model that other judges should follow.

**What obstacles to procedural justice implementation have you observed or experienced?**

The biggest obstacle is funding. As caseloads increase, if you're not increasing the number of staff, you're going to have overworked prosecutors and defense attorneys who are not able to really take the time with each case as they should. And in not being able to take the time, procedural justice gets affected because you take shortcuts. Funding also ties into a lack of programs that can be beneficial to defendants and victims. That's something that's a huge concern to me, especially when you look at mental health and drug addiction. So, these are things that you have to consider because for example, if there's restitution or a fine, they can't pay it, and then you're back to square one in court.

**What advice would you give another prosecutor that's trying to bring procedural justice to their practice?**

Be patient. Rome wasn't built in a day. Keep in mind that every decision you make, every action, is affecting someone's life, whether it be a victim or a defendant. So always be mindful of what the end goal is, which is justice. It's the beginning, middle, and end of it.

# JOE PEREZ



Joe T. Perez is a judge for the Superior Court of Orange County in California. He was appointed by former governor Arnold Schwarzenegger in 2010. He served as a commissioner for the Orange County Superior Court from 2007 to 2010 and was a deputy public defender for the Orange County Public Defender's Office from 1995 to 2007. He earned a J.D. degree from Southwestern University School of Law and a Bachelor of Arts degree from the University of California, Los Angeles.

**What does procedural justice mean to you?**  
My father was a judge. He told me that you have two ears to listen, a brain to know the law, and a heart to bring a sense of humanity to the courtroom. I think that is absolutely true. I don't think this can be done other than just being honest and making sure that everyone who walks in your court knows that you are a caring person and that you will listen to them and make a fair decision. The attitude of the judge reverberates through the court. If you have someone on the bench that isn't nice, that is short-tempered, that treats others with a lack of respect, then the staff will behave the same way.

We have a homeless court where people literally come off the streets and they're to be treated with dignity and respect, and we're there to listen to them. I think people just want to know they have a fair judge who cares and that you're willing to actively listen and to give them a chance to be heard. Then at the end of the day, when you make your ruling, at least they feel they've been listened to.

A lot of the people who come before me have no family. They have nothing. To have someone with a black robe listen and care and want them to do well—and that it comes from the heart—that makes a huge difference. An example, yesterday, this gentleman in the homeless court successfully completed the things we required him to do—volunteer, complete community service, and get a safe place to stay. He said, "Judge, can I come up and shake your hand?" I

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Everyone gets the perception up front that we're there to help and that really lowers defenses. We're providing a service to them.

said, “Sure,” and to see his face light up when I said “Sure,” stuff like that is everything.

I distinctly remember when I was a little boy going into my dad’s court and no matter what was going on, it was very peaceful. Everyone was treated with respect. There was no yelling, no condescension. That’s the way I think I conduct my court.

If putting on a robe gives you an ego, you’re in trouble. Putting on a robe, as far as I’m concerned, is humbling, and it’s a tremendous amount of responsibility. You’ve got to take that very seriously. What we’re doing is actually providing a service. Litigants are not doing things for us; we’re doing things for them. It’s super important that you act humbly and understand that many court users have either never been in the system or have been, but have been treated very poorly.

**You were a public defender for 12 years before becoming a judge. How did that inform your views on procedural justice?**

As a public defender, there are courts you like to go to and there are courts you do not. And it’s about based on how judges conduct themselves in the courtroom. You ask yourself, is it an inviting environment? Or is it hostile and the judge is very difficult to deal with? I promised myself I would never be that way.

**You preside over a range of problem-solving courts, including a homeless court, mental health court, veterans court, and drug court. How does your use of procedural justice strategies vary among them?**

Overseeing these courts, you never know exactly what you’re going to get. I think you need to understand that some of these people are sick and that you’re trying to get them treatment. The bottom line is you want them to get better. I want everybody who works in my court to want these folks to succeed, regardless of what your position is. I mean, there is going to be fighting between the district attorney and the public defender and even between healthcare and the probation department. At the end of the day, I think we all want to see these

folks succeed because if they succeed, the chances that they’re coming back are lower.

**Does that approach work with individuals coming through with more serious cases?**

We had a case where everyone wanted to send this guy to prison—I think it was a driving under the influence case. I said, “No, we’re going to give him a chance because if we don’t treat him, there is a chance he could come back.” And he successfully completed the program. When he graduated, he broke down crying. He said, “Thank you. We have children. You’ve made all the difference in the world with our kids.” I saw that some people in the audience were like, “Wow, he does care and this court makes a difference.” To know that the judge cares is very important. Just for a judge to say, “I’m proud of you,” just to see them light up, that makes a big difference.

**What other feedback have you gotten from court users about their experiences in your court?**

I’ve had this situation happen where you see people out in the street and they say, “Are you Judge Perez?” or they say, “Hi, Judge Perez,” and I say, “Hello, how are you?” Sometimes I remember them and sometimes I don’t. Many of them will come up and say “thank you.” Judges aren’t used to that experience.

In drug court, a young man came before me. He was probably in his mid-20s and everyone wanted to send him to prison. He had just had

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**There is a reason lady justice has a blindfold on. So everyone that comes before her is treated fairly, regardless of race, religion, sexual orientation, and so on.**

a child and was the sole provider for the baby. I said, “I’m going to give you a shot. You’ve got a little girl here and I’m going to hope your instincts as a father are going to drive you to do what is right.” He got through the program. Years after the program, I got a call from my clerk that this gentleman is here to see me. I walk out of the courtroom and I sit next to him, you know, just sit next to him, “How are you? What are you doing?” I shook his hand. He said, “I came to talk to you.” I said, “Well, what’s up?” He said, “Well, let me show you some things.” The first thing that he showed me is that he got his Associate of Arts degree in college. He had done exceptionally well when he was at the community college level. He showed me his acceptance letter to UCLA and told me that he wants to become a lawyer.

#### What are some specific strategies you use to help defendants feel welcome and respected in the courtroom?

Everyone that comes in front of my court is “Sir” or “Ma’am.” I treat everyone with a sense of dignity. We recognize people’s efforts by saying, “Congratulations, you’re doing really well.” Everyone gets the perception up front that we’re there to help and that really lowers defenses. We’re providing a service to them. We want to make sure that we treat them fairly just like you would if you were in business—or like someone walking into your home who you want to feel comfortable. There are some people who believe that it’s not a judicial function. I’ve had people call me a social worker with a robe, but that’s who I am. There are times when you may feel anger but there is no place, in my opinion, to be belittling, to be demeaning, or to treat people without respect.

#### Research on procedural justice has shown that when court users feel that they were treated fairly, they’re more likely to comply with judicial orders and obey the law. Has this been true in your experience?

That’s what I’ve been saying for years. Defendants have to feel they were treated fairly in order for them to want to comply. I also think they have to know it’s sincere.

#### How do you engage your court staff in the work of procedural justice?

I do it by example. When you’re the judge, everyone takes their cues from you. If you have a judge that’s not respectful, his staff also turns into that. On the other hand, if you have a judge that’s very respectful and open, the staff tends to be the same way.

#### What do you say to judges who think that procedural justice is incompatible with the job?

There is a reason lady justice has a blindfold on, right? So everyone that comes before her is treated fairly, regardless of race, religion, sexual orientation, and so on. None of that should ever come into play, so I think procedural justice is built into all of our jobs.

#### Are there ways that you adapt your style when you have defendants in your courtroom who have limited English proficiency or who come from a different cultural framework than this country’s?

Language is a very big issue. You have to remember that everyone likes to be heard—whatever that takes, typically it’s an interpreter, or something where at least they feel more comfortable that we are listening. All of us share a common denominator. I think it’s just human nature. You treat someone with respect and dignity and you’re sincere, you’re going to get the same back hopefully.

#### What advice do you have for judges who are interested in enhancing how they interact with the people who come through the court system?

Judges should put themselves in the position of the person standing before them and really show some empathy. Notice: do you smile or do you frown? Do you seem grumpy? A lot of that makes all the difference. And you have got to listen. Can you imagine walking into court and feeling that the judge couldn’t care less? You have to know the law and you have to know procedures, but you can do all of that with a sense of humanity. I think that’s imperative.



# TOM REED



Thomas H. Reed has been a member of the Milwaukee Trial Office of the Wisconsin State Public Defender since 1982. He is a member of the Board of Directors of the Milwaukee Bar Association, the Milwaukee chapter of the National Alliance on Mental Illness, the Milwaukee Secure Detention Facility, and the Milwaukee Mental Health Task Force. He has been an adjunct professor of law at The Marquette Law School since 1999. He is a graduate of Northwestern University and the Cornell Law School.

Do you think procedural justice is related to the actual delivery of justice?

I think they're related in a lot of important ways, actually. First, there is the aspect of legitimacy: that a person who's subject to a criminal justice sanction needs to feel as though the things that were done in response to their legal status are things that are fair, rational, and explainable. When someone is treated poorly, what they understand is, "I was a powerless person and I was treated poorly because they could treat me poorly." I think when justice-system professionals holler at defendants and are demeaning them, they're trying to say, "We want you to see why this is so harmful to the community at large." But in fact, to the person it feels like, "I'm just a powerless person. This is completely arbitrary."

Beyond the issue of legitimacy, there is also the question of, "What is it that criminal justice systems are accomplishing?" This is a theoretical question of considerable concern in the era of mass imprisonment because we have a criminal justice system that has a large punitive component. If you commit crimes of violence against other persons, and you're convicted of doing that, punishment is how we respond to it. When the public thinks about the criminal justice system, they think about crimes of violence and high victimization, but the fact of the matter is that the majority of cases are fairly low- to moderate-risk offenders who are involved in fairly low to moderate incursions on public safety. What we would

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When someone is treated poorly, what they understand is, "I was a powerless person and I was treated poorly because they could treat me poorly."

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When a system appears to someone to be arbitrary, it misses the opportunity to inspire that person to a deeper understanding of his or her behavior, or to incentivize change.

like to do is to achieve some remediation in the thinking and behavior of these individuals who commit crimes so we can put them back in to the community in a much healthier way. I think that when a system appears to someone to be arbitrary and an expression of power, it misses the opportunity to inspire that person to a deeper understanding of his or her behavior, or to incentivize change. I think it undercuts the possibility of remediation in many cases.

I also think that the culture in which adjudication occurs—namely, the courthouse—is quite consequential. When I walk into a courthouse, and I think this would be true no matter where I was in the United States, the average criminal justice practitioner feels, I think, very pessimistic about the prospects for any meaningful kind of change or improvement. They don't believe they can significantly improve the well-being of the communities in which they live. I think when the conversation that takes place at all levels is drained of connection to the human reality, people become cases, and cases become statistics. We need to get professionals to rethink what it is that they're doing—frankly by changing what they say and how they act. If professionals took a more customer service oriented approach—“What can I do for you? How can we help?”—I think you might very well change what their work produces. If that culture was driven by a positive aura in which communications are constructive, you might find more opportunities to lift people up quite a bit. And when you start

lifting people up, they will get interested in lifting themselves up. When you have the opposite, you don't get that effect. You get the opposite. People are more discouraged, more pessimistic, and they pick up the vibes that that is all that is expected of them.

#### How do you respond to skepticism about procedural justice?

I think it depends on your audience. There are people who are naturally interested in doing the right thing. If you're able to explain the importance of it, then you get pretty good buy-in from them. The trickier audience is people who aren't motivated to make changes. Some think that they are already acting appropriately when they aren't and others feel that it is ok to treat people in a blunt way because of what they are accused of doing.

#### What can you do to win over those people?

I think you start by talking about the people suffering from the lack of procedural justice. The overriding problem for the people we represent is they are living in chronic poverty. Many of them have been the victims of various kinds of trauma in their lives. Many of them have been the victims of the disappointingly low level of education that is available to people living in those circumstances. As a consequence, when the functional vocabulary of a lot of the people we represent is pretty small, that creates different kinds of communication obstacles. Even if you do a great job by traditional measures, if you do it in a way that does not recognize the underlying reality of poverty and how it affects people, I think you cannot communicate very effectively. So a lot of our conversations with people who are not willing, or interested, in procedural justice might be presented through the more complex lines of, “Let's try to understand more about what chronic poverty is and what trauma is and how that affects how people are able to experience things.” Sometimes when the topic is presented in these terms, skeptics can see that the people they treat poorly have been deeply harmed by what has happened to them. It's very rewarding when you can see that change occur, but making a case for why it's necessary is a bit of a challenge.



**Within any profession, a privileged lexicon takes shape. It would help if courts were to start addressing procedural justice as an expectation of due process.**

### **What role does listening and giving voice play in applying procedural justice?**

Procedural justice is about communication with other human beings, and lawyers in particular are trained to speak. I think the professional demands on lawyers, prosecutors, and judges is fairly high and so being fluent in your speech and precise in your use of legal concepts is essential to being seen as an effective practitioner. This can mean listening gets neglected—and not just normal listening, but the kind of imaginative, creative listening that enables you to hear what someone is saying and to consider what they’re not saying. “What is that telling me about how this person is reading the situation?” Asking these kinds of questions in a smart way is necessary, especially when we know the stigma that exists around these topics. People don’t want to admit they’re wrong, if they are wrong. They don’t want to share with strangers things that are very alarming and sensitive to them. A lot of our clients have not been rewarded for telling the truth. We teach children, just tell the truth. For a lot of clients, just telling the truth has always been a bad choice. It got them into more trouble.

### **What do you think is unique to the public defender audience when talking about applications of procedural justice?**

I think lawyers have a tremendous amount to do with the way in which people going through the system perceive what is happening. It’s one of the reasons why it’s not unfair to refer to a crisis on a national level when it comes to the provision

of services to indigent defendants in criminal cases. Lawyers spend a lot of time in court. We would have better outcomes as a system if we increased the amount of time available for preparation. That just isn’t always possible. I think if you were going to talk to some defense attorneys and say, “Well, what do you think procedural justice is?” I bet the answers would be disappointing. But if you explain to somebody, “Well, here’s what the research says. What do you think about that?” I think you would get a lot of heads to nod because I think that public defenders and defense lawyers generally recognize the truth of a lot of these findings, and the value of them. If you ask them, “Well, now that you have access to this research, how compelled do you feel to try this with clients?” I think you’ll run into a problem. It’s not always easy to see how our own behavior is deficient or could be improved.

### **So how do you advocate for change among defenders and other court professionals?**

Within any profession, a privileged lexicon takes shape. It would help if the Court of Appeals, or the Supreme Court of the United States, or the Supreme Court of Wisconsin were to start addressing procedural justice as an expectation of due process. If they asserted that they expect courts to behave in a way that is consistent with procedural justice, it would establish the fundamental legitimacy around what is occurring. Failure to provide things that are suggested by procedural justice research is the failure of due process. So I think you would start to see change if judges knew they could get reversed, or prosecutors could have a conviction undone, if they didn’t apply these standards. On the other hand, merely stating that good research tells us that this is something that we should be doing differently is far less effective. It has a lower level of potency in terms of inspiring change. One of the difficulties I see in the profession is it has been very focused on staying inside its professional discourse. The profession is often reluctant, unwilling, or unable to do much learning from other areas of research, writing, and thinking that bear directly on the legal profession. If I were running a business that served a lot of customers, which by the way is not completely different from running a court system, I’d

be extremely concerned about what behavioral economics and other sciences teach us about how to influence people and encourage them to think and do the things we want. I would want to try to understand what that could teach me and how I could make use of it. People in court systems have no interest in any of that. You would have to go a long way to find people inside the system who think that there is a lot that could be learned from other disciplines and a lot of things that need to change. It's a significant disappointment, and as we grant so much political power to the more insular positions, we have weakened the intellectual roots that might lead us outside of the legal discourse and into the kind of work that could have an impact. It's a problem and not one that will be easily solved.

#### Are there other reform efforts that are supported by or consistent with procedural justice?

Yes, I think so. One of the four core principles of the National Institute of Corrections is that every contact within the criminal justice system is an opportunity to reduce harm. If all you want to do is process cases within the criminal justice system, then it may not be important. As long as it's just processing cases, who cares? But if you actually care about outcomes, then it matters a lot how you treat people and the quality of the communication you have with them. It's not about putting people in jail. It's about inspiring them, taking the moment of crisis they're in as a tool for addressing an addiction, or for helping them to deal with anti-social thinking that is often at the root of things. It's to take seriously the damage that's been done by this individual to a neighborhood, but reconnect them to a neighborhood redevelopment strategy so they're working there instead of sitting at the local county jail.

#### Can you share a story that highlights procedural justice in action?

I can describe a typical situation that illustrates what happens when the lessons of procedural justice are ignored. We often have clients who have trouble getting to court. When they are late or having difficulty it can be a big problem. Clients have problems with getting children to

school or finding daycare. There are limitations to public transportation and it is expensive for many people. There can be long security lines to get into the courthouse complex. It's also often very hard to navigate the large public buildings holding criminal courtrooms. Clients are berated when their tardiness slows court calendars, and very little effort is made to understand the circumstances leading to the delay. We have numerous examples of clients who face warrants and time in custody because they could not find a way to solve problems with their jobs, transportation, or their families. All too often when they attempt to explain themselves, they are met with open skepticism or worse. The message is that we don't care about the problems they experience.

These problems are caused by the structural obstacles facing individuals living in poverty and the lack of resources and procedural justice in our court system. It's difficult for clients to always know how to reach the right person if a problem occurs. There are no provisions available to assist parents of young children which might include a family care center at the courthouse. It can be very difficult for defendants when they are called in for overtime work on short notice, their child care arrangements fall through, or they find that they cannot stay when their 1:30 p.m. case isn't called until 4:00 p.m., after the time their children are out of school.

Because it can take several days in jail before some warrants are cleared, there is often little recognition of the devastating impact this can have on defendants' lives. We need a procedural justice focus to create a system that understands the real lives of the people it serves and is designed to be humane in its administration. A more welcoming and flexible environment would be conducive to helping people resolve their cases in a way that respects their dignity and preserves their capacity to move forward in their lives. We need to be much more parsimonious in imposing sanctions. These should be reserved for certain public safety risks and clients whose recalcitrant and unruly behavior merits it.

**What advice do you have for professionals interested in improving perceptions of fairness?**

We have a tendency—or even a desire—to lecture people who come through the system. We scream at them and are impatient and angry. Tough is easy for us. Being compassionate, patient, and tolerant, and asking questions and being willing to say we're unsure—those are all particularly hard tasks for the current legal environment. We need to rethink how we're wired.

# STEPHEN SCHAPANSKI



Stephen J. Schapanski is chief judge of the Eighth Judicial District for the Colorado Judicial Branch. Previously he was a district court judge and district court magistrate. He received his bachelor's degree from the University of Notre Dame and his J.D. from Valparaiso University School of Law in Indiana.

## What are some of the ways you've worked to improve the court user experience?

It starts before someone sees a judge. We work hard to improve signage—in English and in Spanish—and provide videos to instruct people in multiple languages. Here in Colorado, we have what are called self-represented litigant coordinators. They don't provide legal advice, but give general information. People can sit down, make appointments, access computers, and get legal advice from attorneys who volunteer through the local bar association, and litigant coordinators go out to the libraries and get information for them.

## As chief judge, how do you encourage court staff to implement procedural justice practices?

We encourage all staff to appreciate the importance of their interactions with the public. Everybody can always improve. When we get positive feedback from people, I reinforce it with employees by telling them, "Good job. I know you always do a good job, but it's nice to hear that others are appreciating it." Other supervisors say that too: "This is good. This is what we're trying to do." From my standpoint, I don't get to meet with the staff together as frequently as I would like, but that is just because of my schedule. When I do, I certainly tell them the progress that I've seen, or the good things they're doing.

We also have a leadership council we formed a couple of years ago with a representative from each of the relevant departments or divisions: collections department, probation, clerk's office,

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Whether someone has never heard of this before, or already went through a training, doesn't matter. We could all benefit from a refresher.

court reporters, court judicial assistants, self-represented litigant coordinators, etc. We exchange a lot of information, both positive things and things that may be posing problems. It's something similar to a representative form of government within the judicial department in our district. These representatives consult with their colleagues and bring their issues to the meeting and then convey information back to the departments. Not all of our issues are focused on procedural fairness necessarily, but these communication lines help produce better customer service in the end, including better access to justice.

#### Are there other resources or strategies that help the court and related agencies communicate more effectively with court users?

The state court has a website, and our judicial district has its own website. We keep adding to and improving that, to promote openness, transparency, and access to justice. Periodically, we have what we call judicial resource days. These may be on a single topic, like domestic relations, or they may be on broader case types. We also have presentations on how to file certain case types or motions, and topics, like evidence. I think this communicates that, within the bounds of the law, we want to help self-represented parties. We have a lot of handouts on various topics that are helpful for people representing themselves.

I think our problem-solving courts also demonstrate to parties and counsel that we are genuinely interested in helping them. We have adult and juvenile drug courts, a family treatment court, and a driving-under-the-influence recovery court. About a year ago, we created a wellness court for criminal defendants with persistent and chronic mental health issues that are a major reason why they're involved in the criminal justice system. We're fortunate to have all of these great resources available to the community.

#### What training strategies have been most helpful to enhance procedural justice?

We've filmed judges to help them see what they look like when they're on the bench—not just what they are saying, but their posture, eye

contact, tone of voice, etc. We sometimes have mentor or peer judges simply observe another judge and provide feedback.

#### Who do you think benefits the most from procedural justice?

Everyone benefits from the perception that the process of a case is fair. I think the people who benefit the most, however, are probably those who represent themselves. The message is that we have resources for you—forms, instructional materials, lists of sliding scale attorneys, and so forth—to allow you to represent yourself if that is your choice or simply what you need to do. Judges with self-represented litigants before them often take more time to explain things. Personally, I try very hard to do that regardless of whether people have a lawyer because I don't always know that I can count on a lawyer to make sure the litigant is aware of how the hearing will proceed and how the court will reach its decision. I believe you want to make sure people understand what your orders are, and how you made your findings and applied the law, and that they have an opportunity to be heard. I think that is an important role of the judge.

#### How do you observe the impact this approach is having on court users?

I can tell from the e-mails and letters I get. For example, a lawyer might say, "We appreciate how you handled that." Or jurors often tell me, "We appreciate how much at the beginning you explained to us what the case was about, what was required, and your expectations."

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Everyone benefits from the perception that the process of a case is fair.

**What kinds of tools would be useful to judges and other practitioners interested in implementing procedural justice?**

I think we need to keep doing trainings because there is always turnover in personnel or new judges being appointed. There is also turnover in attorneys handling cases, whether criminal, civil, domestic relations, or otherwise. If someone offered to present another training here, I would absolutely provide support. Whether someone has never heard of this before, or already went through a training, doesn't matter. We could all benefit from a refresher.

**What advice would you give a jurisdiction interested in implementing procedural justice?**

My short answer would be an emphatic “do it.” But I acknowledge it will be easier to get buy-in from participants if you have somebody—whether internally or an outsider— with the background to explain why this works and that doing the little things makes a difference. The training needs to persuade the skeptics, or the ones who say, “We’re already doing a great job.” Yes, you might be doing a great job, but that doesn’t mean you can’t do a better job or learn something you weren’t aware of. I don’t see the downside of consistently implementing the principles of procedural justice or fairness. If someone’s response is, “I don’t have the time,” or, “the docket’s too busy,” my response is, “I think you’ll find this will assist you in the long run and your docket will run more smoothly and efficiently as well as convey the message that each case is important and the parties had an opportunity to be heard and understood your ruling.”



# CHAD SCHMUCKER



Judge Chad C. Schmucker has served as the president of The National Judicial College since 2014. He previously served as Michigan's state court administrator and as a circuit court Judge. He received his bachelor's degree from the University of Michigan and J.D. from Wayne State University Law School.

**How would you define procedural justice and why do you think it's important?**

I think procedural justice, which is sometimes called "procedural fairness," is the manner of handling a case, not just by the judge, but by the whole court system, such that the parties perceive it as being fair.

Without necessarily trying to, judges violate the principles of procedural justice all the time. They're trying to move cases along—they're concentrating on what they say, but not how they say it. When I first came across procedural justice, I was operating a drug court. I tried to interact with people a little bit better, not so much to enhance my procedural fairness, but because I thought it would result in them complying with my orders and the terms of their probation better.

You can improve your procedural justice ratings by changing something as simple as your courthouse signage. If the courthouse is a maze, that's really unhelpful. At that point, you may have lost the battle. The judge can come out on the bench and do a great job, but you're probably so far behind it's going to be hard to turn it around.

**What were your early experiences with implementing procedural justice?**

In Michigan, we started doing surveys to ask people for feedback on their experiences in court. The judges got really nervous because we wanted to put the survey results on the

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**In Michigan, we started doing surveys to ask people for feedback on their experiences in court. Judges got really nervous because we wanted to put the survey results on the internet, too.**

internet, too. There was one question about whether people felt like they had been treated respectfully. Some judges and court staff literally said, “I didn’t know that was my job.” The court clerk said, “My job is to make sure that the court records are accurate and timely. Now you’re telling me I’m supposed to be helpful and pleasant to people. That’s not part of my job. I’m not here to answer questions.” The bailiff said, “I’m here to maintain security, to make sure there’s no trouble. I’m not here as a tour guide.”

#### **How do you address such skepticism?**

When a judge says, “I’m not doing anything unfair,” I say, “I’m not asking you to change your decision, but if you look down at your notes too much as you’re reading your decision, you create the impression of just moving cases along. If you look at the defendant and explain your decision, they’ll see that you listened to them and took an interest in the case.” I’ve had judges say, “I’ve never had a case reversed by the court of appeals because I didn’t give a party a chance to state their position.” My response to that is, “You’re missing the point. That’s not what we are examining here.”

I think court culture has changed for the better in the past few decades. For example, when I first started practicing law in the seventies, it was really considered sport for judges to humiliate self-represented litigants because they thought self-representation was a bad idea. You don’t see that much anymore.

#### **How do you get funding for something like procedural justice?**

If funders believe that you are a high-performing court, they give you money. If they think you’re an underperforming court and that you’re not trying to improve, they will cut your budget. In Michigan, we had some incredible successes in getting money. Even though I was a state court administrator in some of our worst years, we never had a budget problem. They gave us money to do innovative projects. We actually had a fund we called the Court Innovation Fund. I didn’t try to focus just on procedural fairness—I think there has to be more than that to show you’re a truly high-performing court. If you’re high performing, you’re ultimately going to be rewarded for that. That’s how I sold it to the court administrators. I actually encountered more resistance from judges, although they were really only objecting to us making the data public.

#### **What do you think is the value in making court user survey data publicly available?**

If you gather data, and you keep it private, it won’t change behavior. When we said we were going public, we saw behavior being changed dramatically. Earlier, when there was a problem in the court, we would have to force our way in to solve it. The judges would say, “Oh, we can’t do it next week, we’ve got a murder trial.” Or, “We don’t want to do it around the holidays. Why don’t you come back in January?” Once we said we were going to share survey results on the internet, the courts were calling us up, asking for help to make improvements.

#### **As an educator, how do you teach procedural justice?**

There are parts of the curriculum in many different courses at the National Judicial College that address these concepts. We have introductory courses for new judges. We also cover it in a course on working with self-represented litigants, and another course on ethics, fairness, and security. Procedural justice is really diffused across the curriculum. Some of these courses also have a section on implicit bias. I think these are closely related topics. A judge who is concerned about procedural fairness needs to understand implicit bias. But if we

had a course that was just in implicit bias, the people who would come would be the people who are already committed to racial, gender, and ethnic fairness. You wouldn't see the average judge picking that course. The average judge will pick a course in evidence or judicial writing or case management. So we try to infuse it into various parts of our curriculum. Some find it eye-opening—when they take the implicit bias test, they think it's going to show they have no bias at all. Then they fail. They can't believe that their numbers aren't high. So we infuse these things into our curriculum. If every judge in this country came to a course that covered procedural fairness and implicit bias, I think it would have a profound effect on the courts of our country.

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**If you gather data, and you keep it private, it won't change behavior. When we said we were going public, we saw behavior being changed dramatically.**

**Do you think the training strategy should be different for new judges?**

I did some new judge training in Michigan, and I found that new judges are often not initially interested in soft-skill topics. Looking at litigants when they are talking or asking first if it is okay to address them by their first names are important concepts in procedural fairness, but this is not what brand-new judges are usually concerned about. On day one, judges are concerned about the nuts and bolts. I'm not saying that training in the nuts and bolts should be eliminated, but there has to be some follow-up on procedural justice.

# DAVID SLAYTON



David W. Slayton has served as the administrative director for the Texas Office of Court Administration since 2012. Prior to this, he served as the director of court administration for the Lubbock County District Courts and County Courts at Law, court services supervisor for the United States District Court, Northern District of Texas, and as a trial court coordinator for the 99th District Court in Lubbock County. He is a past president of the National Association for Court Management. He earned a bachelor's degree in Political Science from Texas Tech University and a master's degree in Public Administration from Troy University.

## How would you define procedural justice?

We want to make sure that when people enter the court system, they know what to do and understand what's going on. The court system has been around for centuries, and it's built for attorneys and judges who are very learned in the system and understand exactly how it works. Sometimes the language and procedures that are used in the courts are not as easily understandable to the public and sometimes that leads to confusion, a feeling of unfairness. So, it's really important to make sure that people not only are treated fairly, but that they understand what's going on and the procedures, forms, and language. Then, obviously, at the end of the day, it's about making sure that people are indeed treated fairly based upon the situation in their case, and that outcomes are similar for all different groups, no matter what their backgrounds.

## What are some ways in which procedural justice is being implemented in Texas?

When I was the court administrator in Lubbock County, a medium-sized county in west Texas, the judges really believed it was important to learn how the people who came before them thought they were doing. They called it "Judge the Judges." People were asked to answer a survey about their interactions with the judges. Questions included: "Was finding for me to find the courthouse?" "Did I have forms that I needed?" "Did I feel safe?" "Was I able to do my business in a reasonable amount of time?" and "Did the court hours make it

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The court system has been around for centuries, and it's built for attorneys and judges who are very learned in the system and understand exactly how it works.

easy to conduct my business?” Then it went a step further. People who actually went before a judge were asked to grade them on these statements: “The judge listened to my side of the story before the decision was made;” “The judge had information necessary to make a good decision;” “I was treated like everyone else;” and “As I leave I know what to do next.” We asked information on the survey about demographics, what type of case it was, and which court level they went before. This allowed us to drill down into the feelings of different individuals who were coming before the courts, and it gave the judges valuable feedback as to how they could address the issues that might be a concern for the public. We’ve seen some other courts in the state also replicate that survey. I think that it’s really helping us to use that information to make positive changes within the court system.

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We know implicit bias exists. I think it’s like step one of Alcoholics Anonymous: admitting we have a problem.

**What is the role of the court in improving legitimacy of the criminal justice system?**

In this day and age, it’s really true that people see the court system through the lens of the entire criminal justice system. So if there’s police brutality or you have a wrongful conviction or an issue with the defense or prosecution, it’s all the same system in the people’s eyes. So I think we have to think about this as a system-wide issue that we have to address. If we don’t do that, I’m not sure we make a real difference.

**How can procedural fairness address racial disparities in the justice system?**

One of the things that’s really important is the

training that we have been doing with judges on implicit bias. We know it exists. I think it’s like step one of Alcoholics Anonymous: admitting we have a problem. For judges, court staff, prosecutors, and defense attorneys to realize that they have implicit biases is important; then it’s necessary to control that with tools to make sure they can overcome those natural biases. The training behind that is really important.

**What role does data play when having these conversations and trainings about racial disparities?**

Data is key. There are different communities that are over-represented in our criminal justice system. We know that for a fact because we see it. In the past, I’m not sure that we have been willing to take a hard look at the data to see the degree of over-representation.

What I see happening today in the judiciary in Texas is a willingness to peel back the layers and see what the data shows as far as the effect of the criminal justice system on different groups, the disparities that are there, and what we can do about it. We’ve been looking at the child protective system, child welfare system, the truancy system, the children involved in the juvenile justice system, all the way up to the criminal justice system. It’s really important for us to take a look at that and see how people are being treated from the beginning of their involvement in this system all the way to the end. Procedural fairness plays a big part in that.

I look, in particular, to a study that was done a few years ago that has had tremendous impact in our state, called “Breaking Schools’ Rules.” It was done by the Council of State Governments’ Justice Center and the Public Policy Research Institute at Texas A&M. It looked at about a million kids in our school system in the state and their involvement in the school ticketing system for minor offenses. What the report found is that there was over-representation of minorities, but also disparity in the treatment of those minorities for similar offenses. With all other factors equal—the educational background of

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We need to find a way to get into different communities across our state and have meaningful discussions. We need to ask, “How do you feel about the court system?” “What do you think the challenges are?” and “How can we better connect?”

the parents, household income, school district, and even school campus level—the factor that changed the way minorities were treated was race. Besides race, we also saw an issue with individuals who had disabilities being overrepresented and experiencing different treatment. What that led to was a real focus and effort to try to put in place reforms that would address that. It’s a really exciting thing to be able to see the data, and then to take action based upon that.

**In your opinion, what is on the horizon for procedural justice, and how it can help with court reforms of tomorrow?**

One of the real opportunities that I see is community engagement. We need to do a better job of engaging with the community. In the past, community engagement meant going to the Rotary or the bar association to speak. I’m not sure that type of community engagement is most beneficial. Instead, we need to find a way to get into different communities across our state and have meaningful discussions. We need to ask, “How do you feel about the court system?” “What do you think the challenges are?” and “How can we better connect?” The second thing that we can do better is be more transparent. We need to open up our records so that anybody can see what is going on. Perception is reality. So making sure that people can actually validate, or invalidate, their assumptions, is really important.

# ANDRA SPARKS



Andra Donell Sparks is the presiding judge for the City of Birmingham Municipal Court in Alabama. In 2008, when he was appointed municipal court judge for the City of Fairfield, he was the first African-American to hold the position. In 1995, he was appointed a senior trial referee at Jefferson County Family Court. He is a graduate of the University of Alabama School of Law. Following law school, he served as a military attorney in the United States Army attaining the rank of captain. He is the senior pastor of Forty-fifth Street Baptist Church in Birmingham.

## How did you first hear about the concept of procedural justice?

In 1996, I started the first juvenile drug court in Alabama and presided over it until 2007. Because of my work in that capacity, I had the opportunity to become a consultant for the National Association of Drug Court Professionals. As I was preparing to go out and do a presentation for the Association about seven years ago, I came across some information concerning procedural justice. The basic information was from a white paper that the American Judges Association had put out that was called 'Procedural Fairness: The Key Ingredient in Public Satisfaction.' It was written by Judge Kevin Burke and Judge Steve Leben. I realized that some of the things that I had been doing informally were some of the key components of procedural justice.

## Do you feel procedural justice affects juveniles in an important way?

I do. Even before I learned about procedural justice, I'd learned a lesson in how to deal with young folks by talking to them. They taught me how I had been concentrating more on the process than the people.

I was in family court when I first started out. I was talking to one of the defendants, a kid, about his shoplifting case. He looked at me and said, "Can I talk to you?" I got off the bench, took him and his lawyer and the prosecutor into my office, and we talked. He had been shoplifting food and I realized that if a kid is



The power of example can't be overstated.

shoplifting food, then somewhere along the line some adults have failed in their job. He said, “I was doing it for my brother because my mama’s strung out on drugs.” Giving this kid a voice allowed me a deeper understanding of what was going on.

The kid had to see me as a trustworthy authority, somebody that he could talk to. He took advantage of that opportunity. I treated him respectfully by listening to him. I gave him a voice and it had a positive outcome.

So, yes, I absolutely believe that using procedural fairness can help outcomes because it taught me how to better utilize the system and its resources. From that point forward, I knew what to do when it came to dealing with kids. This kid taught me what to look for.

#### **In your experience, does procedural justice lead to more compliance?**

I believe this kid had a desire to prove to me that he was not a bad person, that even though he did the wrong thing, he was trying to do an honorable thing by taking care of his brother. From that point forward, he wanted to prove to me that he could do the right thing given the right tools.

So over the years, I’ve developed a conversant way of engaging defendants when they come to the bench. It’s greeting them respectfully—“Mr. Jones” or “Mr. Smith”—which elevates the discussion from the beginning. If I’ve dealt with them before, I try to recall previous conversations we’ve had, so I can say, “So how’s your daughter doing?” Just something conversant. Or, “I see you’ve gotten yourself in a situation and we need to figure out what to do about this.” That allows them to give me more information than they normally would.

#### **Have you received feedback from court users about the experience of being in your courtroom?**

I get a lot of feedback. I just had a guy come in this week,

unannounced, with a lawyer that had represented him. I’d had him in specialty court. This guy had a drinking problem. The lawyer had given me some indications that he was doing better. He stayed sober for the requisite amount of time and was doing well when we discharged him from the program.

I saw him sitting there and I acknowledged him. He wasn’t there for a case, he was just with his lawyer, visiting court. She said, “He wants to come up and talk to you.” So he came up, we greeted one another. He looked good. He said, “I just wanted to come in and shake your hand and thank you for everything you did for me.” He said, “Can I say something to the courtroom?” And then he turns around in the courtroom and gives this testimony about how well he’s doing and tells all these young folks sitting there, “I know you’re not going to like what he’s doing to you. I didn’t either, he locked me up. But I can tell you right now, he cares about you and he’s trying to do what’s best for you.” I couldn’t have paid him to say that; it was like a campaign ad. Then he just left.

#### **How do you engage other court staff with procedural justice efforts?**

The best thing I can do is be an example of what they should do. I encourage staff, whatever level they are, to be respectful and to communicate such that people feel that they are significant when they come in here; that is from the bailiff to our probation aid and probation officers. The way I communicate with a defendant is going to give them some indication of how they should as well. The power of example can’t be overstated.

We’re at a municipal court, which means we see everybody. Frequently we see people we know, so that heightens our responsibility to be respectful because we will see these people in our regular lives. This also empowers staff to help people in any way they can. Let’s say a person is in court and they are looking somewhat distressed because they have something going on in their life and they need to leave soon. I’ve empowered the staff to be able to come



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I realized that for some people, depending on their job functions, there are no conferences for them to go to. So we created a conference for everyone to go to, and we're training everybody to a certain standard.

to me and let me know what's going on, and when possible, we'll say, "Here's a continuance, come back and we'll take care of it this day." If something's going on in their life that's important to them, we treat it as important. It's paying attention to people.

**How do you address the pushback that the court system shouldn't be in the business of customer service?**

Well, we have an annual all-staff overnight conference. Our focus for the last two years has been customer service. Clearly, I don't think like the other folks think.

**How can other judges and court staff learn how to do what you're doing?**

Alabama created a judicial administration fund that can be used for training. We've used those funds because I believe in training at every level. Whatever capacity you're in, you need training. I realized that for some people, depending on their job functions, there are no conferences for them to go to. So we created a conference for everyone to go to, and we're training everybody to a certain standard. This encourages the whole staff.

**How much do you think the physical courthouse environment has to do with procedural justice?**

The more information you can communicate to the public as they're coming in to the building, the better informed and less stressed they'll be. We've been trying to get digital displays, for

example. Getting through our administrative process and making sure we have the money to buy those things can be difficult. We do the best we can under the circumstances to make sure that people are as informed as they can be about where they need to be.

We have challenges. Our building is not big enough. We have to work around those logistical issues with the public. It just means the staff has got to be aware of it.

**How do you think those challenges affect the public?**

I'll give an example. Since I'm presiding judge, a large part of my job is administrating. I still have to be in court and I continue to hear my docket, but I'm only on the bench two-and-a-half days a week. So because of that, my docket is sometimes heavy. But my courtroom is not large enough for everybody to come in at the same time. Sometimes we have to create an overflow room for people to wait. Those logistical issues make a difference.

**When people come to your court, how does the signage help them figure out where to go?**

There are three display boards that have the dockets posted for each of the three courtrooms in the courthouse. The board will tell them which courtroom to go in. We also have a guard and all our support staff up front instructing people as they come in. If they can't find their name there, then our staff instructs them to go to our record office, and our record staff will direct them to the courtroom or give them instructions. We spend a good amount of time making sure people get to where they're supposed to be.

**What kind of obstacles have you encountered with implementing procedural justice?**

A lot of the obstacles are management issues. As long as upper management or the presiding judge is sensitive to procedural justice, then adjustments can be made. The problem is when you've got a judge who is trying to utilize the concepts and he has management

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We're at a municipal court, which means we see everybody. Frequently we see people we know, so that heightens our responsibility to be respectful because we will see these people in our regular lives.

that is not sensitive to it. But if you want to have good outcomes, then treating people respectfully the first time can only help that. If you put it in upfront, you'll eventually turn a profit on that investment.

**Do you practice any procedural justice efforts that were designed for special populations, like litigants with limited English proficiency?**

We noticed a few years ago that we had a significant number of people coming in who were non-English speaking. They were bringing their own interpreters, which is an indication of a couple of things. One, they want to resolve the issue. Two, they understand the communication problem, so they arrive with their own solution to it. After a while we didn't think that was fair, so we created what we call our bilingual docket, and it's been going on now for three or four years.

It's a docket devoted to non-English-speaking people, because what we would have to do on all those cases is continue the case so we could get one of the certified interpreters to come in. We established the docket with interpreters for the bench and the prosecutor, and it just so happens that most of the people who come in speak Spanish, so we got a Spanish-speaking defense counsel. We basically created a Spanish-language environment. When it's a different language, of course, we have to get an interpreter that can help us with that, but we just created an environment that was more welcoming to non-English-speaking people. It's gone fabulously.

It must work because we have hardly any recidivism on that docket. The only inconvenience is that when they come in the first time, we can't resolve it right away. We have to continue the case for them to be on the bilingual docket. It will be better once we figure out a way to determine this before their first appearance.

**When you think back to when you were in law school or in the early stages of your career as an attorney, did you have any experiences that made you understand intuitively why it is important to practice procedural justice?**

One of the things that has framed my life was when I was in elementary school; I was selected to go to a magnet school. It was for kids who were high-functioning and for kids who were low-functioning or disabled. They put us all in the same building, same program. I learned very early on to have empathy and compassion for people with disabilities. I realized they wanted the same things I wanted, but just couldn't do some of the things I could. And maybe they could do it, but it just might take them longer to do it. It just kind of gave me a heart for people with differences or limitations.

My first job out of law school, I was a JAG officer in the army. So I had the opportunity to deal with service members from everywhere. It kind of gave me an indication that not everybody comes to the table with the same information or ability and we still have a responsibility to treat everybody fairly.

**What advice would you give to judges who are interested in improving the court user experience?**

My mantra when I go out and talk to folks about this is that you can't have justice if you don't care about people. That doesn't mean you don't give people consequences for their choices and decisions. But you can do that compassionately. I think the essence of being a solid jurist is caring about the people you have before you.

# JENNIFER YIM



Jennifer Yim is the executive director of the Utah Judicial Performance Evaluation Commission. She has served as a procedural justice consultant to the Utah Division of Juvenile Justice Services. She received a B.A. in Sociology from Pomona College, an M.P.A. from the University of Utah, and will complete a Ph.D. in Political Science from the University of Utah in 2017.

## How did you first hear of procedural justice, and what were your first impressions of the idea?

In 2008, I was a founding commissioner on Utah's Judicial Performance Evaluation Commission (JPEC) and also a graduate student in political science at the University of Utah. I came across Tom Tyler's work on procedural justice and thought that it might be a helpful way to think about judicial performance evaluation. Eventually, these two things came together in terms of JPEC's courtroom observation program, allowing us to tap into the expertise that laypeople have to help evaluate judges. As someone without a legal background, procedural justice seemed to me like an intuitive way to assess a judge's interactions in a courtroom setting. When you add the compliance and satisfaction benefits that procedural justice offers, it makes even more sense.

## How did you generate buy-in for the concept within the Judicial Performance Evaluation Commission?

It wasn't an easy sell to my fellow commissioners and it took some time for us to put the pieces together. It was an evolution, I would say. I think procedural justice is something people come to support either because it feels intuitive for them or because they begin to recognize how the role of judges in the increasing variety of court proceedings has changed over time.

When JPEC was founded, all we had was our 13 commissioners. We hired an executive director and worked through enabling legislation. We knew that by statute we needed to conduct courtroom observation, but in practice, we had very little guidance or precedent to follow. For example, we could have used video feed to review what happened in the courtroom. There was no statutory specification that live bodies go into courtrooms, but we decided that it was important to have the public involved in the process. We began with a quantitative survey instrument, sending court observers to experiment with the logistics of watching court and filling out a survey. We then switched to a procedural fairness approach and ended up with a qualitative,

narrative-based report process. Four to five different court observers go into a single judge's courtroom during an evaluation period and then write up their responses. We ask them what they saw happen in court. How did they interpret it? What were their conclusions about the judge's interactions? Our questions are keyed to the procedural justice components of neutrality, respect, trust, and voice.

Commissioners use courtroom observation reports along with procedural fairness questions from our survey to make a determination about whether a judge meets JPEC's procedural fairness minimum performance standard. For Utah, courtroom observation has become an important way to bring citizens into our judicial evaluation process and to highlight the importance of procedural fairness in judicial performance. I think that commissioners have come to support procedural justice because they see that the skills are important to quality judging.

#### How do the performance evaluations incentivize certain behaviors among judges?

Judges are required to meet four different minimum performance standards in order to receive a recommendation for retention by JPEC: legal ability, integrity and judicial temperament, administrative skills, and procedural fairness. Our evaluation report and JPEC's recommendation are available to the public once a judge decides to seek an additional term of office. The information is available in the voter information pamphlet and on our website. The publicity alone affects how judges respond to our evaluations.

Even more important is that Utah judges, in addition to getting a retention evaluation report, receive a mid-term evaluation. The mid-term evaluation is just for the purpose of judicial self-improvement. Judges then have the remainder of their term to work on areas identified for improvement. Performance evaluation certainly focuses a judge's attention on what is measured in the evaluation. But an equally important way that performance evaluation incentivizes certain

behaviors—like those associated with procedural justice—is by focusing attention on the process rather than just the outcome. Judges need the time and incentives to incorporate behaviors that will make them better judges. A valuable performance evaluation process can provide that incentive and direction.

#### How has the judicial performance evaluation process been received by the judges?

It has varied. Generally speaking, the courts have welcomed the idea of courtroom observation and the importance of procedural justice. Court observers have the real potential to demonstrate how judges are perceived by court participants, especially those without legal training. Courtroom observation plays an important role in judicial performance evaluation, but it is just one part of a larger effort to evaluate the performance of judges. Similarly, procedural justice is a critical component of assessing a judge's performance, but it isn't everything. What we have come to realize as a commission is how important it is to weigh carefully each of the different parts of our evaluation process so that we end up with a valid, credible work product.

If JPEC can work toward finding more ways to provide meaningful feedback to judges and looking at the resources that are available to help them improve their skills, then I think that judicial performance evaluations will ultimately have better reception among judges.

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Judges need the time and incentives to incorporate behaviors that will make them better judges. A valuable performance evaluation process can provide that incentive and direction.

### Have you noticed other positive ripple effects of using procedural justice as a component of the judicial evaluations?

I hope that the attention on procedural justice is raising awareness over time across the justice system. For example, I think it would be a really important step if procedural justice could become the common language that we use to talk about juvenile justice. The work that I've done in the Utah Division of Juvenile Justice Services to conduct a pilot implementation and training project on procedural justice suggests to me that if we used procedural justice as a common language, we would be more consistent in the kind of messages that we send to youth and their families all the way through the system, from first contact with law enforcement all the way through to the back end of the system in secure facilities. We would be educating youth and families on the kinds of things that they need to know to be successful and positive members of society. I think those messages would be good for all of us.

### How do you think procedural justice is best framed for new audiences of court professionals?

When we first started looking at procedural justice, I made a presentation to my fellow commissioners that I believe was subtitled, "It Really is About How You Play the Game." I think that my message was unexpected for many of them because the court system feels like a win-or-lose kind of place. What I was trying to say was that it is more than just winning or losing insofar as people are really looking to have their day in court. If they perceive that day in court to be fair, then they can accept that process and outcome—even if they lose. That's the promise of procedural justice. We wanted JPEC to adopt a similar philosophy in working with the judges who are subject to our commission's decision-making. That's definitely something that we are continuing to work on and trying to find better ways to make connections with the court, to explain our reasoning and to spend the time and effort so that judges and attorneys find JPEC trustworthy. What I'm saying is that providing procedural justice is the best way to demonstrate that it works.

### How can procedural justice help from a management perspective?

All of the consulting work that I've done in procedural justice has been about working both with public service and management to look at how decisions are made and what kind of inclusive communication process is utilized. All of those organizational decisions translate, in the end, to how service delivery occurs.

If service delivery workers have a voice in their organizations, they are more likely to be invested, to accept and comply with decisions, and to be active participants in the process. They will also be more likely to afford procedural justice to the people that they work with and have decision-making power over.

### As a trainer, what are the biggest challenges with this topic?

Generally speaking, I think that many people find procedural justice ideas to be accessible and intuitive. The harder issue is whether we, as individuals, apply procedural justice to our own interactions. We see the importance of procedural justice really clearly when we are subject to someone else's decision-making authority. The harder issue is what happens when the shoe is on the other foot, and we are in a position to make decisions about other people. From a training perspective, I think it is about raising awareness so that people have reason to stop and consider their use of procedural justice when they're in the decision-making role. I find that people are more likely to be incredulous that

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If people perceive their day in court to be fair, then they can accept that process and outcome—even if they lose. That's the promise of procedural justice.

they are being perceived as unfair or disrespectful. Professionals need a constant reminder to come back to the key principles of procedural justice and to trust that incorporating them will help their interactions.

### What major obstacles do you see to further adoption of procedural justice practices statewide?

I think persistence is really important. Just like people forget when they're in decision-making roles that procedural justice matters, I think we forget that we have to keep paying attention to procedural justice and find creative ways to incorporate it. I also think it is important to measure our efforts so that our attention is consistently drawn to the importance of procedural justice. We need to keep giving ourselves reminders so that we remember who we're serving and how well we are providing that service, whether it's providing justice or judicial performance evaluations.

### What advice would you give to a jurisdiction that's looking at incorporating procedural fairness into judicial performance evaluations?

It is crucial to help judges assess how they are perceived in their courtrooms because procedural justice is really about the social ramifications of justice. Are they able to convey the respect and neutrality that they're feeling? Are they able to help people feel like they're part of the process? Are they building trust through their actions? If they can't convey these things through their interactions, then they are not achieving the system-level benefits or the individual-level benefits offered by procedural justice. And then we're falling short of the public trust and confidence in our legal system that we could achieve.

In addition to being persistent, I would say that finding multiple voices is a really important part of an evaluation process. Sometimes we tend to think that an evaluation is better if everybody is saying the same thing because we have more confidence in it, right? But in Utah's case of judicial performance evaluation, the court observer

voice is a distinctly different voice from the attorney or court personnel voice, and it's not going to say the same thing as other parts of our evaluation. We don't really want it to. Having multiple voices makes our evaluation more comprehensive, even when those voices say different things. It can be hard to know how to fairly weigh all those different voices, but we can't shy away from that challenge. It should matter to us what all those voices say.

### What sort of feedback have you gotten from your volunteer court observers about the experience doing courtroom observations?

Courtroom observers, typically, have loved their experiences in the courtroom. It gives them a reason to go to court and to watch what happens. It's a civic engagement tool. I think they find it personally fulfilling and educative.

### Do you think court observation has changed the volunteers' perception of the court system?

I hope so. It's one of the reasons why we do it. Being able to provide a venue whereby people have a reason to go to court and learn what happens in an incredibly influential part of our society is very important. We should always be looking to find ways for people to become involved in our justice system in positive ways.

### What do you think are the next steps for procedural justice implementation in Utah?

Specifically, in terms of my work with JPEC, I think we need to strengthen the different voices that make up our performance evaluation.

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We should always be looking to find ways for people to become involved in our justice system in positive ways.

We also need to work on finding better and fairer processes to assess the large amount of data we collect. Finally, I think JPEC can communicate better with judges and other stakeholders about the important role that courtroom observation and procedural justice play in the evaluation process.

### How do you measure success in this work?

What I would look for is increased levels of public trust and confidence in our societal institutions and increased levels of civility in the way we conduct those institutions. We need to be confident as a people that the way we treat each other in our public and private lives matters. We can only coerce other people to do what we want for so long. It will, and has started to, fail.

When we have that, I think we will find that we have effectively incorporated procedural justice. Once that becomes institutionalized, those behaviors and those skills become almost unconscious behaviors—things that we do without thinking. Incivility certainly feels like it is contagious. Wouldn't it be great if, instead, procedural justice were contagious?

## Resources

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The Center for Court Innovation works with the State Justice Institute, the U.S. Department of Justice's Bureau of Justice Assistance, and other partners to advance the idea of procedural justice. This work has included convening a national working group, maintaining a speakers' bureau, developing a one-day training in four jurisdictions around the country, providing training at dozens of conferences and training events, conducting a quasi-experimental training and pilot evaluation, creating online learning materials, compiling an evaluation toolkit, and developing a menu of promising communication practices.

All of these resources—and others to come—are available free of charge on our website: [www.courtinnovation.org/proceduraljustice](http://www.courtinnovation.org/proceduraljustice).

Online learning resources and video interviews are also available on our YouTube page: <http://bit.ly/ProJust>.

To be added to the Center for Court Innovation's mailing list or to provide feedback about this product, please email [info@courtinnovation.org](mailto:info@courtinnovation.org).

## Acknowledgments

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Funding provided by the State Justice Institute as part of the National Procedural Fairness Education and Training Initiative.

Foreword by Emily LaGratta and Tom Tyler.

Edited by Emily LaGratta with Greg Berman, John Butler, Michela Lowry, Avni Majithia-Sejpal, and Matthew Watkins.

Book design by Samiha Amin Meah.

Indexing support provided by Megan Goldberg.



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**TO BE FAIR** is a compilation of interviews with practitioners from around the country who have worked to implement the tenets of procedural justice in criminal courts. Research has shown that when court users perceive the justice process to be fair, they are more likely to comply with court orders and to follow the law in the future, regardless of whether they “win” or “lose” their case. Improved perceptions of fairness also yield improved public trust and confidence in the justice system. These interviews with judges, attorneys, and other criminal justice experts show the real-world applications—and benefits—of procedural justice.

The Center for Court Innovation works to promote procedural justice in New York and across the U.S. With support from the State Justice Institute and the U.S. Department of Justice’s Bureau of Justice Assistance, the Center provides training and produces tools for the field. Through roundtables, conference presentations, and publications, the Center aims to generate meaningful discussion about the value of enhancing public trust and confidence. In New York, the Center uses procedural justice as a guiding principle by which to plan, operate, and evaluate operating programs, including the award-winning Red Hook Community Justice Center and Midtown Community Court.

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 launch new strategies.

