



Making the world a more just place by educating and inspiring its judiciary

COURTROOM DECORUM

DIVIDER 3

Hon. Thomas M. Donnelly

OBJECTIVES:

After this session you will be able to:

1. Analyze courtroom situations involving disrespectful or disruptive court staff, lawyers, and litigants and apply appropriate strategies to address the bad behavior;
2. Identify the principles of procedural fairness and practically apply these principles in court proceedings; and
3. Discuss procedural fairness techniques that will aid the participants in preventing disruptive or disrespectful behavior from occurring in the first place.

REQUIRED READING:

PAGE

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|----|--|----|
| 1. | Thomas M. Donnelly, <i>Making Better Decisions, The Process</i> (April 2018) [NJC PowerPoint] | 1 |
| 2. | Thomas M. Donnelly, <i>Courtroom Management Demeanor Scenarios</i> (April 2018) [NJC Document] | 27 |
| 3. | AJA, NCSC and The National Judicial College, <i>Procedural Fairness/Procedural Justice: A Bench Card for Trial Judges</i> (2018) [NJC Document]..... | 43 |

Making Better Decisions
(Part 1)

The Process*

Hon. Thomas M. Donnelly

*With Special Thanks to Judge Kevin Burke

Procedural
Fairness

2

Outcomes v. Process

Judges see *outcomes*.

The public sees:

the process.

3

How it matters

How you treat them

-----not the result.

4

In Court

Treating people with
dignity and respect

⇨ **Trust**

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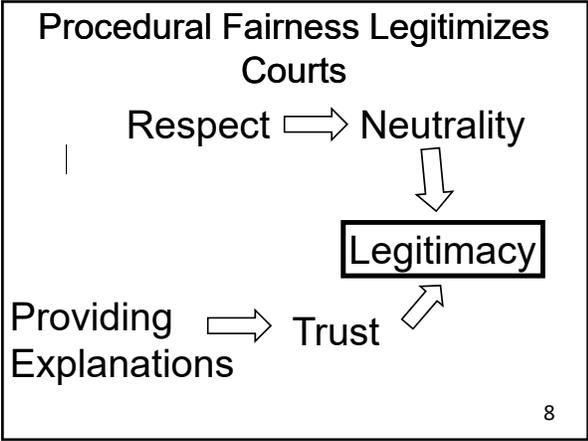
Trust---

Depends on two beliefs:

- Process is fair
- Our motives are benevolent

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Legitimacy
Procedural fairness
legitimizes courts



Legitimacy \Rightarrow ***Obedience***
Procedural fairness increases
compliance

Litigant's View

What do they look for?

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They look for:

- Were they heard?
- Tone of our voice
- Words/gestures of respect
- Clear explanations

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We Must Work Harder

Minority populations rate
judges poorly on procedural
fairness

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Procedural Fairness
Four components

- Voice
- Neutrality
- Respect
- Trust

Voice
Litigants have a powerful need to express themselves vocally during the court's proceedings

Voice

- Paying Attention
 - Eye Contact
 - Pace
 - Body posture
- Relaxed tone---fear inhibits speech
- Reflective Listening
- Incorporating Litigant's Words in Decision

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Voice: Forum Rights

What's your understanding of the difference between trial before members and trial by military judge alone?

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Neutrality

- Wait
- Ask open-ended questions
- Take time
- "Tough," not "easy"

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Respect

- Tone of voice
- Eye Contact
- Comfort: Chair, Water, Etc.
- Greeting: “Good morning, how are you?”

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Respect-Body Language

Body language influences how litigants perceive the judge and the judge’s decision

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Trust

- Use props, law books, etc.
- Speak in clear, simple language
- Talk with, not down
- Express emotion

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Forum Rights

MJ: (Accused), you have the right to be tried by a court-martial composed of a panel of members, you also have the right to have at least one-third enlisted persons on the panel.

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Forum Rights

You get to decide whether you are tried by officers-only panel or a panel including both officers and enlisted.
That's your decision.

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Explain Trust

- Speak English
- Read the law
- Read testimony

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MAKING BETTER
DECISIONS
(PART 2)

STRATEGIES &
TACTICS

Two Ways of Thinking

Reflexive

- Automatic, rapid and unconscious
- Patterns that develop based on experience

Reflective

- Deliberate, slow, conscious
- Requires attention

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Time & Effort

Reflective thinking takes time and effort.

Reflexive thinking is faster.



We think **reflexively** whenever possible

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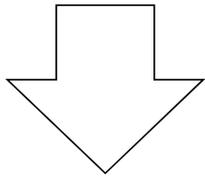
Limited Capacity

“Most of the time we solve problems without coming close to the conscious, step-by-step analysis....”

Necessity Curbs Reflective Thinking

- Deciding even a ***small fraction*** of problems reflectively would bring our lives to a screeching halt.

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Most problem-solving is intuitive

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Good Reflexive Decisions

- Better than a deliberative approach in some situations (especially with training)
– Firefighters

Bad Reflexive Decisions

- Erroneous rules of thumb:
sequence is causation
- Be only partially correct:
stereotypes
- Be applied incorrectly:
a gesture has identical meaning universally

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Schemas → Error

Rules of Thumb
Implicit Bias

Cognitive Heuristics

Heuristics are rules of thumb that rely on only some of the information that's available.

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Chicago Rules of Thumb

- Single finger
- Drop case
- Caught-inside burglary
- SODDI
- Mere Presence
- Police Pay Back

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List Your Rules of Thumb

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Heuristics Gone Wrong

1. Anchoring
2. Small samples
3. Framing

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Implicit Biases

Based on implicit attitudes and stereotypes.

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Are judges immune?

Trained to follow procedural rules:
Minimizing influence of
irrelevant information.



Anchoring

- When making numeric estimates,
people commonly rely on the
initial value available to them.

Anchoring Case Study

*Half told about dismissal motion:
under \$75,000 damages.*

Told of motion:

\$882,000 average award.

Not told of motion:

\$1.25 million average award.

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Small Samples

*“Marijuana users usually go on to
use other drugs”*

- You’ve seen 5 defendants who came back on probation violations who went on to use cocaine.

Implicit Bias

- Research about judges (Rachlinski, *et al.*)
 - White judges showed a strong white preference.
 - Black judges showed no clear overall preference.
 - Some evidence suggested effects on sentencing.

Defeating Implicit Bias

- Judges who *monitor* their implicit racial biases and *suppress* them can defeat them.

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Other Factors that Harm Your Decision-Making Ability

Fatigue

Sleep deprivation leads to:

- Lack of innovation
- Inflexibility
- Distractibility

Fatigue

Sleep deprivation leads to:

- Over-reliance on past strategies
- Unreliable memories
- Loss of empathy
- Inability to deal with the unexpected

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Less than 6 hours sleep

6 or fewer hours of sleep
over a 14-day period.



Effects caused by 2 full nights of
sleep deprivation.

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Hunger

Eating helps you:

- Maintain self-control
- Maintain attention
- Cope with stress



Hunger

When glucose levels are low, we are more likely to rely on reflexive processes; reflexive processes take more energy.

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However:

Bad Mood = More Reflective

Good mood \Rightarrow Reflexive \Rightarrow automatic processing.

Bad mood \Rightarrow Reflective \Rightarrow deliberative processing.

Good Mood = Bad Decisions

Reliance on stereotypes
more likely in a good mood.

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Vigilance

Conscious thought—
is important.

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Deceptively Easy

Information that's easy to
process is *perceived* as more
trustworthy.

Hard = Better

Hard-to-read TYPE:

- People get more of the answers right.
- Difficult font -- a cue that the task would require some effort.

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Multi-tasking

- The brain “multi-tasks” by rapid *task-switching*, not multi-tasking.

3%

- Almost universally (97% of people), multi-tasking has a cost in performance.
- Are you *really* among the 3%?

Procedural-Fairness Cost

Multitasking in the courtroom — litigants may perceive that the judge is not paying attention.





Becoming More Mindful

Focus on *Purpose*

- Why did you become a judge?

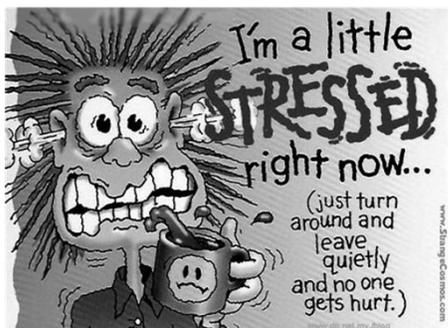
Becoming More Mindful

- Are there rules of thumb that you have been using to make a type of decision (e.g., for cause challenges)?

Note and Critique Rules of Thumb

- What are the assumptions behind these rules?
- Do you have any basis in research to support them?
- Is there any research available on that point?

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Breaks

Be aware:

- Break-time?
- Snack-time?

Justice Breyer pauses for 10 to 15 minutes, twice a day.

“My wife said this would be good for [my] blood pressure and she was right.”



STOP Meditation

Stop what you are doing.

Take a deep breath and focus on breathing.

Observe what you're thinking, feeling, and doing.

Proceed with new awareness.

How to Rule in Hard Cases

Say why certain values outweigh other values in light of:

1. the situation,
2. the events that led up to it,
3. the relations among the parties, and
4. the contours of our way of life.

Professor Joseph Singer

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Goal

Show respect for all persons affected by the dispute.

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Factual Findings

- Talk to the Loser

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Audi Alteram Partem

Hear
the other side

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Good Decisions

Justify the decision by the best reasons the decision maker can offer which show respect to the loser and treat the loser with equal concern and respect.

Professor Joseph Singer

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Courtroom Management & Demeanor

Scenarios

#1 - COURTROOM MANAGEMENT & DEMEANOR

[Clerk; Defense; City]

CLERK Please rise. The municipal court of Elkhart is now in session. The Honorable Thomas Kemp, presiding.

City of Elkhart v. John Jones

JUDGE..... Good Morning, Counsel. Mr. Jones is accused of violation of K.S.A 8-1567 Driving Under The Influence and K.S.A. 8-1568 Attempt To Elude

Are both sides ready for trial?

DEFENSE Yes, your Honor.

CITY..... City is ready.

JUDGE..... Since I have quite a heavy call today, I would like to pass this case for trial after lunch. Please return at 1:00 pm.

[Case recessed]

CLERK..... Recalling City of Elhart v. John Jones

DEFENSE *[Slurring words & unable to stand without support & obviously drunk]*

Judge, after a very long lunch, let's get rolling on this trial. *[Looking around the courtroom]* Oops, Judge, I seem to have lost my witnesses. How about just doing this trial on another day? What dya think your Honor? It's absolutely your call.

JUDGE..... *[Response...]*

#2 - COURTROOM MANAGEMENT & DEMEANOR

Outbursts from the Gallery

INTRODUCTIONWitness is on the stand testifying a Domestic Battery. Her boyfriend is in the gallery.

CITYAfter you observed the Defendant strike Mary Jones, what did you do next?

WITNESSI ran to call the police.

CITYAre you sure that's what you did next?

AUDIENCE MEMBERAre you deaf? She said she ran to call the police.

JUDGE..... Sir, people in the audience are not permitted to speak out in the courtroom. If you speak out again, you will be removed from the courtroom.

CITYAre you sure that's what you did next?

AUDIENCE MEMBEROh, for god's sake!

JUDGE..... All right sir, I warned you - you will have to leave the courtroom.

AUDIENCE MEMBERThis is Bullshit!

JUDGE..... [Response...]

#3 - COURTROOM MANAGEMENT & DEMEANOR

INTRODUCTION Judge seated in chambers before the morning call begins.

Sheriff knocks on door.

JUDGE..... Yes, who is it?

SHERIFF Judge, it's Deputy Jones. I'm assigned to your courtroom today.

JUDGE..... Come in.

SHERIFF How you doing this morning, Your Honor. I wanted to talk to you.

JUDGE..... What about?

SHERIFFMy cousin has a case on your call today.

JUDGE..... I cannot speak to you about cases on my call.

SHERIFFWell, Judge, whatever you could do to help him out B I would personally appreciate it. His name is Johnny Jones.

JUDGE..... [Response...]

#5 - COURTROOM MANAGEMENT & DEMEANOR

INTRODUCTION During a lengthy trial regarding harassment by telecommunication device K.S.A. 21-6206.a.1

DEFENSE Mr. Burns, Petitioner's Ex. 1 depicts all the text messages you claim were sent by you to my client Shirley Jones.

BURNSYes.

DEFENSE ...Directing your attention to item #2 on Ex. 1, that's your message of 2/22/18 to petitioner.

BURNS I don't know. I don't see it.

DEFENSE ...*[Pointing at item in Exhibit in Respondent's hands]*

Well, directing your attention to item #2 in the Exhibit you are holding.

BURNSGet out of my face.

DEFENSE ...Sir, if you would just pay attention to my question.

BURNS I said get out of my face or you're going to be sorry.

JUDGE..... [Response...]

#7 - COURTROOM MANAGEMENT & DEMEANOR

Closing Argument

[Prosecutor; Defense Attorney]

INTRODUCTIONThe Prosecutor is giving his closing argument at the end of a criminal trial. During the trial, a co-defendant, Mr. Smith, who pled guilty to the charges testified against the defendant, Mr. Jones. The defendant did not testify.

PROSECUTORYour honor, Mr. Smith came in here and told you the defendant committed domestic battery with him. Mr. Smith pled guilty and took responsibility for his conduct.

But the defendant, Mr. Jones, has yet to take any responsibility for his actions. He hasn't stepped up to the plate and said, "Yes, I did this."

DEFENSE ATTORNEY ..*[Continues looking at notes]*

JUDGE.....*[Response...]*

#8 - COURTROOM MANAGEMENT & DEMEANOR

Attorney Arguing with Judge's Decision

[Introduction; Jones' Attorney]

INTRODUCTIONThe Judge has listened to the evidence all morning and starts to announce her decision.

JUDGE.....All right, Ladies and Gentlemen, I've been listening to the evidence all morning and my ruling is as follows: I find defendant guilty of DUI.

JONES' ATTORNEYBut judge, how could you find him guilty...the police officer couldn't remember anything.

JUDGE.....Mr. Smith, please let me finish announcing my rulings.

JONES' ATTORNEYBut judge, all of the evidence favored my client on this issue. If you were a lawyer, you would understand.

JUDGE.....[Response...]

#9 - COURTROOM MANAGEMENT & DEMEANOR

During a trial for violation of a protective order KSA 21-5924

Cell Phone Disruption

[Audience; Witness]

WITNESSThen the Def. threatened to hurt the children

FROM THE AUDIENCE *[Sound of cell phone ringing]*

JUDGE..... *[Response...]*

#10 - COURTROOM MANAGEMENT & DEMEANOR

Inappropriate Remarks from Courtroom Staff

[Introduction – Judge Donnelly; Clerk – Judge Wilson]

INTRODUCTIONA crowded motion call is in progress. Among the parties waiting for their case to be called is a person who appears to be transgender.

JUDGE.....Clerk, please call the next case.

CLERKWho should I call next, the drunk or the he-she?

[Court personnel snicker]

JUDGE.....[Response...]

Discussion

Judge Donnelly

#11 - COURTROOM MANAGEMENT & DEMEANOR

Disruptive Attorney Scenario

[Counsel – Judge Donnelly]

JUDGE..... After hearing the testimony and considering the authority submitted and the arguments of counsel, the motion is respectfully denied.

COUNSEL *[Throws up his hands.]* What a total joke...

JUDGE..... *[Response....]*

#12 - COURTROOM MANAGEMENT & DEMEANOR

Banning Disruptive Audience Members from Courtroom

[Introduction – Judge Wilson; Defense Counsel – Judge Donnelly]

INTRODUCTIONYou are conducting a jury trial. You notice the bailiff approach a group of people in the audience on several occasions. The people are friends and family of the defendant. The bailiff directs the group to leave the Courtroom and tells them they will not be allowed back in the Courtroom. At a break, the bailiff tells the judge that this group of people was making noises. They were gesturing and making facial expressions.

DEFENSE COUNSELYour Honor, I'm asking defendant's family be allowed back into the Courtroom for closing argument. I've admonished them that they must be quiet. I invite you, Your Honor, to admonish them. But my client has a right to a public trial.

JUDGE..... [Response...]

#14 - COURTROOM MANAGEMENT & Demeanor

Crazy Guy Part I Scenario

[ASA – Volunteer; Deputy; APD]

ASAThe People answer ready for trial.

DEPUTYYour honor, I am not bringing the defendant out. He has been very disruptive in the lock-up and my sergeant has told me that I am not to bring him out of the lock up, regardless of what you say, with all due respect.

APDYour honor, my client answers ready for trial and this is the last day of the speedy trial term and I demand that he be allowed to be present for his trial. The deputy sheriffs have been taunting him in the back and he did get upset, but he has calmed down.

DEPUTY I don't care what this lazy PD says; we are not going to bring him out here.

JUDGE..... [Responds...]

#15 - COURTROOM MANAGEMENT & DEMEANOR

Crazy Guy Part II Scenario

[Defendant – Judge Donnelly; Deputy – Judge Wilson; APD – Volunteer]

[Defendant is brought out, wearing a prayer hat.]

DEFENDANT I am ready for trial, but I don't want a lawyer. And I want to sit right next to you judge, during the trial.

[Defendant attempts to get up to the witness box.]

DEPUTY That is the witness box; you cannot sit there. I order you to sit down next to your lawyer. See what I told you judge; you should never have let him come out here; I am going to shackle him to the table so he won't be any more trouble. And *[to the defendant]*; take off that goofy hat.

DEFENDANT That is my prayer hat; you cannot take that off me.

APD Your honor, I object to my client being shackled for this jury trial.

DEFENDANT He's not my lawyer; *[to the APD]* I thought I told you, You're fired.

JUDGE..... *[Responds...]*

Discussion

Judge Donnelly

#16 - COURTROOM MANAGEMENT & DEMEANOR

Lawyer Arguing with Witness

[Introduction – Volunteer; Lawyer – Judge Donnelly; Witness – Judge Wilson]

INTRODUCTION The Lawyer is questioning an uncooperative witness and begins to argue with the witness.

LAWYERWhen did you compile this list?

WITNESS I have no idea.

LAWYERWell was it 1 week, 3 weeks or 10 weeks ago?

WITNESS I don't know.

LAWYERWell, when will you know?

WITNESS I can't remember.

LAWYERWell, it seems you remember everything that's beneficial to your side of the case, but when it comes to something helpful to our side of the case, you don't remember anything.

WITNESS It might look that way, but I don't remember.

LAWYERYou're just a liar, aren't you?

JUDGE..... [Response...]

Discussion

Judge Wilson

#17 - COURTROOM MANAGEMENT & DEMEANOR

Gum-cracking & Talking while Court is in Session

[Introduction; Clerk; Gallery]

INTRODUCTION Court is in session. A disruptive person in the gallery is talking loudly to the person seated next to them, while cracking gum. The Judge is unable to hear the parties at the bench.

CLERKCity of Waterville v. John Jesky

GALLERY *[directed to defendant at the bar, person stands and points]*

Hey, Johnny. I'm going to come visit you this weekend. *[to person next to him B loudly]*

That's my son. He didn't do nothing wrong. The police just put this case on him.

[person in gallery starts to approach the bench] I'm sick of this shit.

JUDGE..... [Response...]

#18 - COURTROOM MANAGEMENT & DEMEANOR

Repeated Requests for Continuance

[Clerk; City; Defense]

CLERK City of Edgerton v. Theresa Simmons

JUDGE..... This case is set for trial again today for the sixth time. Are both sides ready?

CITY The City is ready again today, Judge. All of our witnesses are here.

DEFENSE Judge, one of my witnesses did show up today. But the most crucial defense witness has not appeared, and I don't know why I haven't heard from him.

JUDGE..... Did you subpoena your crucial witness, Counsel.

DEFENSE Well, no. He's been cooperative and he promised the defendant he would be here. I'm going to have to ask for another continuance, and I'll try to get him here on the next date.

JUDGE..... [Response...]

#19 - COURTROOM MANAGEMENT & Demeanor

Persistent Pro Se Litigant

[Clerk]

CLERK City of Shawnee v. Larry David

JUDGE..... Are the parties ready to proceed? Mr. David, are you planning to represent yourself in this case?

Larry David Well, I don't have much of a choice. I don't have any money to hire a lawyer. I'm counting on you, Judge, to help me out, if you know what I mean.

City Your Honor, I believe that Mr. David does not understand the procedures of the courtroom.

Larry David..... Hey Judge, I need you to tell me what my rights are and if I have a leg to stand on. I know that you won't steer me wrong in this case, right? You are going to do all the questioning for me.

JUDGE..... [Response...]

PROCEDURAL FAIRNESS/PROCEDURAL JUSTICE

A BENCH CARD FOR TRIAL JUDGES

WHAT IS PROCEDURAL FAIRNESS OR PROCEDURAL JUSTICE?

When we speak of **Procedural Fairness** or **Procedural Justice** (two terms for the same concept), we refer to the perceived fairness of court proceedings. Those who come in contact with the court form perceptions of fairness from the proceedings, from the surroundings, and from the treatment people get.

Research has shown that higher perceptions of procedural fairness lead to better acceptance of court decisions, a more positive view of individual courts and the justice system, and greater compliance with court orders.

Researchers sometimes identify the elements of procedural fairness differently, but these are the ones most commonly noted:

VOICE: the ability of litigants to participate in the case by expressing their own viewpoints.

NEUTRALITY: the consistent application of legal principles by unbiased decision makers who are transparent about how decisions are made.

RESPECT: that individuals were treated with courtesy and respect, which includes respect for people's rights.

TRUST: that decision makers are perceived as sincere and caring, trying to do the right thing.

UNDERSTANDING: that court participants are able to understand court procedures, court decisions, and how decisions are made.

HELPFULNESS: that litigants perceive court actors as interested in their personal situation to the extent that the law allows.

MEASURING FAIRNESS

"Measurements . . . define what we mean by performance."

—Peter Drucker

There are tools to help you measure fairness in your court. You can then see if you can improve over time.

The Center for Court Innovation has *Measuring Perceptions of Fairness: An Evaluation Toolkit*, available at <http://goo.gl/TVu42A>.

The National Center for State Courts has its CourtTools, which includes an Access and Fairness survey in both English and Spanish, available at www.courttools.org.

The Utah Judicial Performance Evaluation Commission has a Courtroom Observation Report, which can be used by courtroom observers to give qualitative feedback, available at <http://goo.gl/1bWAVk>.

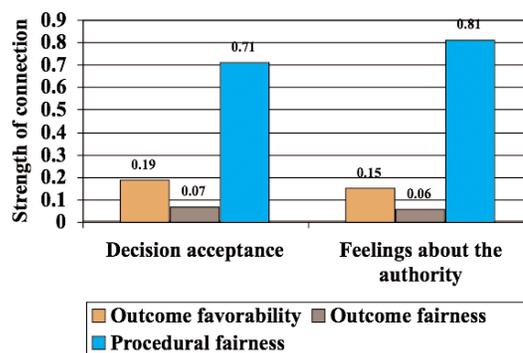
KEEP IN MIND:

- This may be the most important contact with the court system the parties will ever have.
- Filling out forms on the bench may be important, but eye contact and engagement with the parties are critical.
- Trust is not a given. But it can be gained in each hearing through adherence to procedural-fairness principles.
- People make assumptions when they lack knowledge. Explain things.
- Listening is a key skill. Decision acceptance is greater if it's clear you listened—note their key points when ruling.
- Like others, judges can be affected by perceptions, assumptions, and stereotypes—in other words, implicit biases. Be aware.

WHY IS IT IMPORTANT?

Several rigorous evaluations have shown that both acceptance of court decisions and overall approval of the court system are much more closely connected to perceptions of procedural fairness than to outcome favorability (Did I win?) or outcome fairness (Did the right party win?). Studies also show increased compliance with court orders when participants experience procedural fairness.

WHY DO PEOPLE ACCEPT COURT DECISIONS?



Source: Survey of court users in Oakland and Los Angeles, California, reported generally in TOM R. TYLER & YUEN J. HUO, TRUST IN THE LAW (2002).

FOR MORE INFORMATION

ProceduralFairness.org

ProceduralFairnessGuide.org

Center for Court Innovation (www.courtinnovation.org)

National Center for State Courts (www.ncsc.org)



THE NATIONAL
JUDICIAL COLLEGE

BENCH CARD ON PROCEDURAL FAIRNESS

PRACTICAL TIPS FOR COURTROOM PROCEEDINGS

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

GREET ALL PARTIES NEUTRALLY. Address litigants and attorneys by name and make eye contact. Show neutrality by treating all lawyers respectfully and without favoritism. This includes minimizing the use of jokes or other communication that could be misinterpreted by court users.

ADDRESS ANY TIMING CONCERNS. If you will be particularly busy, acknowledge this and outline strategies for making things run smoothly. This can help relax the audience and make the process seem more transparent and respectful.

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

EXPLAIN EXTRANEOUS FACTORS. If there are factors that will affect your conduct or mood, consider adjusting your behavior accordingly. When appropriate, explain the issue to the audience. This can humanize the experience and avoid court users’ making an incorrect assumption.

Example: “I am getting over the flu. I’m not contagious, but please excuse me if I look sleepy or uncomfortable.”

EXPLAIN THE COURT PROCESS AND HOW DECISIONS ARE MADE. The purpose of each appearance should be explained in plain language. Tell the defendant if and when she will have an opportunity to speak and ask questions. Judges and attorneys should demonstrate neutrality by explaining in plain language what factors will be considered before a decision is made.

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

USE PLAIN LANGUAGE. Minimize legal jargon or acronyms so that defendants can follow the conversation. If necessary, explain legal jargon

in plain language. Ask litigants to describe in their own words what they understood so any necessary clarifications can be made.

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

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

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

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

STAY ON TASK. Avoid reading or completing paperwork while a case is being heard. If you do need to divert your attention briefly, pause and explain this to the audience. Take breaks as needed to stay focused.

Example: “I am going to take notes on my computer while you’re talking. I will be listening to you as I type.”

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

Adapted from EMILY GOLD LAGRATTA, PROCEDURAL JUSTICE: PRACTICAL TIPS FOR COURTS (2015).

FOR ADDITIONAL READING

EMILY GOLD LAGRATTA, PROCEDURAL JUSTICE: PRACTICAL TIPS FOR COURTS (2015), available at <https://goo.gl/YbuC3K>.

Kevin Burke & Steve Leben, *Procedural Fairness: A Key Ingredient in Public Satisfaction*, 44 Ct. Rev. 4 (2007-2008) (an AJA White Paper), available at <http://goo.gl/afCYT>.

Pamela Casey, Kevin Burke & Steve Leben, *Minding the Court: Enhancing the Decision-Making Process*, 49 Ct. Rev. 76 (2013) (an AJA White Paper), available at <http://goo.gl/RrFw8Y>.

Brian MacKenzie, *The Judge Is the Key Component: The Importance of Procedural Fairness in Drug-Treatment Court*, 52 Ct. Rev. 8 (2016) (an AJA White Paper), available at <http://goo.gl/XA75N3>.

David B. Rottman, *Procedural Fairness as a Court Reform Agenda*, 44 Ct. Rev. 32 (2007-2008), available at <https://goo.gl/sXRTW7>.

Tom R. Tyler, *Procedural Justice and the Courts*, 44 Ct. Rev. 26 (2007-2008), available at <https://goo.gl/UHPkxY>.