A court’s successes are measured by many things, but public confidence and legitimacy are rarely among them. Yet research has shown that, when court users perceive the justice system to be fair, they are more likely to comply with court orders and follow the law—regardless of the outcome of their case. This session will cover the foundations of procedural justice research and its key elements. The discussion will be interactive and guide practitioners through exercises that practice the communication strategies associated with improved trust and promote compliance.
Emily LaGratta, Director of Procedural Justice Initiatives, Center for Court Innovation, New York

Emily LaGratta is the deputy director of training and technical assistance and director of procedural justice initiatives at the Center for Court Innovation, a nonprofit justice reform agency in New York. In this role, she leads the Center’s technical assistance efforts on the topics of procedural justice and community courts and provides/coordinates training, site assessments and site-based implementation efforts for jurisdictions interested in improving litigant perceptions of fairness. Before the technical assistance team, she was on the planning team for several New York-based initiatives, including the Brownsville Community Justice Center and Brooklyn Justice Initiatives. LaGratta is a graduate of Pomona College and the University of Wisconsin Law School.
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 National Center for State Courts has its CourTools, which includes an Access and Fairness survey in both English and Spanish, available at [www.courtools.org](http://www.courtools.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](http://goo.gl/1bWAVk).

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?

![Graph showing reasons for decision acceptance](image)


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.

FOR MORE INFORMATION

ProceduralFairness.org
ProceduralFairnessGuide.org
Center for Court Innovation ([www.courtinnovation.org](http://www.courtinnovation.org))
National Center for State Courts ([www.ncsc.org](http://www.ncsc.org))
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 NEUTRARLY. 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.


FOR ADDITIONAL READING


This bench card is jointly produced by the American Judges Association, the Center for Court Innovation, the National Center for State Courts, and the National Judicial College.
SIGNAGE EXERCISE

Rank the provided signs in order from most consistent with procedural justice to least consistent with procedural justice. Consider the elements: voice, neutrality, understanding, and respect.
ANNOUNCEMENT EXERCISE

Draft an opening announcement that a judge, bailiff, or clerk could deliver to court users that considers:

1. What aspects of the court’s mission and values could be conveyed in an opening announcement?
2. In an opening announcement, how can you attest to the court’s respect for court users, including their time, individual needs, and legal rights?
3. How can you help users understand the process?
4. How might an announcement convey the court’s commitment to neutrality?
5. How might an announcement inform users about how they can have a voice in the process?
I can:

- Introduce myself by name and role and address court users by name
- Make eye contact and use appropriate non-verbal cues with all parties, especially at key moments in the appearance
- Personalize interactions with court users; make case file notes to help recall details later
- Clearly state the most important and/or frequently violated court rules
- Use open ended questions instead of yes/no questions
- Ask users to repeat back their understanding of key decisions (e.g. responsibilities for conditions of release)
- Explain how I make decisions
- Avoid the appearance of inappropriate favoritism to certain parties or court players
- Acknowledge unfairness when I see it
- Educate myself about implicit bias

Environmental design can:

- Create a welcoming and respectful atmosphere in the lobby and security area
- Show respect through a clean and well-maintained facility, including restrooms
- Situate the judge’s bench at eye level to enable meaningful eye contact with all parties
- Provide an estimate of wait times; provide information or resources that would be valuable while court users are waiting
- Use clear and respectful signs to communicate court rules and security procedures; include signage and other resources for individuals with Limited English Proficiency
- Use microphones and amplification in the courtroom to ensure that family members and other court users can hear the proceedings
- Provide a help desk or resource center manned by knowledgeable staff or volunteers
- Display artwork and other décor that reflects the values and demographics of the community
- Have accessible comment card boxes

Agency policies can:

- Include procedural justice practices in job postings and interviews; prioritize candidates who value and demonstrate key elements
- Consider how agency objectives and the mission statement align with procedural justice
- Establish a facility review committee that regularly assesses building conditions
- Use video-taping, peer review, and structured court observation to provide feedback to court professionals
- Train staff in advanced communication techniques
- Create scripts that model best practices
- Schedule/stagger court appearance times to reduce security lines and waiting times
- Consider trainings on related practices, such as motivational interviewing
- Encourage regular discussions with community members, including shared brainstorming about how to build public trust
- Implement ways to solicit user feedback about their experiences via comment cards, surveys, or other formats
- Appoint an ombudsman to address court user comments and questions

Key: Understanding • Respect • Voice • Neutrality • All