



The Procedural-Fairness Movement Comes of Age

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Research shows that public attitudes toward courts are driven more by how they are treated rather than by case outcomes. Courts can do much to improve public confidence in the justice system by focusing on procedural fairness, as shown in Alaska, Utah, and New York.

Six years ago, National Center for State Courts researcher David Rottman called procedural fairness “the organizing theory for which 21st-century court reform has been waiting.” Recent developments in Alaska, Utah, and New York show that Rottman was right—a focus on procedural fairness is leading courts and judges toward better performance, better outcomes, and greater public approval.

Before we talk about those recent developments, let’s first be clear about what we mean by procedural fairness (also called procedural justice). For more than two decades, a number of social scientists—notably including Yale law and psychology professor Tom Tyler—have looked into how people react to their encounters with authority figures, including law-enforcement officers and judges. The research has shown that how disputes are handled has an important influence on people’s evaluations of their experiences in the

court system. In fact, these researchers have convincingly shown that the public’s view of the justice system is driven more by how they are treated by the courts than whether they win or lose their particular case.

Tyler (2008) has identified four basic procedural-fairness concepts that drive these reactions:

1. **Voice:** litigants’ ability to participate in the case by expressing their viewpoint;
2. **Neutrality:** consistently applied legal principles, unbiased decision makers, and a transparency about how decisions are made;
3. **Respect:** individuals are treated with dignity and their rights are explicitly protected; and
4. **Trust:** authorities are benevolent, caring, and sincerely trying to help the litigants—a trust garnered by listening to individuals and by explaining or justifying decisions that address the litigants’ needs.

People view fair procedures as the way to produce fair outcomes.

Although these ideas are distilled from careful research, they seem simple enough. But, traditionally, the focus of education and training for trial judges has been more on

learning legal rules (e.g., How do I rule quickly on a hearsay objection?) so as to avoid reversal on appeal than on how to deal with litigants so that they go away satisfied with their experience.

Successful efforts to refocus judges and court personnel are underway in Alaska and Utah. The developments there are worthy of national attention.

Let's start with Alaska. Under the leadership of present Chief Justice Dana Fabe and her predecessor, Walter L.

Carpeneti, all Alaska judges have received procedural-fairness training. But Chief Justice Fabe took things a step further in 2013: she posted a framed "Pledge of Fairness" in every courthouse in Alaska. In addition, she made the pledge a focus of her state-of-the-judiciary address to a joint session of the Alaska legislature, telling them, "What people should expect from a judge is courtesy, respect, and thoughtful consideration. And what they should expect from the process is to understand what happened, and why."

The poster makes these points in bold print. And it has been printed not only in English, but also in the six languages for which interpreter services are most often requested in Alaska: Hmong, Korean, Russian, Spanish, Tagalog, and Yupik.

Posting a fairness pledge in every courthouse—and announcing the move to the legislature and broadly to the public—served important purposes. First, Chief Justice Fabe emphasized that procedural-fairness principles were at the foundation of the court's mission. Second, she made the pledge a permanent statement to be read at a prominent location in each courthouse. It will serve as a reminder to

judges and courthouse personnel of a core aspect of their work. For members of the public, each time they step into the courthouse, they see an explicit performance promise that the courts must keep.

The statement has encouraged an understanding among courthouse employees that they have a shared mission with the judges in providing service to the public. Court clerks regularly see courthouse visitors reading the pledge, and the inclusion of a translation into several languages has

been a plus too—it has prompted courthouse visitors to ask about the language services that are available.

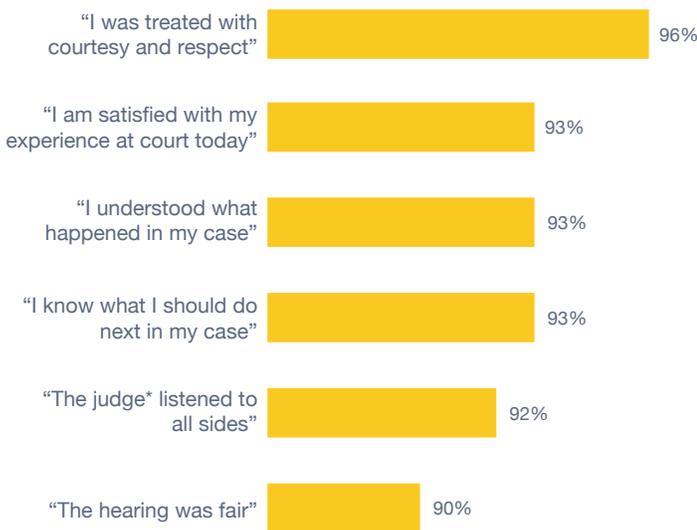
Now let's consider Utah. Its state courts present perhaps the most extensive emphasis on procedural-fairness principles anywhere. Like Alaska, all Utah judges have received procedural-fairness training at their state judicial conference. But Utah has something that no other state has—explicit and publicly available performance evaluations of every judge based on procedural-fairness principles. And that emphasis appears to be making a difference.

Utah has an independent Judicial Performance Evaluation Commission, established in 2008 with directions to have a system in place to provide public evaluations of Utah's judges by the time of its

2012 judicial-retention election. The statute creating the commission required that its evaluations be based in part on courtroom observation, and the commission adopted formal rules requiring that those evaluations be based on procedural-fairness principles. Volunteer citizen-observers fill out forms rating judges' performance on giving participants a voice in the proceedings, handling hearings in a neutral fashion, and showing respect for litigants and their rights.

What is important about this Utah experience is that it is having a measurable impact. Utah Chief Justice Matthew B. Durrant made procedural fairness the headline story for his 2014 state-of-the-judiciary address to the Utah legislature. He started with the number 93, which was the percentage of people leaving courthouses in Utah during a 2013 survey who said, “I am satisfied with my experience at court today.” That number was up from 87 percent in 2006. Chief Justice Durrant told the legislators about other positive numbers from the survey—broad agreement on a number of key statements:

Survey of Utah Courthouse Visitors



*Note: “Judge” also includes commissioners, referees, and mediators.
Source: Utah Judicial Branch

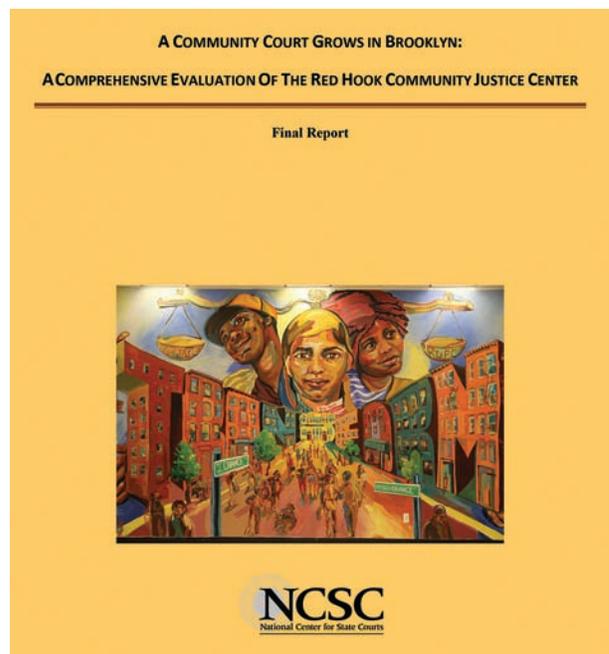
Chief Justice Durrant explained to legislators that “[w]hen people truly believe that they have been treated with respect, they in turn respect the process, regardless of the result.” He then explained the research on procedural fairness and told legislators that “we have taken the research in this area to heart. We have educated our judges and helped them hone these skills.” That’s a pretty good message to present to the public and the state legislature, and the Utah survey results show that its judges are, indeed, practicing these principles daily.

To be fair to Alaska, it too has formal judicial-performance evaluations and citizen-volunteers who report their courtroom observations of judges. While Alaska does not have formal rules explicitly adopting procedural-fairness principles for judging the judges, it probably is not a coincidence that the state courts in Alaska and Utah have a similar history of formal judicial-performance evaluations, including publicly released observations of judges’ courtroom behavior, combined with—perhaps leading to—

a statewide and public commitment from the state courts to procedural fairness.

So far, then, we have discussed two important developments. Alaska has proclaimed allegiance to procedural-fairness principles in large posters displayed in every courthouse—a useful reminder to judges and court staff, a promise to the public, and a valuable public-relations move so long as judges and court staff do their part. Utah has made procedural-fairness principles part of every judge’s exam grade. You might say that Utah judges have then “taught to the test,” but this is a test that every judge should be taught to perform well on. Who can complain if litigants leave the courthouse feeling that they were listened to, understanding what the court ruled and why, and knowing what they should do next in their case? Taken together, these developments help to improve public perceptions of the court system.

The third important recent development comes from research into a specific New York court—the often-studied Red Hook Community Justice Center in Brooklyn. A comprehensive evaluation of the court published in November 2013 looked to see why recidivism and crime had declined in the geographic area the court served. The researchers concluded that this “impact on crime and recidivism results primarily from the Justice Center’s ability to project its legitimacy to offenders and the local residential community rather than from strategies of deterrence or intervention.” And what leads to a feeling that an institution is legitimate, one that is entitled to be deferred to and obeyed? Tyler and others have shown that for courts and police, high performance in procedural fairness leads to a greater sense that their power is justified. Procedural fairness leads to greater respect



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for the court as an institution, a sense that the court is a legitimate authority, and greater willingness to follow court orders.

Researchers found that Red Hook’s courthouse culture reflected a norm of being helpful to visitors to the courthouse, whether they came as defendants or otherwise, thus reinforcing a sense of procedural fairness. Red Hook’s judge exhibits procedural-fairness principles in his courtroom interactions. Researchers found solid evidence that these procedural-fairness practices, combined with public perception that the court shares community values, helped to reduce recidivism rates.

There have been other studies showing that adherence to procedural-fairness principles increases compliance with court orders and leads to a greater sense of the court’s legitimacy. But the Red Hook study is worthy of special note because the research design was exhaustive and looked

at a number of potential cause-and-effect relationships. Adherence to procedural-fairness principles and a sense of shared values seemed the most likely causes of the reduced recidivism.

So the promise that David Rottman spoke of six years ago is coming to fruition. Procedural fairness is moving into the mainstream as more states explicitly encourage their judges to practice these principles. There is substantial evidence that doing so improves public approval and acceptance of the courts—and even that it improves compliance rates with court orders and the law generally. As Rottman suggested, that is about as good a principle upon which to reform our courts as one could expect to find.

Going forward, judges and court administrators need to adopt—and even go beyond—the approaches now in place in Alaska and Utah. One good place to start is with court staff, who have a great deal of interaction with the people coming through our courthouses. Public proclamations of allegiance to procedural-fairness principles should be combined with effective staff training. In addition to learning these principles, court employees can benefit from procedural fairness too. Research shows that employees follow rules and do a better job when they perceive that workplace evaluations and procedures are fair. Focusing on using these same principles (voice, neutrality, respect, and trust) with employees as well as the public would go a long way toward creating a better courthouse culture.

Judges and court staff alike come to their jobs out of a desire to serve the public. Focusing every day on procedural fairness gives all of us a worthy and attainable goal that resonates with every court employee’s better self—the one that wants to serve. ↻

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