By Len DeFrancesco

Procedural justice – Procedural Fairness. These are significant factors in determining the public’s perception of the legal system in the United States, especially given the recent altercations between African-Americans and police.

Due to a lack of procedural justice, the trust between police and the community is sadly lacking. Rochester City Councilman Adam McFadden recently stated the two most frequent complaints he hears from residents are about police using force and the lack of courtesy.

Focusing on the lack of courtesy and other aspects of procedural justice, this Eye on the Courts essay will acquaint you with the five aspects of procedural justice — voice, respect, neutrality, understanding and helpfulness — their crucial value, and the vital need for procedural fairness. This article will not deal with racial issues and the use of force; instead, it’s focus will be the court system, including the role of judges, the attitudes and behavior of legal professions, from the District Attorney’s office, the Public Defenders and private counsel, etc.

According to the American Judges Association, “procedural justice is the critical element in the public’s perception and satisfaction with the court system.” If procedural justice is achieved, the public will likely have a positive public perception of the court system, recidivism will be reduced and the compliance with court orders will increase.

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THE BIG 5 (continued from page 1)

Confidence in the judicial branch is quite low and the layperson's perception does matter. Studies show that procedural fairness is lacking. One study found that one third of all judges display ineffective behavior. The five aspects of procedural justice must also be applied by and to every participant in a court case. Let's take them one at a time:

“VOICE.” Defendants who are given an opportunity to speak have higher satisfaction with the legal process than those who aren't. How can “voice” be accomplished? By giving defendants:
1. An opportunity to tell their story and explain the circumstances surrounding the behavior they're accused of.
2. Time to ask questions and make comments before sentencing.
3. Enough time to talk to the defense attorney.
4. An opportunity to restate in their own words the sentence and the consequences if the sentence is not carried out.

Granted this will take time, but it is necessary to help build public confidence in the legal system.

“UNDERSTANDING.” Defendants must see the court as benevolent and sincere. This can be achieved by:
1. Asking defendants to state their rights in their own words, rather than just respond “yes” or “no” when asked if they understand their rights.
2. Asking defendants to explain what the judge decides, such as what it meant when an order of protection is issued.
3. Increasing transparency by informing defendants about the reasons for and the results of sidebar and conferences.
4. Using layman’s language, rather than legal terms, such as arraignment, deposition, indictment, etc.

“NEUTRALITY.” Defendant must view decision-making as unbiased and trustworthy. This can be achieved by having a judge who does not:
1. Favor the defense, the prosecutor or a particular attorney.
2. Profile by race, gender, sexual orientation, economic status, school status, etc.

“HELPFULNESS.” Court/legal personnel must be perceived to be interested in a defendant’s personal situation, to the extent allowed by law. This can be achieved by:
1. Providing adequate time for fine and surcharge payment.
2. Considering a defendant's family obligations, work schedule and other extenuating circumstances in determining the sentence.
3. Politely encouraging a defendant to follow a court's order and explaining the consequences if it is not carried out.
4. Offering reasonable pleas in certain cases.

“RESPECT.” Defendants need to perceive that the judge, attorneys and the court staff are treating them with dignity. This can be achieved by:
1. Use a defendant’s name or addressing him/her as “sir” or “ma’am.”
2. Accurately pronouncing the defendant's name or asking the defendant for the correct pronunciation.
3. Courteously greeting defendants with a sincere “good morning,” etc., and wishing them good luck.
4. Speaking in an audible voice and encouraging all courtroom personnel to speak into the microphones.
5. Speaking firmly, pleasantly and civilly.
6. Avoiding sarcasm and the display of negative emotions.
7. Refraining from excessive note-taking at the bench.
8. Speaking directly to the defendant.
9. Maintaining eye contact with the defendant.
10. Not interrupting the defendant.
11. Avoiding talking too fast.
12. Practicing active listening by squarely facing the defendant as he/she speaks, and nodding to show agreement or understanding; not slouching, leaning toward the defendant when he/she is speaking,
13. Refraining from sighing.
14. Staying focused, avoiding distraction, such as a person entering the courtroom.
15. Starting the session on time. Conferencing, etc., should be completed before the stated start time for the sessions.

It is important how the court communicates with the public. The above list incorporates verbal and non-verbal situations. Respect begets respect.

The judge is the primary ingredient in creating the public's perception of fairness. Many judges and other court personnel are overworked, but this is not an excuse for neglecting procedural justice. If procedural justice is not established, the greater the dissatisfaction with the judge and the entire legal process. Most certainly, the judge must focus on the legal outcome; however, the judge's approach to the five essential aspects of procedural justice is vital. His/her demeanor is observed and evaluated by the public.

It has been suggested that judges and all legal participants should be trained in the elements of procedural fairness. The courts could enlist the services of professionals who specialize in communication and nonverbal behavior to monitor the judges by videotaping courtroom sessions. Others have suggested that defendants and the gallery evaluate courtroom sessions regarding procedural justice.

There are other tangible results of having a high level of procedural fairness. One significant benefit is compliance with court orders and sentences.

A person's experience with one aspect of the legal system affects their view of other parts of the legal system. Good experiences create trust and confidence. Procedural fairness reduces recidivism. When satisfaction with a court's decision increases, the chance of its orders being violated decreases.

Procedural fairness can also bridge the gap between

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The Big 5  
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familiarity and unfamiliarity. Many defendants are unfamiliar with the court system; if they are given a voice, see neutrality, are shown respect and view the legal personnel as helpful, they are more likely to accept and trust the legal system.  
“Procedural fairness is about as good a principle upon which to reform our courts as one can expect to find.”  
(National Center for State Courts. 2014).  
This article was based upon a publication by Judges Kevin Burke and Steve Leben for the American Judges Association (2007).  

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Court Observations  
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Court Watchers observed 22 court sessions in January; 24 in February; 28 in March.  

Reading Town Court  
Judge 8493  
• Displayed sense of humor, joked with some defendants
• Treated defendants with respect
• Had trouble locating cases, delays related to making of copies (Clerk out sick)
• Clearly explained rights collectively to large group of people being arraigned
• When asked why cell phones weren’t allowed, explained that the session shouldn’t be broadcast to people outside the courtroom, and when asked why said it was the prerogative of the judge
• In one session stated the court was obligated to levy the maximum fine, by subsequent session knew this was inaccurate
• Advised one seemingly confused defendant that he should get an attorney
• Insisted upon reading the rights to one defendant who claimed it was unnecessary

Geneva City Court  
Judge 0635  
• Gave clear explanations of process
• Didn’t always use microphone, so not always audible
• In a landlord-tenant case, explained to tenant that she should listen carefully to presentation of case since she would be asked whether she agreed with the information provided
• Explained rights to each defendant slowly and clearly
• Asked if defendant understood; when defendant said no, carefully re-explained
• Pronounced names carefully and checked to make sure pronunciation was correct
• Called a recess to give defendants the chance to speak with the APD since there were many who qualified and all were new cases
• Rather than making general announce-ment at beginning about qualifying for APD, handled each case individually. This included first asking the defendant at the bench about his or her income, and then directing the defendant to fill out the form. This seemed an unnecessary public disclosure of private information.

Judge 1586  
• Deal with wide variety of defendants (age, attitude, circumstances), tailoring tone to suit, showing real concern where it seemed appropriate and a no-nonsense briskness in other cases
• Took great care to make sure that someone being evicted understood the agreement and would have somewhere to go
• Gave defendants written reminders with date of next appearance
• Expressed great concern about a situation involving possible complications arising from a no-offensive conduct order
• Was very patient with challenging defendants (one young man with mental health issues; an old man who seemed very confused), giving them plenty of time to speak
• Apologized for mispronouncing name
• Explained rules for victim impact panel very clearly to a young DWI defendant
• Did not remind defendants who responded by nodding that they needed to speak

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- Was not very helpful to a friend/relative who appeared with a defendant and wanted to get back the bail she had posted
- Expressed apologies to defendant whose retained counsel wasn’t in court
- Gave very careful explanation of terms of payment to a defendant having trouble understanding English
- Gave very careful consideration to discussions about reducing bail

Judge 7138
- For traffic court, made sure everyone knew how, when and where to pay fines and the importance of determining the consequences of points before accepting offer from ADA
- Willing to give necessary time for defendants to pay fines
- In a case of non-violent crime, granted delay in start of jail term so defendant could continue with physical therapy after surgery
- Did not turn off microphone during sidebar, so some of the discussion was audible
- Arrived a bit late (for a session that was called unexpectedly)
- Encouraged ADA to indicate which of several charges would be emphasized when the case was heard; ADA 2748 declined, explaining that this wasn’t required; judge said it would be the “decent” thing to do. APD 5371 seemed unconcerned about whether this was done.
- Was very informative; very helpful to all parties; showed special care with defendant with mental health issues and with another with difficulties with English; called a short recess so the interpreter and the defendant’s wife could explain the process and potential consequences to the defendant
- Gave a lot of thought before deciding on one very difficult case; found a resolution in a different challenging case
- Explained to one young defendant that probation is not punishment, but is intended to help
- Showed great patience when working with a defendant appearing with an interpreter
- Spoke too rapidly when stating defendants’ rights

ADA 2748
- Declined to follow judge’s suggestion that defendant be told which of several charges would be emphasized when the case was heard
- Reminded judge that one cannot drive to the Victim Impact Panel even with a conditional license
- Commended a young woman with DWI for having been proactive (she had installed the interlock device before appearing in court)
- Had heated exchange with APD 3640 in two separate cases on same day
- Expressed apologies to defendant whose retained counsel wasn’t in court
- Hard to hear

ADA 9943
- Was careful to try to follow practices of ADA for whom was substituting, especially with reductions in traffic tickets

ADA 5912
- Substituting, not completely organized, caused some delays and some adjournments
- Easy to hear
- Met with traffic cases as each case was called rather than earlier, which slowed proceedings

APD 2260
- Sometimes hard to hear
- Soft-spoken but seemed clear, respectful.
- Seemed flustered, having trouble juggling all the cases (Was in conversation with one defendant while being interrupted by another and being called by the judge in a third case!)

APD 3640
- Demonstrated great patience with a challenging defendant
- Had heated exchange with ADA 2748 in two separate cases on same day
- Very well-prepared

Court liaison officer
- On several dates, asked people to be quiet; on several other dates did not. When did so, was polite, either requesting that people not talk or if they were there with young children that they wait in the corridor
- Visibly chewing gum, which seems unprofessional

Clerk
- Found telephone number of another court for someone who needed to clear up a case there
- After calling the name of prospective juror, also spelled it out, so there was no confusion
- Provided information about fines, surcharges

Attorney 5575
- Had full documentation for case that has been going on for a long time
- Very clear, easy to hear
- Hard to hear

Attorney 7656
- Hard to hear (two dates)

Attorney 4393
- Did not appear as retained counsel for a case
- Spoke very clearly

Attorney 9263
- Clear, informed, well-prepared, impressive

Other issues
- Courtroom was full and many people entered and left; door was very noisy
- Lots of conversations, no attempt to quiet people (on multiple court dates)

Geneva Town Court

Judge 1771
- Explained plea deals and sentencing but did not ask if defendant had any questions
- Easy to hear on one occasion; very soft-spoken on others
- Heard case for defendant who came on wrong date, taking the time to have the file located so the case could be heard

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• Asked defendant and attorney to speak into the mike.

Judge 7185
• Carefully explained process
• When denying a request for an extension, read out loud a long list of defendant’s failures to meet commitments, expressed regret that she had not complied.
• Very patient explaining process to a defendant who didn’t seem to understand
• Made good use of time awaiting defendant’s arrival, by meeting in chambers with the attorney
• Was helpful to a non-English speaker (interpreter was delayed in another court)
• Explained rights clearly to someone being evicted for non-payment
• Explained to two defendants in traffic cases that they could wait to plead until after meeting with the ADA (ADA wasn’t scheduled to attend that day)

ADA 2748
• Explained to defendant who was considering a guilty plea the possible repercussions of that plea if there were a civil suit as well. Recommended defendant plead not guilty and seek legal counsel
• Clarified confusion in a number of cases
• Well-prepared
• Very patient explaining process to a defendant who didn’t seem to understand

APD 2260
• Demonstrated concern for clients
• Not always audible; have to strain to hear (multiple observations)
• Made sure defendant understood judge’s lengthy instructions
• Very patient explaining process to a defendant who didn’t seem to understand

Clerk
• Quickly located missing file
• Checked to ensure microphones working before start of session

Courtroom often noisy
• Roof being repaired
• Noisy copy machine; hard to hear
• Talking in lobby, no effort to close doors

Victor Town Court
Judge 5874
• Wonderful demeanor, kind, understanding
• Efficient, moves cases along

ADA 6962
• Praised by judge for helping to move cases along
• Helpful to two defendants with no attorney

Attorney 4393
• Well-prepared
• Spoke clearly

Other issues: Audibility inconsistent

Seneca Town Court
Judge 9875
• Benevolent attitude, greeting defendants, wishing them a good night
• Allowed a defendant to speak directly rather than through attorney

Attorney 4393
• Proposed a solution without first checking with client, who ultimately rejected it

Clerk
• Assisted judge with a complex matter
• Warmly greets defendants, wishes them a good night

Other: Physical setup causes problems with audibility

Farmington Town Court
Judge 5453
• When first seated, introduced self, clerks, APD, ADA, court officer to those in the courtroom
• Tended to look down when calling names, so hard to hear
• Warned one defendant to stop speaking, since she was hurting her case
• Offered words of encouragement to a number of defendants
• Emphasized the importance of complying with terms of sentence
• Urged APD and ADA to compromise so case could be settled rather than adjourned

ADA 2473
• Very well prepared for heavy caseload
• Raised concern about possible consequences for student loans of initial charge

APD 2583
• Well-prepared
• Good rapport with client, respectful

Attorney 4091
• Moved mike closer to improve audibility

Court clerks
• Two were present which made things run smoothly and quickly
• Provided printed reminders of dates of next appearance to defendants

Police officer
• Cordial to those entering courthouse

Hopewell Town Court
Judge 1139
• Asked each defendant to state name, address and birthdate
• Greeted each defendant pleasantly
• Allowed defendant ample time to explain situation in detail
• Reassured concerned parent attending with son that they would be guided through the process
• Informed one defendant of possible consequences of marijuana possession charge (for college loans or military status) and adjourned case to give time to explore options.

APD 2260
• Careful to have provisions of an order of protection clarified

Court clerk
• Provided efficient assistance to judge

Gorham Town Court
Judge 8818
• Spoke rather softly
• Offered words of encouragement and/or warning to the defendants

ADA 6962
• Well-prepared
• Offered clarification to judge of complex case

APD 1256
• Offered background information on a case although defendant wasn’t eligible for public defender
• Well informed about cases

Clerk
• Worked efficiently
• Remained calm even after two copying machines malfunctioned
• Treated defendants with respect
The Court Watch Coordinating Committee acknowledges the Presbytery of Geneva, The Presbyterian Church in Geneva, Finger Lakes Community Endowments and the many local friends of the League of Women Voters, who financially support this project.

Anyone interested in making a donation can write a check to: "League of Women Voters Court Watch c/o Len DeFrancesco, 94 High Street, Geneva, NY 14456"

“Eye on the Courts” is edited by Anne Schuhle and compiled by members of the coordinating committee: Osbaldo Arce, Len DeFrancesco, Phyllis DeVito, Nancy Garver, Judith McKinney, Mary Lou Presutti and Fred Sonnenfeld. Additional Court Watch volunteers include: Kim Aliperti, Carl Aten, Ann Burt, Bobbi Calabrese, Wayne Castle, Elizabeth Chace, Molly Chapin, Bernadette Foley, Gretchen Fox, JoBeth Mertens, Kevin Milcarek, Melissa Nault, Anne Onorato, Ellen Reynolds, Maureen Scherer, Candi Smith, Ellie Syverud.

The next volunteer meeting will be a Skype session with one of the leaders of the New Orleans, La., Court Watch program. Get an idea what it’s like to observe sessions in a larger court system by attending this special session from 1:15 to 3 p.m. Thursday, May 14, at New York Law building, 361 S. Main St., Geneva. Please sign up in advance by calling Len at 789-3579.