

Fair, Functional, & Friendly: Citizen Suggestions for Making Orleans Parish Criminal District Court More User-Friendly and Procedurally Fair for Witnesses, Families, and the General Public



October 2014

Court Watch NOLA, 2014: First Half Report

“It is desirable that the trial of causes of action should take place under the public eye... because it is of the highest moment that those who administer justice should always act under the sense of public responsibility, and that every citizen should be able to satisfy himself with his own eyes as to the mode in which a public duty is performed.”

Justice Oliver Wendell Holmes, *Cowley v. Pulsifer*, 137 Mass. 392, 394 (Mass. 1884).

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II. EXECUTIVE SUMMARY

Every day Court Watch NOLA volunteers – citizens from all walks of life – serve as the public’s eyes and ears monitoring our elected officials at Orleans Parish Criminal District Court (“Criminal Court”). In the first half of 2014, 57 volunteers observed 479 court sessions, rating our Judges, prosecutors, law enforcement, and other public servants in order to make the criminal justice system more efficient, transparent, and procedurally fair.

CWN volunteers are joined in court by a cross-section of New Orleanians, including victims, witnesses, defendants, family members, and law enforcement, who are taking time off from work or family. This Report is a compilation of the observations made and data collected by our volunteers, and is being published in an effort to improve the courthouse experience for the tens of thousands of annual Criminal Court visitors. It walks the reader through a courthouse visit from the public’s perspective. Highlights from the Report include:

1. A Confused Public Needs Better Exterior and Interior Signage

Criminal Court, a.k.a. “Tulane and Broad,” is right where people expect it to be, but the lack of exterior signage and maps often confuses visitors looking for the nearby Traffic and Municipal Courts. Criminal Court’s ground-level entrance can be difficult to find for the same reason, a problem for people with disabilities. And the courthouse itself is a warren of seemingly out-of-order courtrooms. Without proper maps and signage, the public must therefore bother already-overworked Sheriff’s deputies and courthouse staff for directions.

2. The Courthouse Feels Safe But Courtroom Deputies Often Fail to Stay Alert

CWN volunteers felt safe during 98.7% of courthouse visits – a remarkable achievement given the challenges facing the Sheriff’s Office, which is in charge of security – and did not usually wait in long lines to get through security. Nevertheless, many volunteers were concerned that some courtroom deputies were napping, eating, reading, and playing on their phones instead of monitoring the inmates and other possible security threats.

3. Late Courtroom Start Times and Lengthy Delays Remain Frustrating

While most courtrooms start roughly on time, those that do not frustrate visitors who have taken time off work or away from family to attend court. Once court starts, visitors usually must wait through additional delays while the Court finds tardy police officers, doctors, prosecutors, and defense attorneys, the last of whom cause most of the delays. Reducing late court start times and lengthy delays would make the Court more efficient and allow the public and law enforcement to return sooner to their work and families.

4. Continuing Cases to a Later Date Often Wastes the Public and the Court’s Time

Despite Criminal Court’s 2013 efficiency gains, the “culture of continuances” continues to dog some courtrooms. Each time a case is continued (delayed) to another day, the attorneys, witnesses, victims, law enforcement, defendants, and family members who put

their lives on hold to attend court must do so yet again. The most-often observed reasons for continuances in early 2014 include: 1) a trial in progress (so that no other hearings could occur), 2) an unavailable or unprepared defense attorney, 3) a defendant who was released or bonded out failing to appear, 4) the state or custodial authority's failure to produce an in-custody defendant, and 5) the state's failure to timely provide the defense with discovery (*e.g.*, police reports). These reasons largely parallel those listed in previous reports.

5. Procedural Fairness: Criminal Court Judges Generally Excel at Being Respectful, Helpful, Neutral, and Understanding Towards Defendants

Procedural fairness is an evidence-based practice endorsed by the American Judges Association and the Conference of Chief Justices, which recently explained that “extensive research demonstrates that in addition to providing legal due process, it is important [for courts] to meet the public's expectations regarding the process in order to increase positive public perceptions of the court system, reduce recidivism, and increase compliance with court orders.”¹ The key elements in procedural fairness are:

- 1) *Voice*: litigants are given the opportunity to tell their story;
- 2) *Respect*: litigants perceive that... [they are treated] with dignity and respect;
- 3) *Neutrality*: litigants perceive that the decision-making process is unbiased...;
- 4) *Understanding*: litigants understand their rights and [court decisions]; and
- 5) *Helpfulness*: litigants perceive that court actors are interested in their personal situation.”²

Criminal courts that focus on procedural fairness can increase public satisfaction with the court system, reduce recidivism, and increase compliance with court orders.

CWN volunteers therefore rated Criminal Court's twelve trial Judges on a variety of metrics related to procedural fairness, and, using these subjective ratings, CWN then compiled a ranking of how procedurally fair CWN volunteers perceived each Judge to be. Fortunately, volunteers observed a judiciary generally devoted to respecting the rights, voice, and dignity of defendants, and rated most Judges very highly in this regard. Based on this data, Criminal Court's greatest strength may be the respectful, helpful, neutral, and understanding treatment that defendants there usually receive.

6. Making Criminal Court More User-Friendly and Procedurally Fair

The Report concludes with a discussion of over thirty specific recommendations, based on CWN volunteer data and national best practices, that, if followed, would make the courthouse more user-friendly and procedurally fair. The recommendations cover the entire courthouse experience, from finding and securing the courthouse to improving access for people with disabilities to upgrading facilities and reducing delays and continuances.

¹ Resolution 12 In Support of State Supreme Court Leadership to Promote Procedural Fairness, Conference of Chief Justices and Conference of State Court Administrators (July 31, 2013).

² Berman and Gold, *Procedural Justice from the Bench*, *The Judges' Journal*, Vol. 51, No. 2, Spring 2012.

III. INTRODUCTION

Every weekday morning, hundreds of New Orleanians walk through the doors of Orleans Parish Criminal District Court (“Criminal Court”) expecting justice. They are grieving victims, witnesses, anxious defendants, law enforcement, caring family members, and jurors. And crime has disrupted many of their lives – even the jurors – as one volunteer observed:

Jury selection was chilling this morning in that many members of the jury had experienced murder in their immediate families. Several people were crying recounting these events. Crime touches so many people - this is a random group yet roughly 40% had major crimes committed against them or their family!!!!

Some visitors have been to court before, and for some it will be their first interaction with the criminal justice system. Once at Criminal Court, they encounter a dizzying array of well-meaning staff, security, and officials, and a warren of courtrooms. How they are treated once court begins varies widely, depending on the rules and customs of each Judge.

Court Watch NOLA (“CWN”) volunteers are also a daily presence at Criminal Court. They come from all walks of life, from legal studies and criminal justice students to senior volunteers looking to make a difference. They observe and record courthouse proceedings on behalf of all New Orleanians who visit, work in, pay for, or are affected by the criminal justice system in order to make it more efficient, transparent, and procedurally fair.

Throughout the first half of 2014, 57 CWN volunteers attended 479 sessions at Criminal Court. This report, *Fair, Functional and Friendly: Citizen Suggestions for Making Orleans Parish Criminal District Court More User-Friendly and Procedurally Fair for Witnesses, Families, and the General Public* (the “Report”), compiles their observations and the data they collected during this time, and is being published in an effort to improve the courthouse experience for the tens of thousands of New Orleanians who visit Criminal Court each year. The Report walks the reader through a courthouse visit - from the parking lot to the courtroom - through the eyes of CWN volunteers, and includes statistical data based on both objective and subjective information, as well as the volunteers’ narrative observations.⁴

“It is especially important for judges to realize that people’s experience with any one part of the criminal justice system affects the views of all the others, any contact with the courts, including everything from official notifications to the condition of the courthouse itself, can affect public trust and confidence. Security guards and even janitors affect the public’s experience in the courthouse, but judges uniquely shape public perceptions because of their position.”³

³ Burke and Leben, *Procedural Fairness: A Key Ingredient in Public Satisfaction* at 8, American Judges Association, 2007, attached as Exhibit 1 (internal quotations omitted).

⁴ As well as some song and album lyrics and titles.

IV. “THIS IS HOW WE DO IT”: BACKGROUND AND METHODOLOGY

A. HISTORY OF COURT WATCH NOLA

Court Watch NOLA was founded in 2007 by the Business Council of New Orleans and the River Region, Common Good, and Citizens for 1 Greater New Orleans as a grassroots volunteer effort to bring greater transparency and efficiency to our criminal courts. Since then, CWN has recruited, trained, and supported volunteers in observing and reporting on whether our judges, prosecutors, public defenders, and other public servants are doing their jobs professionally, transparently, and without wasting taxpayer resources.

Originally just 15 volunteers watching 37 cases, in 2013 CWN boasted over 100 volunteers and made its 15,000th observation since 2007. CWN’s sole staff member compiles the results of the volunteers’ observations and publishes regular reports, and the organization is strictly nonpartisan and does not make candidate endorsements.

B. MISSION STATEMENT

Court Watch NOLA’s mission is to promote greater efficiency, transparency and procedural fairness in Louisiana criminal courts through citizen involvement and courtroom observation.

CWN’s focus on **efficiency** through the reduction of courtroom delays promotes public safety, fairness, and the cost-effective provision of public services. After all, the longer a case takes the more likely that key evidence and witnesses are lost. Reducing delays also means that our police officers can spend less time in court and more time on patrol. Finally, for defendants awaiting trial, justice delayed is justice denied – an unfair and expensive proposition when taxpayers are usually paying the bill for their pretrial incarceration.

Like efficiency, **transparency** is more than just a buzz word to CWN – it is a principle founded on each American’s right to due process and a public trial. Court Watch NOLA monitors the courts to make sure that public courtrooms do not become smoke-filled backrooms in which deals are made.

CWN’s focus on **procedural fairness**, meanwhile, promotes both public satisfaction with the court system and public safety. According to the American Association of Judges, “Procedural fairness is **THE** critical element in public perception and satisfaction with the court system.”⁵ Procedural fairness matters to the public because if a court participant feels that the process was fair, regardless of the outcome, he is more likely to follow court orders and less likely to recidivate.⁶ CWN volunteers are therefore trained to watch for these elements, in addition to indicators of efficiency and transparency, in the courtroom.

⁵ Burke and Leben, Ex. 1, at 5 (emphasis original). See *infra* at §IX for more information on procedural fairness.

⁶ *Id.* at 7-8.

C. METHODOLOGY

57 Court Watch NOLA student, community, and senior volunteers collected the data compiled in this report during 479 courtroom observations sessions, which generally consisted of two or more hours of court observation during a weekday morning.⁷ For each courtroom observed on a particular day, the volunteer was asked to complete a data sheet, a blank version of which had been previously submitted to the Court.⁸ Student volunteers were recruited from Delgado's Criminal Justice program, Loyola Law School, and Tulane's legal studies program. CWN's community and senior volunteers were recruited online and in the community with the help of the Orleans Council on Aging, Peoples Health, and numerous other organizations. Because CWN volunteers are not attorneys, and because they are not able to observe all aspects of a case's development, they do not have access to as much information about the court system and individual cases as attorneys or Judges might.

Unless otherwise noted, all statistics, data, and observations included in this Report were collected between January 1 and June 30 of 2014, and may be subject to some small degree of human error. All percentages have been rounded to the nearest whole number, such that totals may not always add up to exactly 100%.

In addition to the objective data they collect, CWN volunteers also make more subjective observations regarding the Judges, prosecutors, defense attorneys, and law enforcement officers who are present for or testify at hearings and trials. These more subjective observations include ratings and narrative observations. For the ratings, volunteers were often asked to rate these parties on a scale of 1-5, with one signifying that the practice at issue "never" happened during the observation period, three signifying that it "occasionally" happened, and five signifying that it "always" happened. When describing an average of these ratings, this Report may round to the nearest whole number, such that a 4.4 is described as a 4.0 - *i.e.* that the rated behavior "usually" happens - but the more precise data will be made available in footnotes. Some of the narrative observations were also edited for grammar, spelling and/or length, but not for substance.

The volunteers' ratings and observations, meanwhile, are snapshots of one volunteer's personal opinion regarding one particular day in court,⁹ and do not represent the position or opinion of Court Watch NOLA, its officers, or its directors.

⁷ 12, or approximately 2.5% of the 479 observations, were made by CWN staff.

⁸ See Court Watch NOLA data sheet, attached as Ex. 2.

⁹ In 34 instances (fewer than 10% of all observations), two CWN volunteers observed the same courtroom on the same day (often when a trial was underway). While CWN eliminated duplicate time on the bench data in these instances (using the earlier time on the bench in the case of disagreement), these 34 days are nevertheless overrepresented in CWN's data.

V. "WHERE WERE THEY GOING WITHOUT EVER KNOWING THE WAY?"

A. FINDING THE COURTHOUSE

Criminal District Court is located at the intersection of Tulane Avenue and South Broad Street, hence its nickname, "Tulane and Broad." The iconic courthouse is easy to find, perhaps in part due to the helpful nickname, and is easily accessible by car, bus and streetcar.¹⁰ The neighborhood includes both ample paid and on-street parking, though parking may become more difficult once a nearby hospital complex opens.

Pedestrian safety is a concern, however. Courthouse visitors and jurors using the paid parking lots on Broad Street must cross six lanes of often speeding traffic (traffic coming down from the I-10 overpass is often going over 40 miles per hour) to reach Criminal Court, Traffic Court, Municipal Court, and NOPD headquarters. While the City (apparently at the Court's urging) recently added two crosswalks and corresponding signage to the area, most vehicles do



not stop for pedestrians hoping to use the crosswalks. In fact, one CWN board member recently saw a car hit a small child who was trying to use the crosswalk with his family. The City should consider adding more signage, speed cameras, and/or reducing traffic to two lanes in this area to improve pedestrian safety.

While there are no signs directing the public to the main courthouse entrance,¹² the monumental front staircase is difficult for visitors to miss. The lack of signage leads to confusion, however, for citizens trying to get to *other* courthouses. Criminal Court dominates the local streetscape, and CWN volunteers repeatedly noted that members of the public trying to get to the Municipal and Traffic Courts building (which is tucked behind Criminal Court), often get confused about where they should be. Better outdoor signage and a map that clearly showed the locations of Municipal / Traffic Court, the main Criminal Court entrance, and Criminal Court's ground-level entrance would reduce this confusion.

¹⁰ Volunteer Responses ("VR"): "Were you able to easily find the courthouse?" Yes: 304 (98.4%); No: 5 (1.6%).

¹¹ Photo Credit: Gary Cziko, "STOP HERE FOR PED," <https://creativecommons.org/licenses/by-nc/2.0/legalcode> (last visited Aug. 25, 2014) (no changes made).

¹² VR: "Were there accurate and easy to follow signs directing public to courthouse entrance?" No: 156 (87.6%); Yes: 22 (12.4%).

B. SECURITY AND SAFETY

The public's first courthouse interaction is with the Sheriff's deputies who perform a security screening to prevent anybody from bringing weapons into the courthouse. As a state court, the Orleans Parish Sheriff - and not the NOPD - is responsible for securing Criminal Court. Despite the hundreds of visitors these two or three deputies must screen every day, CWN volunteers generally gave them high marks - there were long lines of people waiting to get through the security checkpoint only 22.6% of the time.¹³ On particularly busy days, however, the line of visitors can snake down the large front staircase and all of the way to the Tulane Avenue sidewalk, a problem when it is particularly cold, hot, or rainy because only a few of the visitors waiting for the security screening are sheltered from the weather.¹⁴

Thanks in part to the diligence of the security screening, and despite observing several altercations in Criminal Court's hallways, CWN volunteers felt safe in the courthouse. In fact, volunteers felt safe during 98.7% of their observations, a remarkable percentage for which Sheriff Gusman and his deputies deserve a great deal of credit.¹⁶ One volunteer also lauded the deputies' skillful reaction to a medical emergency:

One of the defendants fainted [and hit his head] after his case was continued due to an officer not being present.... I was very impressed at how... efficiently the Sheriff's deputies took control of the situation and got the defendant medical help.

"Those who have lived through [violent courthouse] incidents have a simple message for their state court counterparts throughout the country: Don't think these types of incidents won't happen in your courthouse. It's not a matter of IF - It's a matter of WHEN!"¹⁵

Volunteers reported some potential security concerns within the courtrooms themselves, however. Volunteers rated the courtroom security deputies in a number of categories on a scale of 1-5,¹⁷ giving them the highest marks for their courtesy and keeping the courtrooms under control, and slightly lower marks for their ability to stay alert and pay attention.¹⁸ While the degree of alertness varied between courtrooms,¹⁹ the most common

¹³ VR: "Were there long lines getting through security?" No: 250 (77.4%); Yes: 73 (22.6%).

¹⁴ While a security rules sign was recently posted, volunteers had noted problems earlier in the year: "There always seems to be just one man that works the security line... Sometimes people (like the general public) don't really know the rules for going through the security line.... [T]hey should post up rules more clearly."

¹⁵ National Center for State Courts, *Courthouse Violence in 2010-2012: Lessons Learned* at 2, November 2013 (emphasis omitted).

¹⁶ VR: "Did you feel safe in the courthouse?" Yes: 306 (98.7%); No: 4 (1.3%).

¹⁷ See *supra* at §IV(C) for explanation of rating system.

¹⁸ VR: "Sheriff: Did the deputies behave courteously to all?" Avg: 4.709 (n=431). VR: "Sheriff: Did the deputies maintain control of the courtroom?" Avg: 4.538 (n (sample size)=433). VR: "Sheriff: Did the deputies stay alert and pay attention?" Avg: 4.354 (n=432).

¹⁹ One volunteer complimented the deputies in Section J, for example, writing "Excellent job - very attentive and aware of inmates."

courtroom security concern noted by volunteers was inmates communicating with each other or with members of the audience, a problem because inmates may be trying to intimidate witnesses or circumvent the jail's system for surveilling their phone calls:

One inmate was looking back several times at the witness of his case without anyone stopping him. I was not sitting by the witness but I could see the inmates face and I felt intimidated by the situation.

Some deputies also had trouble staying alert and paying attention. Volunteers observed deputies sleeping in the courtroom on at least eight occasions during the first six months of 2014, and also saw deputies reading, eating, and using their computers and cell phones instead of monitoring their courtrooms. "Every time I looked over they were on their cell phones," reported one volunteer. "One even had headphones in." Another wrote that "while the [deputy] was talking to attorneys about a bachelor party he just went to, the defendant was turned completely around and was talking to people in the court."

Here's how one volunteer described the dichotomy between the relative safety of the courthouse and the courtroom security concerns:

I felt safe because of the security at the entrance. I found them to be thorough. However, I did not feel as safe because the courtroom was so small (parties, defendants, and the public were so close to each other) and... chaotic.

The deputies themselves may share this concern, according to another volunteer:

I noticed that the deputies don't have guns. If something was to happen how would they protect us? I asked a deputy this question and she told me, 'I don't know how we would protect ya'll.' There are only two officers with guns in the building - the ones at the front door. That needs to change before someone comes in with a weapon.

To date the OPSO screening and courtroom deputies have successfully protected the courthouse, public, and staff from violent incidents, but they should remain vigilant and attempt to eliminate some of the lapses in courtroom behavior described above.

C. ACCESS FOR PEOPLE WITH LIMITED ENGLISH PROFICIENCY AND/OR DISABILITIES

Criminal District Court visitors, like Court Watch NOLA volunteers, come from all walks of life. Many speak a first language other than English, and many have a disability or mobility concerns. While Criminal Court has interpreters, elevators, and a separate entrance for jurors and people with disabilities,²¹ proper signage remains a concern. After all, if people are not aware of or cannot locate these options, they might as well not exist. One volunteer

²⁰ American Bar Association, Standards for Language Access in Courts at 1, February 2012.

²¹ As a general matter, 68.8% of volunteers agreed that Criminal Court was, on the whole, accessible. VR: "Was access for people with disabilities available (e.g. ramps, elevators, railings, restroom facilities, etc.)? If no, please explain." Yes: 128 (68.8%); No: 58 (31.2%).

thus observed a woman, who presumably was not aware of the side ground-level courthouse entrance, “struggling up the outdoor steps as I entered.” What little signage there is in and around the courthouse, meanwhile, is not multi-lingual or in Braille.²²

“[L]anguage access services, through professional interpretation of spoken communication and translation of documents, as well as the use of bilingual and multilingual court personnel, lawyers, and others integral to court operations and services, are an essential component of a functional and fair justice system.”²¹

According to CWN volunteers, over 90% of the time an interpreter was requested, one was made available.²³ CWN volunteers observed Spanish and American Sign Language interpreters, and one observer made a point of lauding Judge White for her ability to work with and through interpreters:

A defendant needed a Spanish interpreter. Judge White was extremely thorough in ensuring that the interpreter translated everything that the defendant needed to know.

Criminal Court’s elevators are clearly old, but usually work properly.²⁴ And though the attic courtrooms do not appear accessible at first glance,

deputies helped one CWN volunteer with mobility concerns avoid having to use the stairs:

I didn’t see a sign [for the elevator] but I ran into a deputy who got me to the third floor. She called somebody and they came in less than 5 minutes and took me to the third floor via a small elevator. The same was true for leaving.

When this one elevator breaks down, however, problems ensue:

Elevator to the attic did not work, and one woman was having trouble breathing after having to climb multiple flights of stairs.

Criminal Court should therefore continue to focus on better assisting visitors with disabilities or limited English proficiency.

D. FINDING THE RIGHT COURTROOM

Once Jeux Q. Public has found the courthouse and passed security, he or she must find the right courtroom, usually with only a lone section letter (*i.e.* Section “I” or “E”) to guide him or her. Confusingly, the twelve trial sections (“A” - “L”) are not arranged in alphabetical order. Each section has a sign outside its door announcing the section letter and name of the

²² VR: “Was all signage multi-lingual / in Braille?” No: 216 (91.5%); Yes: 20 (8.5%).

²³ VR: “Was an interpreter requested at any time?” No: 366 (93.6%); Yes: 25 (6.4%). VR: “If an interpreter was requested, was one made available?” Yes: 20 (90.9%); No: 2 (9.1%); Nevertheless, this data may overstate the rate at which interpreters are made available because volunteers may not hear discussions about interpreter unavailability that are conducted at sidebar.

²⁴ VR: “Did the elevators / escalators work properly?” Y: 203 (97.1%); N: 6 (2.9%).

²⁵ E. Farley, E. Jensen, & M. Rempel, Center for Court Innovation, *Improving Courthouse Communication* at 29 (Jan. 2014).

presiding Judge, but there are no maps, directories or print-outs telling the public where the various courtrooms are located.²⁶ Sections B and L, located in the attic and only accessible via a small door, stairway, and hidden elevator, are particularly hard to locate.

Volunteers repeatedly noted public confusion about courtroom location. “It seems like most of the time the public seems very confused about when and where they are supposed to be,” wrote one. Another noted that:

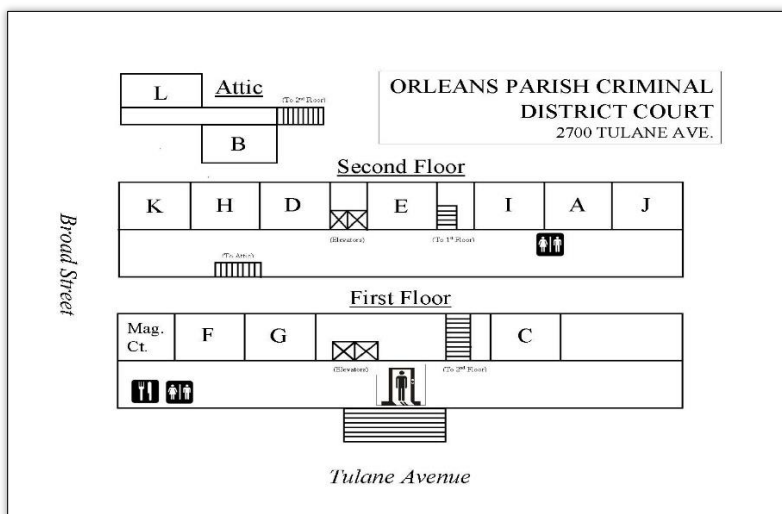
It was a little intimidating to go into the courthouse and have no idea where to go or where we should be at first. I think there should definitely be more signs or a big map right at the entrance.

An inconvenienced public inconveniences, in turn, the OPSO deputies, distracting them from security duties with questions about where to go. One deputy admitted that “she often encountered people looking for the different courtrooms. She even said it's confusing.”

To allay this confusion, Criminal Court should erect a map at each courthouse entrance, as well as in the main floor hallway. The simple map below, created by CWN, for example, displays Criminal Court’s seemingly out-of-order courtrooms, as well as how easy it would be for the Court to create and mount an even more effective and useful map.

“[E]ven the little things [matter]... right from the get-go, when people are coming in, if they are coming into a building that’s properly signed or they understand you know where they’re going and that they’re there on time and what their expectation can be. That decreases their stress level so that when they get to us, they’re more willing to listen to what we say... They’re in a better frame of mind.”

Anonymous Milwaukee Criminal Court Judge²⁶



²⁶ VR: “As you enter courthouse, were there accurate and easy to follow signs to courtrooms and offices?” No: 202 (72.1%); Yes: 78 (27.9%). VR: “Does the court provide factsheets and/or other written information that is clearly marked and accessible?” No: 185 (66.8%); Yes: 92 (33.2%). The Criminal Court website does not even include a map of the interior of the courthouse.

E. COURTROOM FACILITIES

Many of Criminal District Court's courtrooms are majestic venues for the administration of justice. Some are... not, suffering from space constraints, blocked sightlines, uncomfortable seating, and lighting, noise, and temperature problems. The two attic sections,²⁷ in particular, are so small as to increase the risk of a security incident. In general, however, and especially given the Court's age and funding, it is well maintained.

Court Watch NOLA volunteers rated the various courtrooms in a number of different categories. The courtrooms were clean and well maintained 96.6% of the time, which is impressive given the number of daily visitors.²⁸ The courtrooms were also usually well lit.²⁹

Some maintenance problems persist, however. Volunteers frequently complained that the courtroom benches had graffiti and were uncomfortable or tore at clothing:

The back of the benches need to be cleaned and sanded down. The back of the first row bench on the right side of [Section H] has derogatory remarks about [the Judge] written on it.

Another volunteer suggested adding cushions to the benches:

Section H has cushions on the benches which is really nice. Most of the people in the court sit in there for hours and I can personally say that the cushion was appreciated. Every section with wooden benches should have them.

Others noted incorrect clocks, broken benches, worn carpet, and water-damaged ceilings.

While the courtroom temperatures were generally comfortable,³⁰ the same cannot be said for the non-climate controlled hallways. Some volunteers perceived a trend in temperature extremes: in the winter, the hallways tend to be too cold while the courtrooms are overheated, and the opposite is true during the summer. The uncomfortable hallway temperatures are especially problematic when a courtroom starts late, forcing the public to wait in a hallway with insufficient seating for lengthy periods of time.³¹

The courtrooms boasted sufficient seating and staff and attorney space in 93.5% of observations, and the volunteers perceived a safe distance between the parties, witnesses, judge and public in over 85% of observations.³² The two sections accounting for the majority

²⁷ Currently Sections B and L. The courtrooms are traditionally selected by the Judges based on seniority, with the two newest Judges being relegated to the attic.

²⁸ VR: "Is the courtroom clean / well maintained?" Yes: 394 (96.6%); No: 14 (3.4%).

²⁹ VR: "Is the courtroom well lighted?" Yes: 382 (91.8%); No: 34 (8.2%); One volunteer noted that Section I is so dark that it is "hard to see."

³⁰ VR: "Is the courtroom temperature comfortable (re: heat or a/c)?" Yes: 374 (89.3%); No: 45 (A: 8; B: 4; C: 1; D: 6; F: 5; G: 2; H: 5; I: 3; J: 3; K: 2; L: 6) (10.7%);

³¹ See *infra* at §VI(A) regarding courtroom start times.

³² VR: "Is there enough seating in the courtroom?" Yes: 389 (93.5%); No: 27 (B: 16; L: 4) (6.5%). VR: "Is there enough space for the staff, attorneys, and Judge?" Yes: 387 (93.5%); No: 27 (B: 15; L: 8) (6.5%). VR: "Is there sufficient distance between the parties and the Judge?" Yes: 392 (94.5%); No: 23 (B: 6; L: 11) (5.5%). VR: "Is

of the volunteers' negative observations were, unsurprisingly, the attic courtrooms. These courtrooms are so cramped - especially during a jury trial - that witnesses, family, and observers are frequently forced from the courtroom and into the hallway. This presents practical and constitutional problems in light of the Sixth Amendment's right to a "speedy and public trial." One volunteer noted that the space crunch even affects attorneys: "The D.A.'s barely had enough room with all of their files and computers." Another wrote that: "The courtroom is too small, it needs more space so people can at least walk without injuring themselves or others." Finally, the attic courtrooms' space limitations mean that inmates are seated in such a way that it is easier for them to look back into the public gallery.³³

While budget constraints are certainly a consideration, based on these observations the public's visits to Criminal District Court would be improved with better maintenance and climate control, as well as more comfortable seating. And Criminal Court would undoubtedly be safer for those who work and visit there if Sections B and L were replaced with modern courtrooms, and if all Judges had private access to their chambers and courtroom, so they did not have to wade through the public in order to take the bench.

F. OTHER COURTHOUSE FACILITIES

Keeping Criminal District Court's public restrooms clean and well-stocked appears to be a long-running battle for court administration, perhaps due to the sheer number of daily visitors. CWN volunteers said that the restrooms were clean 80.2% of the time, meaning that one out of every five visitors had to use a dirty facility.³⁴ Volunteers repeatedly observed water and toilet paper on the floors, broken or missing toilet paper holders, and women's stalls that lacked locks and even doors. When, after several weeks, the doors were replaced, one volunteer celebrated: "New doors in the 1st Floor Ladies' Room - A cause for rejoicing!!"

The cafeteria, meanwhile, may seem like an afterthought but is important when the public must sometimes wait for hours and cannot bring food or drink into the courthouse. CWN volunteers said that while it "wasn't much of a cafeteria" and had limited options, it was generally clean.³⁵ Some also suggested that it begin accepting credit and debit cards.

After seeing litter outside Criminal Court in early 2014, volunteers rejoiced when the OPSO began sending clean-up crews: "I noticed orange vested people were cleaning the grounds around the courthouse - yeah!" They also suggested other ways to improve the courthouse, including adding a help desk, water fountains, bike racks, and hallway seating, as well the addition of a day care center. These are listed at the end of the Report.

there a safe distance between the parties, witnesses, and the public in the event an argument occurs?" Yes: 363 (87.1%); No: 54 (B: 12; L: 12) (12.9%).

³³ See *supra* at §V(B) regarding communication between inmates and the public.

³⁴ VR: "Were the restrooms clean & well maintained?" Yes: 178 (80.2%); No: 44 (19.8%).

³⁵ VR: "Was the cafeteria clean / well maintained?" Yes: 113 (81.3%); No: 26 (18.7%).

VI. "READY TO START"

Courthouse visitors' experiences begin to diverge once they reach the door to their courtroom. Many are invited into timely, professional courtrooms in which the Judge goes out of his or her way to explain courtroom procedures to the public. Some, however, are not.

A. COURTROOM START TIMES

Court Watch NOLA, on behalf of all courtroom users and visitors, including attorneys, law enforcement, and the public, has been recording what time each Judge takes the bench for several years. According to the American Bar Association, "[a] judge should be evaluated on his or her... [p]unctuality and preparation for court."³⁶

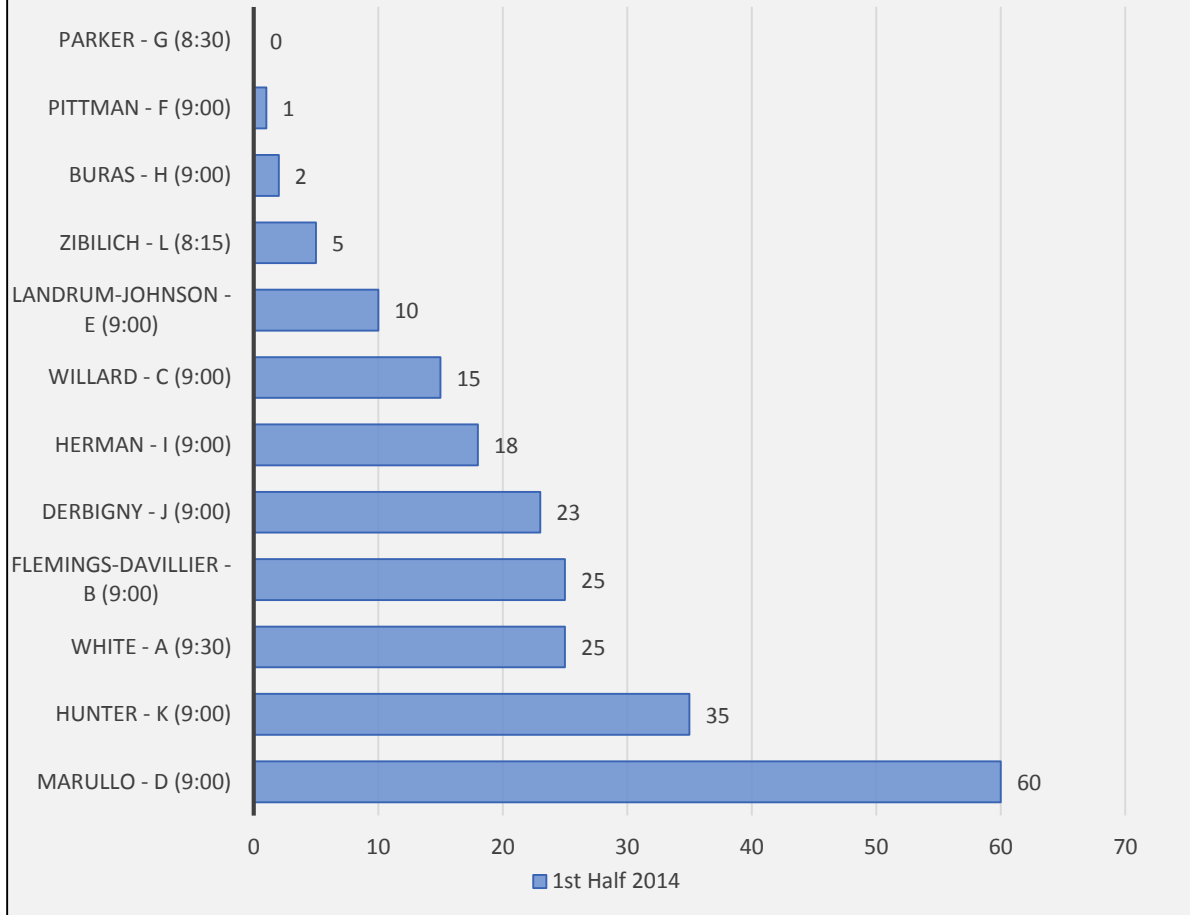
Every day each section of Court issues subpoenas to witnesses, attorneys and defendants, ordering them to appear at a particular date and time for the next hearing in their case, and each Judge can choose the court start time listed on his or her section's subpoena. Subpoena recipients are then legally obligated to be present in court at the court start time. Most sections have a subpoena start time of 9:00 a.m. **Chart 1** thus reflects the median delay (in minutes) between each section's subpoena start time and the time Court Watch NOLA volunteers observed the Judge in that section take the bench during the first half of 2014.³⁷

While half of all sections had an observed median start time within fifteen minutes of when they were supposed to start, courtrooms with regular, substantial delays are wasting the time of the witnesses, defendants, and family members who must often take time off of work to go to court, as well as of all of the public servants, including the prosecutors, public defenders, deputies, court staff, and law enforcement, whose salaries are paid by the taxpayers. Some sections also lock the public out until court starts, forcing visitors to wait through these delays in hallways with insufficient seating and no climate control.

³⁶ Am. Bar Ass'n, *Black Letter Guidelines on Judicial Accountability* at 5-5.1 (Feb. 2005); see Center for Court Innovation and National Judicial College, *Enhancing Procedural Fairness: Draft Menu of Best Practices* ("Court session should begin promptly at the time scheduled to demonstrate respect of defendants' time. You can thank the audience members for being on time to show mutual respect. If court does not start on time, court staff may [/] should update audience members of when they expect court to start.").

³⁷ Court Watch NOLA emphasizes that its volunteers record the time the Judge takes the bench and not the time the Judge may arrive in court. Chief Judge Willard, in particular, has additional administrative duties to which he must attend. Each section's subpoena start time, listed next to the Judge's name, was provided by the Judicial Administrator's office in February of 2014, and sections A, C, F, H & K separately confirmed the accuracy of their respective subpoena times. VR: "What time did the Judge first take the bench? (Ex: 8:58 A.M.; do not complete if unsure)" A: (n (sample size)=28); B: (n=36); C: (n=26); D: (n=24); E: (n=25); F: (n=28); G: (n=21); H: (n=29); I: (n=31); J: (n=31); K: (n=20); L: (n=22).

Chart 1: Median Time Elapsed Between Court Subpoena Start Time and Time Judge First Takes the Bench (in Minutes)



Lengthy delays in starting court are not only wasteful, but frustrating to visitors who rarely receive any indication from court staff regarding when they can expect court to start:

Court started very late [and t]here was a man who used an oxygen tank. He expressed concern over the lateness to an ADA because he said he may run out of oxygen. The ADA said they would call him early in the docket, but they did not do that.... The Judge did not take the bench until 10:40 a.m..... [and] it was 11:20 before they called his case.

Another volunteer described the number of people affected by a late start:

There were 20 [people] in the audience, 2 NOPD, 2 [inmates], 12 attorneys, 4 ADAs, [and] 2 clerks hanging around for 1.5 hours... not knowing when the Judge would take the bench... [then an] attorney came out from [the back] with a demitasse in his hand while several others came out with paper cups of drinks. [The public is] sitting for hours already while they were in back having coffee?

Some prosecutors use the down time before court starts to get the courtroom organized:

Before the judge arrived the ADA went around and gathered the names of individuals.... This really helped them organize, and expedite the process.

[Judge Pittman] is the first judge I have witnessed all week to actually show up exactly on time. She held one person in contempt of court for being an hour and a half late to court because she believes if she has to be there on time then everyone has to be there on time. I could not agree with her more.

When court starts late, the public deserves - at a minimum - an estimate from court staff as to when court is likely to start, and, once court begins, an explanation and apology for the delay.³⁸ The public rarely gets such an apology, however.³⁹ CWN volunteers, for example, never observed and recorded such an apology in Section D, the latest-starting courtroom, and did so only once in Section K, the second-latest. When a Judge does announce the reason for a delay in starting court, these typically include non-courtroom judicial work by the Judge, such as attending

meetings, working in chambers, conducting interviews, and waiting for inmates and/or attorneys to appear. And as one CWN volunteer observed, announcing that the delay was due to this kind of hard work may be reassuring to the public:

This is the second time I observed [this courtroom], and this is the second time the Judge was not on the stand until almost 11 AM without [any] explanation.... It is one thing if he is speaking with attorneys and such for cases he will be hearing, but he should at least say this when he takes the stand.

B. PRIORITIZING LAW ENFORCEMENT

At a time when the New Orleans Police Department needs as many of its officers on the street as possible, too many are forced to wait in Court for hours at a time. On the average day, over 100 NOPD officers may be subpoenaed to appear in, and up to fifty may actually attend, court.⁴⁰ CWN volunteers, for instance, counted 131 instances during the first half of 2014 where multiple police officers (nine, in one instance) were waiting in Court for the Judge to take the bench - sometimes in these cases the Court began on time, and sometimes it did not - showing the potential negative impact on police officers when Court starts late.

³⁸ Center for Court Innovation and National Judicial College, *Enhancing Procedural Fairness: Draft Menu of Best Practices* ("Court session should begin promptly at the time scheduled to demonstrate respect of defendants' time. You can thank the audience members for being on time to show mutual respect. If court does not start on time, court staff may [/] should update audience members of when they expect court to start.").

³⁹ VR: "Did the Judge apologize for any delay in starting?" No: 212 (91%); Yes: 21 (9%). By section: B: 24 no (80%), 6 yes (20%); L: 9 no (81.8%), 2 yes (18.2%); I: 22 no (84.6%), 4 yes (15.4%); A: 21 no (87.5%), 3 yes (12.5%); F: 7 no (87.5%), 1 yes (12.5%); C: 18 no (90%), 2 yes (10%); H: 11 no (91.7%), 1 yes (8.3%); E: 15 no (93.8%), 1 yes (6.2%); K: 20 no (95.2%), 1 yes (4.8%); D: 26 no (100%), 0 yes (0%); G: 6 no (100%), 0 yes (0%); J: 32 no (100%), 0 yes (0%).

⁴⁰ Lt. Arden Taylor, New Orleans Police Department, to CWN on August 4, 2014.

Once court started, fortunately, CWN volunteers found that Judges attempted to quickly handle the cases involving police officers at least 63% of the time, though the Judges were sometimes stymied in these efforts due to a lack of necessary parties.⁴¹ For instance, one volunteer observed that an “officer was there for a hearing that was delayed due to the defense attorney being late,” while another wondered if the Sheriff’s Office could better coordinate with the police and D.A. in order to cut down on officer courtroom waiting time: “I would suggest that the inmates that are needed for a testifying police officer should be the first inmates brought to the courtroom so that those cases will be heard first.”



C. WELCOME TO COURT

Court generally begins with the bailiff calling the courtroom to order and announcing the presiding Judge’s name. Once on the bench, few Judges regularly take the opportunity to introduce themselves by name to the public.⁴³ Even a simple introduction and greeting can go a long way, as one CWN volunteer explained: “[Judge Flemings-Davillier said] good morning and looked everyone in the audience in the face, which I appreciated.”

Whether visitors understand courtroom rules and etiquette depends largely on what section they are in.⁴⁴ Some courtrooms, for instance, announce or post on their doors basic

⁴¹ VR: “Did the Judge attempt to promptly hear the cases involving uniformed police officers present in court?” Yes: 159 (62.8%); No: 94 (37.2%). By section: F: 3 no (17.6%), 14 yes (82.4%); B: 4 no (20%), 16 yes (80%); H: 7 no (21.2%), 26 yes (78.8%); E: 4 no (26.7%), 11 yes (73.3%); I: 8 no (32%), 17 yes (68%); C: 7 no (38.9%), 11 yes (61.1%); L: 6 no (40%), 9 yes (60%); A: 11 no (40.7%), 16 yes (59.3%); G: 8 no (47.1%), 9 yes (52.9%); D: 11 no (50%), 11 yes (50%); J: 12 no (52.2%), 11 yes (47.8%); K: 12 no (60%), 8 yes (40%). The actual percentage of the time that the Judge is attempting to promptly address these cases is likely even higher than the observed rate, given that volunteers may not be able to hear if the Judge discusses the issue at sidebar.

⁴² Photo credit: Kenny, Katherine, “NOPD,” <https://creativecommons.org/licenses/by-nc-nd/2.0/legalcode> (last visited Aug. 25, 2014) (no changes made).

⁴³ VR: “Did the Judge introduce him/herself to the public by name at the beginning of court?” No: 256 (70.5%); Yes: 107 (29.5%). By section: B: 20 no (55.6%), 16 yes (44.4%); A: 19 no (59.4%), 13 yes (40.6%); L: 15 no (60%), 10 yes (40%); F: 21 no (61.8%), 13 yes (38.2%); H: 19 no (63.3%), 11 yes (36.7%); G: 16 no (66.7%), 8 yes (33.3%); I: 23 no (67.6%), 11 yes (32.4%); E: 21 no (72.4%), 8 yes (27.6%); C: 26 no (81.3%), 6 yes (18.8%); J: 28 no (84.8%), 5 yes (15.2%); K: 21 no (87.5%), 3 yes (12.5%); D: 26 no (89.7%), 3 yes (10.3%). See Center for Court Innovation and National Judicial College, *Enhancing Procedural Fairness: Draft Menu of Best Practices*.

⁴⁴ VR: “Was court etiquette and rules clearly posted or explained by the Judge or court staff before court began?” Yes: 193 (51.6%); No: 181 (48.4%). By section: G: 9 no (36%), 16 yes (64%); J: 12 no (36.4%), 21 yes (63.6%); I: 13 no (37.1%), 22 yes (62.9%); E: 12 no (41.4%), 17 yes (58.6%); F: 14 no (43.8%), 18 yes (56.3%); B: 17 no (45.9%), 20 yes (54.1%); H: 16 no (48.5%), 17 yes (51.5%); A: 17 no (51.5%), 16 yes (48.5%); C: 17 no (51.5%), 16 yes (48.5%); L: 15 no (57.7%), 11 yes (42.3%); D: 20 no (66.7%), 10 yes (33.3%); K: 18 no (66.7%), 9 yes (33.3%).

rules regarding dress code, where to sit, and forbidden behaviors (*i.e.* talking, eating, drinking, using cell phones), while others do not. These small efforts make a big difference.

Some sections also post the day's docket (schedule of cases) outside the courtroom, an effective and cheap way to help visitors ensure they are in the right courtroom on the right day (In other sections, the Judge or ADA may ask visitors why they are in court for the same reason):

While I was waiting... a defendant entered and asked me if he was supposed to be in court even though he could not find his name on the docket. I looked at his subpoena and it had the correct day [so] I suggested he speak with the D.A. She said he was not on the docket, that it was a mistake, and he was on the docket the next day. When the D.A. left, the defendant stated that this had happened before.

“Court officers can rethink how courtroom rules are posted, explained, and enforced in a way that is clear and respectful.... Explaining courtroom procedures and rules at the beginning of each court session may reduce frequent interruptions and the need to answer questions and make reprimands.”⁴⁵

In courtrooms without a posted docket, however, CWN volunteers have observed people like this defendant wait for hours, only to find out that they, too, came on the wrong day. CWN encourages all sections to post the docket and post or announce courtroom rules and etiquette for each day court is in session.

⁴⁵ Berman and Gold, *Procedural Justice from the Bench: How Judges Can Improve the Effectiveness of Criminal Courts*, *The Judges Journal*, Vol. 51, No. 2 at 22.

VII. "TIRED OF WAITING FOR YOU"

Anxious, curious, quiet or fearful, courtroom visitors wait for the case they or their loved one is involved in to be called, watching the hearings before them for clues as to what might happen in their case. How does the Judge treat defendants? Are witnesses going to be subject to heated cross-examinations? Is the ADA compromising and offering reasonable plea deals? Will my case even be heard today, or will I have to come back next month, too?

While attorneys and Judges are trained to treat each case separately based on its own unique set of circumstances, and not let the facts or emotions of one case spill into another, it is human nature for the public to try to read the tea leaves in this way. To reassure visitors that their cases will be treated with the same care, courtroom actors should therefore try to make sure every courtroom hearing is as respectful, transparent, and neutral as possible.

So while waiting for their own cases, courthouse visitors usually see a dizzying array of different types of hearings - from arraignment to sentencing - with attorneys coming and going, as well as long lulls when court comes to a grinding halt. Depending on the courtroom, they may or may not be able to hear what is said on-the-record, and hearings may generally take place in open court or in secret sidebars.

A. AUDIBILITY

The public's ability to hear what is said on-the-record is central to its ability to follow and understand the justice that is being administered in its name. And most on-the-record proceedings at Criminal Court are audible, according to CWN volunteers, though it depends heavily on whether the Judge uses and forces the attorneys to use a microphone. CWN volunteers could clearly hear the court proceedings 72% of the time in the first half of 2014, and could "sometimes" hear them another 20% of the time during that span.⁴⁶ They rated the Judges as most audible, followed by prosecutors, but rated defense attorneys as less likely to be heard.⁴⁷ Volunteers had a particularly difficult time hearing the Judges in Sections C, J, and K, however, and gave them lower ratings accordingly.

Frequently noted noise issues included attorneys' failure to use microphones, hallway noise spilling into the courtroom when doors are open, attorneys chatting with each other and their clients, squeaky doors, and loud air conditioning units. Judges can help the public hear and follow courtroom proceedings by forcing attorneys to use the microphone and avoid loud chatter. One volunteer, for instance, applauded Judge White, noting that "ADAs were convening noisily in the corner and [Judge White] said 'This may be a circus but

⁴⁶ VR: "Could you clearly hear the court proceedings? If not, why not?" Yes: 314 (72.2%); No: 33 (C: 12) (7.6%); Sometimes: 88 (20.2%).

⁴⁷ VR: "State: Was the ADA audible?" Avg: 4.441 (n=430). VR: "Defense: were the defense attorneys audible?" Avg: 4.315 (n=422). VR: "Judge: Was the Judge audible?" Avg: 4.551 (n=426). By section: H: 4.926 (n=41); L: 4.906 (n=32); E: 4.885 (n=35); F: 4.868 (n=38); A: 4.833 (n=36); B: 4.804 (n=41); I: 4.722 (n=36); G: 4.617 (n=34); D: 4.482 (n=29); K: 4.074 (n=27); J: 3.926 (n=40); C: 3.428 (n=35).

I am the main ring. Be quiet.’ The ADAs apologized.” Other volunteers complimented Judges Marullo and Buras for requiring attorneys to use the microphones more frequently: “At times, attorneys did not use microphone. The Judge admonished them politely to do so.”

B. SIDEBARS

The public cannot hear anything that is said off-the-record at sidebar or in chambers, and while some courtrooms allow sidebars sparingly, some cause CWN volunteers to report things like a “[t]otal lack of transparency--virtually every case began with an unrecorded bench or chambers conference.” Sidebars are sometimes necessary - legitimate reasons for them may include discussions regarding a victim’s personal information or a witness’s health. But at best an over-reliance on sidebars is a missed opportunity to educate the public about the legal process and reassure it that justice is conducted transparently. At worse, it can perpetuate negative perceptions that New Orleans’ court system is more about backroom deals than courtroom justice.⁴⁸

Court Watch NOLA volunteers therefore continue to track the number of sidebars that occur during any given volunteer observation period (typically 2-3 hours) for each section of court. The fact that this number varies considerably by courtroom - with Section J, the least transparent section of court, allowing over three times as many sidebars as Section L, Criminal Court’s most transparent section - suggests the opportunity for greater transparency in some courtrooms. At the very least, the Court should announce on the record the reasons for and/or results of sidebars, something that is happening with more frequency since CWN first highlighted this issue.⁴⁹ One volunteer, for instance, noted with approval that “when they went back on the record, one of the attorneys would begin with, ‘Pursuant to our conversation at the bench...’”

C. DELAYS

The average courtroom visitor, once he or she has found the courthouse, found the proper courtroom, and possibly waited for court to start, must also sit through two additional delays, totaling over 27 minutes, during which nothing is happening in the

⁴⁸ Sidebars can also put the public - and even officers of the court - to sleep, observed a CWN volunteer: “One ADA was dozing off at one point when there was a sidebar and he didn’t even realize [it]... [A]nother ADA had to wake him up and he had to run over to the bench.”

⁴⁹ The percentage of time the Judge did this improved from 27 to 43 across 2013 and remained at 42% during the first half of 2014. Sections A and L are most likely to explain sidebars to the public, while Sections K and D are least likely to do so. VR: “Did the Judge or attorneys explain on the record the results of the sidebars?” No: 234 (57.8%); Sometimes: 125 (30.9%); Yes: 46 (11.4%). By Section: A: 13 no (40.6%), 13 sometimes (40.6%), 6 yes (18.8%); L: 12 no (44.4%), 10 sometimes (37%), 5 yes (18.5%); H: 21 no (50%), 17 sometimes (40.5%), 4 yes (9.5%); F: 21 no (55.3%), 12 sometimes (31.6%), 5 yes (13.2%); E: 20 no (55.6%), 11 sometimes (30.6%), 5 yes (13.9%); J: 22 no (56.4%), 16 sometimes (41%), 1 yes (2.5%); G: 18 no (58.1%), 7 sometimes (22.6%), 6 yes (19.4%); B: 23 no (60.5%), 12 sometimes (31.6%), 3 yes (7.9%); I: 25 no (69.4%), 5 sometimes (13.9%), 6 yes (16.7%); C: 20 no (62.5%), 12 sometimes (37.5%), 0 yes; D: 19 no (70.4%), 6 sometimes (22.2%), 2 yes (7.4%); K: 20 no (76.9%), 4 sometimes (15.4%), 2 yes (7.7%);

courtroom.⁵⁰ In other words, on the average day even once court starts an additional half an hour or so is wasted. These delays are problematic for the same reasons that late courtroom start times are inefficient - defendants, families, and witnesses are taking time off work or away from children to sit in court, doing nothing, while public servants and law enforcement could be behind their desks or out on the streets instead of waiting out delays.

According to CWN volunteers, defense attorneys are most often to blame for these delays. While most Judges did not often explain the reason for delays to the public (Judges Zibilich, Pittman, and Herman were most likely to do so),⁵¹ CWN volunteers observed that Criminal Court Judges were all “always” or “usually” ready to promptly call the next case, and also rated the prosecutors well in this category.⁵² “Even when there was a delay, [Judge Zibilich] made sure to start on something else and not waste any time,” one observer noted.

CWN volunteers said that defense attorneys, on the other hand, were present when their case was called somewhere between “sometimes” and “usually” during the first half of 2014.⁵³ While CWN did not differentiate between public defenders and private defense attorneys in 2014, in 2013 private criminal defense attorneys were disproportionately responsible for these types of delays.⁵⁴

CWN volunteers observed the consequences of this tardiness on a daily basis. “At one point the ADA listed over 5 defense attorneys the court was waiting for,” wrote one, while another observed that “[n]ot one defense attorney was [in court] for at least the first hour.” Sometimes the defense attorneys come armed with excuses: “one of the defense lawyers was

“I was in court for 2 hours and saw 10 minutes of court proceedings. The Judge took the bench at 10:15 and announced a recess at 10:25. It was not until 11 that one of the ADAs told me court would resume at 1. There were only two more matters on the docket and recess appeared to have occurred because the Judge was waiting on defense attorneys to show up.”

⁵⁰ VR: “How many delays occurred during court? (i.e. brief delays, not continuances to another day)” Avg. across all sections: 2.033 (n=390). By Section: E: 1.363 (n=33); D: 1.384 (n=26); A: 1.533 (n=30); H: 1.794 (n=39); L: 1.933 (n=30); K: 1.961 (n=26); J: 2.114 (n=35); C: 2.1515 (n=33); F: 2.333 (n=36); G: 2.535 (n=28); I: 2.542 (n=35); B: 2.578 (n=38).

⁵⁰ VR: “Estimate the total length of the delays (in minutes).” Avg. across all sections: 27.402 (n=388). By Section: A: 17.482 (n=29); H: 18.432 (n=37); B: 19.270 (n=37); F: 22.702 (n=37); G: 25 (n=30); E: 25.333 (n=30); L: 27 (n=31); D: 31.423 (n=26); K: 31.538 (n=26); I: 36.222 (n=36); C: 37.193 (n=31); J: 39.162 (n=37).

⁵¹ VR: “Did the Judge explain to the public the reason for any delays? If so, what did he/she say?” No: 204 (59.1%); Sometimes: 59 (17.1%); Yes: 82 (A: 4, B: 2, C: 4, D: 4, E: 6, F: 12, G: 2, H: 9, I: 12, J: 9, K: 1, L: 16) (23.8%).

⁵² VR: “Judge: Was the Judge ready to promptly call the next case?” Avg. 4.574 (n=432). By section: F: 4.923 (n=39); E: 4.852 (n=34); L: 4.848 (n=33); H: 4.818 (n=44); D: 4.633 (n=30); G: 4.516 (n=31); B: 4.476 (n=42); A: 4.472 (n=36); I: 4.405 (n=37); J: 4.365 (n=41); C: 4.277 (n=36); K: 4.214 (n=28).

⁵² VR: “State: Was the ADA ready to promptly call the next case?” Avg. 4.422 (n=433).

⁵³ VR: “Defense: Were the defense attorneys present when their case was called?” Avg.: 3.717 (n=432).

⁵⁴ See CWN 2013 Report at 20-21.

a no-show, and after finally getting ahold of him on the phone his excuse was that he didn't change his clocks for daylight savings time." And while the Judge can ask defendants to contact their attorneys, the public isn't allowed to bring cell phones into the courthouse:

The day started slowly with many defense attorneys not in court. The Judge would tell the defendants to go call their attorneys. (Question: how do they call them without a phone?)

Volunteers also observed how the unavailability of defense attorneys can affect other lawyers and defendants themselves. "There had been 2 changes of defense attorneys and the new attorneys weren't present... [so the Judge] insisted the 'old' attorney [handle the hearing]," one reported. Another observed "a man waiting for his attorney until the Judge told him she would be leaving, and that he could see his attorney in jail."

According to CWN volunteers, the public must also regularly sit through delays caused by tardy doctors (who testify at mental competency evaluations), late police officers, a lack of inmates (whom OPSO has not yet transported to court), and attorneys negotiating plea deals. One CWN volunteer described the compounding effect of these delays:

The courtroom finally opened at 9:15 [and] there were 2 NOPD officers waiting.... Eventually, three more NOPD officers (all uniformed) came in, but none of them testified. Most cases were continued, and at about 10:15 a.m., the Judge called for a jury to be there at 11 a.m. for a trial. Before 11 a.m., three of the NOPD officers left. At 11:07, the last case that needed to be heard before the trial could not be heard because the one NOPD officer needed to testify (not one of the five who had been in the courtroom) was not there. This case also required an interpreter for the defendant, so the interpreter sat there and waited, until 11:37, when the NOPD officer arrived. At that point, the Judge continued that case because he wanted to start the trial. However, the jury still was not there, and at 11:50, when I left, there still was no jury. The inefficiency concerns me.

Another volunteer explained how better communication with the public about these delays can improve the courtroom experience:

Any time there was a delay, [Judge Derbigny] announced a recess, which I thought was nice. Many of the other courts have delays and the Judge just sits on the bench and those of us in the audience have no idea what's going on. Announcing a recess at least lets the audience know that nothing is going on for a few minutes.

VIII. "ALL FOR NOTHING": THE WHAT AND WHY OF CONTINUANCES

Perhaps the most frustrating part of the visitor experience at Criminal Court is when the case for which the visitor took time off, trekked to Tulane and Broad, and waited through delays, is continued to another day, starting the whole process - and the accompanying anxiety - over. In the second half of 2013, 57% of all hearings observed by Court Watch NOLA volunteers were continued, and while this was a substantial improvement over previous years, it still suggests that roughly half of all witnesses, family members, defendants, victims, and law enforcement visit the courthouse only to have their case put off to another day.⁵⁵ One volunteer observed how frustrating this can be:

An officer who had been brought in for the same defendant multiple times became agitated because his case was taking so much time. The ADA eventually spoke with the officer outside and he eventually testified in the motions hearing.

Legally, "a 'continuance' is the rescheduling of a court event that did not happen on the scheduled date, whether it is granted by the court at the request of a party or is necessary because the court could not reach the case on its calendar."⁵⁶ And these delays matter:

Routine granting of continuances, without requiring a showing of exceptional cause, signals a lack of judicial supervision of case progress and often results in case delays and backlogs... In sum, the routine granting of continuances creates disorganization and inconvenience.⁵⁷

Louisiana law recognizes this reality,⁵⁸ and Louisiana's district court judges recently called for the reform of state continuance laws.⁵⁹

Chart 2 (next page) therefore shows the most commonly observed reasons for which matters were continued in the first half of 2014, ranked from most to least frequent.⁶⁰ As in the second half of 2013, the number one observed reason for continuances was that a

⁵⁵ See CWN 2013 Report at 11.

⁵⁶ Steelman, David C., *Time Standards as A Court Management Tool: The Experience in American State and Local Trial Courts*, Int'l Journal for Court Administration, April 2010 at 7 n.28; see La. Code Crim. P. art. 708 (defining a continuance as "the postponement of a scheduled trial or hearing."); see also La. Code Crim. P. arts. 707-15 (regarding continuances generally).

⁵⁷ Bureau of Justice Assistance and American Univ., *Improving Criminal Caseflow* at 8 (Oct. 2008); see also Bureau of Justice Assistance, *August 17, 2009 Memorandum to Chief Judge Hunter* at 5 (percent of matters continued and the reasons for the same are "objective, accurate caseload and case processing information.").

⁵⁸ See La. Code Crim. P. art. 707 ("A motion for a continuance shall be in writing and shall allege specifically the grounds upon which it is based.... It shall be filed at least seven days prior to the commencement of trial. Upon written motion at any time and after contradictory hearing, the court may grant a continuance, but only upon a showing that such motion is in the interest of justice."). Louisiana's Fourth Circuit Court of Appeal has nevertheless held that Judges must grant joint motions to continue made by both the State and the defense.

⁵⁹ Supreme Court of Louisiana, *Report to the Louisiana Legislature in Response to House Concurrent Resolution No. 143 of the 2011 Regular Legislative Session* at 31 (Feb. 14, 2014).

⁶⁰ Because many continuances are only discussed by the judge and attorneys at sidebar - that is, off the record and out of the hearing of the public - or never mentioned in open court at all, there are many cases for which Court Watch NOLA's volunteers were not able to determine the reason for the continuance.

trial was in progress in the courtroom, which generally requires the continuance of all other matters. This is usually one of the most commonly observed reasons for continuances, likely in part because it is easy for the public to observe that a trial is taking place, whereas other reasons for continuances may only be discussed at sidebar.

Chart 2: Most Frequently Observed Reasons for Continuances in the First Half of 2014	
1.	Trial in Progress
2.	Defense attorney unprepared or unavailable
3.	Defendant released, did not appear
4.	Defendant in custody, not produced
5.	State owes discovery to defense
6.	State witness unavailable (usually law enforcement)
7.	New defense counsel
8.	Defense owes discovery to state
9.	Defense witness unavailable
10.	Unscheduled courtroom closure

The second- and third-most commonly observed reasons for delay in the first half of 2014 relate to the defense. Defense attorneys are often unavailable and/or unprepared when their clients' cases are called. The reasons for "no shows" range from the excusable, such as attorney illness, to the organizational, such as the Orleans Public Defenders' practice of assigning

its attorneys to courtroom "clusters" such that a public defender could have three hearings in three different courtrooms⁶¹ at the same time, to the inexcusable, such as private attorneys scheduling multiple trials that are set to proceed in different courtrooms on the same day.⁶² Defendants who have been released or posted bond also often fail to appear in court, causing additional delays.

The next three most commonly observed reasons for continuances in the first half of 2014 implicate state agencies. Defendants who are in custody often do not make it court, whether due to the failure of the District Attorney's office to request transport or the failure of the custodial authority (such as the OPSO or the state Department of Corrections) to provide it. Prosecutors may also fail to provide discovery, such as police reports or tapes of jailhouse phone calls, to the defense sufficiently in advance of trial. And state witnesses are also often unavailable, particularly police officers, who may wait for the prosecutor to tell them they are needed that day instead of arriving to court on time.

Other frequently observed reasons for continuances include: a request by a new defense attorney for more time to prepare; the defense's failure to provide discovery to the state; the unavailability of defense witnesses (sometimes also police officers); and unscheduled courtroom closures.⁶³

⁶¹ OPD recently shifted to four courtroom clusters, which may exacerbate this problem.

⁶² For 2013 CWN determined that although public defenders handle more cases, the private criminal defense bar is disproportionately responsible for defense continuances. *See* CWN 2013 Report at 20-21.

⁶³ Court Watch NOLA confirms that any section to which its volunteers are sent to observe cases has hearings scheduled for the assigned day, yet our volunteers – as well as witnesses, families, and the public at large –

IX. "R-E-S-P-E-C-T": COURTROOM INTERACTIONS & PROCEDURAL FAIRNESS

When the stars are aligned - discovery has been exchanged, the Judge is ready, the state is prepared, the defense attorney is present, witnesses are available, and the courtroom visitor's case is finally called - they can shine their brightest. And in the first half of 2014 CWN volunteers not only saw the courthouse chaos and molasses-drip pace of justice discussed above, but also observed a judiciary generally devoted to respecting the rights, voice, and dignity of the defendants before them.

Criminal Court defendants deserve this respect not simply because no matter what they are alleged to have done they remain human beings and are innocent until proven guilty, but also because it improves public safety outcomes.

A. WHAT IS PROCEDURAL FAIRNESS?

"Procedural fairness is THE critical element in public perception and satisfaction with the court system."
American Judges Association White Paper⁶⁵

Procedural fairness (a.k.a. procedural justice) is an evidence-based practice endorsed by the American Judges Association, National Center for State Courts, Conference of Chief Justices, and Conference of State Court Administrators.⁶⁵ As the latter two recently stated, "extensive research demonstrates that in addition to providing legal due process, it is important [for courts] to meet the public's expectations regarding the process in order to increase positive public perceptions of the court system, reduce recidivism, and increase compliance with court orders."⁶⁶ The key elements in procedural fairness are:

- 1) *Voice*: litigants are given the opportunity to tell their story;
- 2) *Respect*: litigants perceive that the judge, attorneys, and court staff treat them with dignity and respect;
- 3) *Neutrality*: litigants perceive that the decision-making process is unbiased and trustworthy;

arrived to closed courtrooms at least 49 times in the first half of 2014. An unknown number - but certainly hundreds - of cases were continued as a result of these closures, meaning that the courtroom closure category is likely underrepresented as a reason for continuances on this chart. And while some of these closures are no doubt due to last-minute illnesses or family emergencies, the Court should provide substitute *ad hoc* Judges and/or better public notice when a courtroom will be closed and this is known in advance.

⁶⁴ Burke and Leben, *Procedural Fairness: A Key Ingredient in Public Satisfaction* at 5, American Judges Association, 2007, attached as Ex. 1 (emphasis original).

⁶⁵ See Burke and Leben, Ex. 1, at 8; Resolution 12 In Support of State Supreme Court Leadership to Promote Procedural Fairness, Conference of Chief Justices and Conference of State Court Administrators (July 31, 2013); www.proceduralfairness.org (last visited Jan. 10, 2014) (NCSC is a "founding participant").

⁶⁶ Resolution 12 In Support of State Supreme Court Leadership to Promote Procedural Fairness, Conference of Chief Justices and Conference of State Court Administrators (July 31, 2013).

- 4) *Understanding*: litigants understand their rights and the decisions that are made; and
- 5) *Helpfulness*: litigants perceive that court actors are interested in their personal situation to the extent that the law allows.”⁶⁷

Criminal courts that focus on these elements of procedural fairness can increase public satisfaction with the court system, reduce recidivism, and increase compliance with court orders.⁶⁸ Crucially, these benefits accrue regardless of whether the party before the Court wins or loses his or her case, for both majority and minority group members, and in both low- and high-stakes cases.⁶⁹

In other words, court users understand they may not win, but at least want a neutral, respectful process in which their story is heard. And respect begets respect, such that defendants who are treated respectfully are more likely, in turn, to respect the system, commit fewer new crimes, and comply more fully with court orders, like probation conditions and restraining orders.

Because procedural fairness is about the serious, real-world implications of whether the public perceives courtroom procedure to be fair, neutral, and respectful, substantive law and objective case processing data mean little in this critical area. Instead, it is the lay public’s (admittedly subjective) *perception* that matters. And while the police, lawyers, and court staff influence the public’s perception of procedural fairness, the Judge is the primary contributor to whether people feel they are being treated fairly.⁷⁰

Knowingly or unknowingly, many Criminal Court Judges already focus intently on procedural fairness when they work closely and respectfully with non-violent defendants in specialty courts like drug court, mental health court, re-entry court, and veterans court.

“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.... [Procedural fairness] is about as good a principle upon which to reform our courts as one could expect to find.”

National Center for State Courts’ 2014 *Trends in State*

⁶⁷ Berman and Gold, *Procedural Justice from the Bench*, The Judges’ Journal, Vol. 51, No. 2, Spring 2012.

⁶⁸ Burke and Leben, Ex. 1, at 7; Berman and Gold at 22; Lee, C.G., F. Cheesman, D. Rottman, R. Swaner, S. Lambson, M. Rempel & R. Curtis (2013) *A Community Court Grows in Brooklyn: A Comprehensive Evaluation of the Red Hook Community Justice Center*. Williamsburg, VA: National Center for State Courts at 122, 178 (two-year recidivism rate among adult criminal defendants reduced by 10% compared to traditional criminal court).

⁶⁹ Lee and Cheesman at 8; see Burke and Leben, Ex. 1, at 19 (while minority and socioeconomically disadvantaged groups have historically perceived court systems to be less fair than other groups have, the Red Hook Community Court in Brooklyn, which was founded in part in an effort to apply procedural fairness concepts in the real world, has erased this perception gap).

⁷⁰ Burke and Leben, Ex. 1, at 8.

Research shows that these practices can and should be applied to all court users, including those on the regular docket, however. While Judges may object that they are too overworked to apply procedural fairness principles in all cases before them, recent research on “right-sizing the courts” raises the question of whether this is a legitimate concern.⁷¹ Moreover, as the American Judges Association stated, “[c]ase volume... is a management challenge for judges, not an excuse for deemphasizing procedural fairness.... Everyone who comes through the court system has a right to be treated with respect 100% of the time, a right to be listened to during the process, and a right to have key rulings in the proceeding explained in terms that they can understand.”⁷²

Judges, like any public servants, are not entitled to the public's trust but must instead earn it. As representatives of the public at large,⁷³ CWN volunteers therefore rate the Judges of Orleans Parish Criminal District Court on a variety of metrics culled from national procedural fairness best and evidence-based practices.

B. CWN'S PROCEDURAL FAIRNESS RANKINGS

CWN volunteers observed data regarding or rated Criminal Court Judges on a variety of metrics related to procedural fairness throughout the first half of 2014, watching them on weekday mornings for, generally, two or more hours at a time. For each morning, volunteers were asked to contemporaneously note the time the Judge first took the bench and whether the rules of court were posted or explained to defendants and the public. Once the observation period ended, they were asked to rate the Judge with regard to the remaining metrics listed in **Chart 3** and explained below on a scale of 1-5, with one signifying that the practice at issue “never” happened during the observation period, three signifying that it “occasionally” happened, and five signifying that it “always” happened.⁷⁴

Court Watch NOLA then compiled all of this data for the first half of 2014 and averaged the volunteers' ratings or data with regard to each Judge for each of the eight metrics in **Chart 3**.⁷⁵ For each metric CWN then assigned 12 points to the top performing

⁷¹ See Bureau of Governmental Research, *Benchmarking the Bench: Are Public Dollars Being Wasted on Excess Judgeships in Orleans Parish?* (2013), available at <http://www.bgr.org/reports/are-public-dollars-being-wasted-on-excess-judgeships-in-orleans-parish/> (last visited Mar. 11, 2014).

⁷² Burke and Leben, Ex. 1, at 16.

⁷³ See S. Beier, C. Eib, V. Oehmann, P. Fiedler, & K. Fiedler, *Influence of Judges' Behavior on Perceived Procedural Justice*, *Journal of Applied Social Psychology* 2014, vol. 44 at 57 (neutral observers may be better suited to making procedural fairness judgments than defendants themselves because they may have “a more objective perception of the [defendant's] actual treatment.”). Utah and Alaska, two leaders in the procedural fairness movement, also use citizen observers to rate Judges as part of the two states' official judicial performance evaluations. Hon. S. Leben, *The Procedural-Fairness Movement Comes of Age*, *Trends in State Courts 2014*, the National Center for State Courts at 60-61.

⁷⁴ As with the volunteers' narrative observations, the ratings are snapshots of one volunteer's personal opinion regarding one particular day in court, and do not represent the position or opinion of Court Watch NOLA, its officers, or its directors.

⁷⁵ CWN used the median data value in the case of time on the bench.

Judge, 11 points to the Judge with the second-highest average rating, and so on, with the lowest-performing Judge on that metric receiving one point.⁷⁶ CWN then added each Judge’s point total to get his or her final score, out of a total possible score of 96. The following is therefore a ranking of how procedurally fair (respectful, neutral, helpful, and understanding, based on the metrics explained below) Court Watch NOLA volunteers perceived the twelve trial court Judges of Orleans Parish Criminal District Court to be during the first half of 2014.

Individual Category Ranking (1st=12 points; 2nd=11 points... 12th=1 point)												
CHART 3	Judge	Section	Time on the Bench	Rules & Etiquette	Paying Attention	Showing Respect	Using Plain English	Neutrality	Courtroom Control	Transparency	Total Points	Overall Ranking
	Hon. Camille Buras	H	3rd	7th	1st	2nd	1st	3rd	3rd	3rd	81	1
	Hon. Keva Landrum-Johnson	E	5th	4th	3rd	4th	5th	1st	1st	6th	75	2 (tie)
	Hon. Robin Pittman	F	2nd	5th	2nd	8th	3rd	5th (tie)	2nd	2nd	75	2 (tie)
	Hon. Karen Herman	I	7th	3rd	5th	1st	2nd	5th (tie)	6th	4th	71	4
	Hon. Franz Zibilich	L	4th	10th	4th	5th	6th	10th	4th	1st	60	5
	Hon. Julian Parker	G	1st	1st	11th	7th	8th	11th	5th	5th	55	6
	Hon. Tracey Flemings-Davillier	B	9th (tie)	6th	7th	3rd	4th	7th	10th	8th	50	7
	Hon. Darryl Derbigny	J	8th	2nd	9th	10th	9th	2nd	8th	10th	46	8
	Hon. Laurie White	A	9th (tie)	8th (tie)	6th	6th	7th	8th (tie)	9th	7th	44	9
	Hon. Benedict Willard	C	6th	8th (tie)	10th	9th	11th	4th	11th	11th	34	10
	Hon. Frank Marullo	D	12th	11th (tie)	8th	12th	10th	12th	7th	9th	23	11
	Hon. Arthur Hunter	K	11th	11th (tie)	12th	11th	12th	8th (tie)	12th	12th	15	12

C. ANALYSIS OF PROCEDURAL FAIRNESS RANKINGS

1. Time on the Bench

Starting court on time shows respect for defendants and the public, who may be taking time off from work or family to attend court.⁷⁷ See *supra* at §VI(A) for further discussion and data related to this metric.

⁷⁶ In the case of a tie, both Judges received the higher point value.

⁷⁷ Center for Court Innovation and National Judicial College, *Enhancing Procedural Fairness: Draft Menu of Best Practices* (“Court session should begin promptly at the time scheduled to demonstrate respect of defendants’ time. You can thank the audience members for being on time to show mutual respect. If court does not start on time, court staff may [/] should update audience members of when they expect court to start.”).

2. Explanation or Posting of Rules and Etiquette

Defendants and the public cannot follow rules they do not know exist, and clearly explaining courthouse rules and etiquette showcases the Court's helpfulness.⁷⁸ *See supra* at §VI(C) for further discussion and data related to this metric.

3. Did the Judge appear to pay attention to all proceedings?

Because defendants' lives and liberty are at stake in each court hearing, the Court shows respect for the process and for defendants themselves when it pays close attention to all proceedings before it.⁷⁹ Attending to the hearings and arguments presented by both sides also reinforces the Court's neutrality. Common sense, meanwhile, suggests that no court should expect defendants to take the criminal justice system seriously if Judges themselves are not taking each proceeding seriously.

Fortunately, CWN volunteers said that Criminal Court Judges were very good about paying attention to the proceedings before them.⁸⁰ The volunteers gave all of the Judges ratings above 4.5 out of 5.0 in this area. Most of the rare negative volunteer observations in this category related to Judges sometimes doing paperwork or using computers during hearings, lengthy testimony, or jury selection. For instance, one volunteer wrote: "I was amazed by how little the Judge seemed to care, he almost appeared to nod off at one point during the competency hearing," while another noted that a different Judge "was leaned back, staring at the ceiling, and swiveling back and forth in his chair during jury selection."

4. Was the Judge respectful to all defendants (e.g. making eye contact, greeting them by name, using a respectful tone, etc.)?

Respect for defendants - who, after all, are innocent until proven guilty - and others appearing in court is one of the central tenets of procedural fairness.⁸¹ And once again, CWN

⁷⁸ Burke and Leben, Ex. 1, at 20 ("As a matter of practice, explain in understandable language what is about to go on to litigants, witnesses, and jurors. The more they know what to expect, the more likely they will be to comprehend. Judges need to accept that it is their ultimate responsibility to ensure people understand their processes and orders."); Berman and Gold at 22 ("Court officers can rethink how courtroom rules are posted, explained, and enforced in a way that is clear and respectful.... Explaining courtroom procedures and rules at the beginning of each court session may reduce frequent interruptions and the need to answer questions and make reprimands."); Center for Court Innovation and National Judicial College, *Enhancing Procedural Fairness: Draft Menu of Best Practices* ("Rules should be simple, clearly posted, and consistent throughout the courthouse. Efforts should be made to use respectful language.... Court staff may choose to recite the basic rules and format of the court proceedings at the beginning of each court session. These procedures can also be posted in the courtroom.").

⁷⁹ Berman and Gold at 22.

⁸⁰ VR: "Judge: Did the Judge appear to pay attention to all proceedings? If not, please explain." Avg: 4.788 (n=434). By section: H: 4.953 (n=43); F: 4.948 (n=39); E: 4.942 (n=35); L: 4.939 (n=33); I: 4.837 (n=37); A: 4.783 (n=37); B: 4.761 (n=42); D: 4.714 (n=28); J: 4.658 (n=41); C: 4.657 (n=35); G: 4.628 (n=35); K: 4.535 (n=28).

⁸¹ Burke and Leben, Ex. 1, at 11-12 (nonverbal cues showing respect for litigants a key aspect of procedural fairness); Berman and Gold at 21-22 ("Appearing approachable and accessible is a key component of procedural justice. Judges should consider addressing defendants by name and thanking them and audience

volunteers rated most Judges highly in this category, with only Judges Marullo, Hunter and Derbigny rating under 4.5 (suggesting that they “usually” but not “always” behave respectfully towards defendants).⁸² Indicators of respect that CWN volunteers were asked to look for include the use of the defendant’s name or “sir” or “ma’am” (as opposed to “you”), a respectful tone of voice, making eye contact with the defendants, and explaining things to defendants themselves and not just speaking to their attorneys.

Respectful bench behavior is particularly important with regard to defendants who may be subject to heightened levels of societal discrimination. For instance, one CWN volunteer praised Judge Parker, who “treated respectfully” a person that the volunteer perceived to be a transvestite.

5. Did the Judge adequately describe what was happening to defendants using plain English?

Explaining the legal process to defendants and others who appear in court using plain English is crucial to their understanding of (and thus respect for) the criminal justice process. Defendants are also more likely to understand - and obey - court orders when legalese is avoided. Nor should courts simply rely on attorneys, who may be pressed for time, forgetful, or less articulate, to explain the court process to defendants.⁸³ And despite a natural instinct to fall back on legalese in some cases (“[The Judge] said ‘nolle prosequi,’” one volunteer observed, “and [if I were a defendant] I would not have understood what that meant”), court watchers gave most Judges high marks in this category, with an overall average across all court sections of 4.558 out of 5.0.⁸⁴

6. Did the Judge avoid showing favor towards ADAs or defense attorneys? If no, please explain.

Ethical rules prevent Judges from unfairly favoring one side over the other, and Court Watch NOLA has no basis for believing that any of the Criminal Court Judges are violating

members for their cooperation while court is in session.... Judges who make eye contact and appear alert, engaged, and knowledgeable about the case before them demonstrate greater respect for the defendant and the process.”).

⁸² VR: “Judge: Was the Judge respectful to all defendants (e.g. making eye contact, greeting them by name, using a respectful tone, etc.)?” Avg: 4.636 (n=435). By section: I: 4.864 (n=37); H: 4.863 (n=44); B: 4.809 (n=42); E: 4.800 (n=35); L: 4.727 (n=33); A: 4.621 (n=37); G: 4.606 (n=33); F: 4.589 (n=39); C: 4.527 (n=36); J: 4.439 (n=41); K: 4.428 (n=28); D: 4.172 (n=29).

⁸³ Burke and Leben, Ex. 1, at 20 (“While it is understandable to believe that a lawyer will explain judicial orders, not every litigant has a lawyer who will ensure an order is understood. It’s your order. You have a responsibility to explain it in understandable terms.”); Berman and Gold at 21 (“Adapting courtroom language to be understood by all – including defendants, witnesses, and other audience members – encourages understanding of the process and makes the system more user-friendly.”).

⁸⁴ VR: “Judge: Did the Judge adequately describe what was happening to defendants using plain English?” Avg.: 4.558 (n=420). By section: H: 4.878 (n=41); I: 4.810 (n=37); F: 4.783 (n=37); B: 4.761 (n=42); E: 4.727 (n=34); L: 4.625 (n=32); A: 4.588 (n=35); G: 4.424 (n=34); J: 4.300 (n=40); D: 4.25 (n=28); C: 4.235 (n=34); K: 4.037 (n=27).

these rules. Nevertheless, the *appearance* of favorable treatment (even where no such bias exists) can cause the public to question the Court’s neutrality.⁸⁵

With a handful of exceptions, CWN volunteers found that the Criminal Court Judges almost always managed to avoid showing favor to the State or defense.⁸⁶ Nevertheless, one volunteer noted how the Judge “took several ADAs into his chambers throughout the morning and no defense attorneys,” causing a perception problem even if the only subject they discussed (as seems likely) is the Saints. A handful of other volunteers also wondered if some of the Judges gave the State special treatment. The Court should bend over backwards to broadcast a message (and the appearance) of neutrality at all times, so that public perception matches the behind-the-scenes reality of a neutral court system.

7. Did the Judge maintain control of the court, including minimizing disruptions and keeping jurors attentive?

CWN volunteers generally rated the Judges well on this metric, with an overall average rating across all sections of Court of 4.637.⁸⁸ Nevertheless, some issues with courtroom control cropped up repeatedly, including inmates looking back at and communicating with (and possibly intimidating) members of the public, attorneys chatting loudly with each other and their clients (either in person or on the phone), talking in the audience, and the comings and goings of attorneys and other courtroom personnel. *See supra* at §VII(A) for more on courtroom audibility.

“[E]xtraneous activity has the potential to distract and confuse both litigants and observers, and to create the impression that the case at bar is not the court’s most important concern.”⁹⁰

8. Was the Judge transparent and stay on the record?

Courtroom transparency is the last procedural fairness metric incorporated into the rankings, and presents an opportunity for improvement for many sections of court.⁸⁹ Only

⁸⁵ Burke and Leben, Ex. 1, at 6 (“Neutrality: consistently applied legal principles, unbiased decision makers, and a ‘transparency’ about how decisions are made.”); Center for Court Innovation and National Judicial College, *Enhancing Procedural Fairness: Draft Menu of Best Practices* (“Demonstrate neutrality by treating lawyers respectfully and without favoritism.”).

⁸⁶ VR: “Judge: Did the Judge avoid showing favor towards ADAs or defense attorneys? If no, please explain.” Avg: 4.759 (n=433). By section: E: 4.971 (n=35); J: 4.878 (n=41); H: 4.863 (n=44); C: 4.857 (n=35); F: 4.789 (n=38); I: 4.789 (n=38); B: 4.785 (n=42); A: 4.75 (n=36); K: 4.75 (n=28); L: 4.612 (n=31); G: 4.529 (n=34); D: 4.400 (n=30).

⁸⁷ Lee and Cheesman at 68.

⁸⁸ VR: “Judge: Did the Judge maintain control of the court, including minimizing disruptions and keeping jurors attentive?” Avg: 4.637 (n=430). By section: E: 4.971 (n=35); F: 4.868 (n=38); H: 4.857 (n=42); L: 4.774 (n=31); G: 4.735 (n=34); I: 4.648 (n=37); D: 4.566 (n=30); J: 4.525 (n=40); A: 4.513 (n=37); B: 4.5 (n=42); C: 4.342 (n=35); K: 4.25 (n=28).

⁸⁹ Burke and Leben, Ex. 1, at 6, 16 (“Neutrality: consistently applied legal principles, unbiased decision makers, and a ‘transparency’ about how decisions are made.... [T]he parties had no voice and could not see that the procedures were neutral because there was no transparency in the process. They did not see any evidence that

sections L, F, & H (in descending order) had transparency ratings above 4.5 (meaning that CWN volunteers, on average, rated these Judges as almost always transparent and on-the-record). The primary impediments to more transparent courtrooms, according to volunteers, were the ubiquity of sidebars in some courtrooms, an over-reliance on conferences in chambers, and problems hearing the Judge and attorneys. *See supra* at §§ VII(A)-(B).

Even in the most transparent courtrooms, meanwhile, the public is sometimes prevented from observing court without explanation, as one volunteer reported:

I arrived at 8:50 AM and went into the courtroom but I was asked to leave until 9:00 because 'We talk about things...' I thought that was strange... especially considering no defense attorneys were present - only ADAs and court staff. After I left, I returned at 9:00 AM and the Judge was already on the bench.

Another volunteer observed that:

There was a time when the Judge asked everyone in the audience to step out... [and] when we were allowed to come back in court was dismissed. The Judge didn't explain the reason, he just told us to get out.

D. OTHER OPPORTUNITIES TO IMPROVE PROCEDURAL FAIRNESS

1. Decreasing the Likelihood that the Public will Perceive Courtroom Bias or Discrimination

All public servants - and especially those, like Judges and court staff, who are supposed to be neutral arbiters of justice - should be unbiased and unprejudiced. And Court Watch NOLA has no reason to believe that any member of the bench, bar, or court staff has discriminated or acted out of bias or prejudice. Indeed, CWN volunteers, when asked if they perceived “that anyone was treated inappropriately or differently based on gender, race, ethnicity, religion, age, disability status, sexual orientation, economic status, etc.?” answered with a resounding “No.”⁹⁰

CWN volunteers nevertheless observed a handful of incidents related to race, religion, sexual orientation, and other topics best left alone that could be interpreted in the wrong way, and could influence whether the public perceives the criminal justice system as neutral, fair, and welcoming to all New Orleanians. These volunteer observations are not accusations or even suggestions of actual bias, but rather opportunities for improvement in how the

their concerns were being taken seriously because they had minimal contact with the judge.”). VR: “Judge: Was/Did the Judge transparent and stay on the record?” Avg: 4.328 (n=432). By section: L: 4.687 (n=32); F: 4.684 (n=38); H: 4.571 (n=42); I: 4.447 (n=38); G: 4.382 (n=34); E: 4.352 (n=34); A: 4.324 (n=37); B: 4.238 (n=42); D: 4.133 (n=30); J: 4.048 (n=41); C: 4.028 (n=35); K: 3.928 (n=28).

⁹⁰ VR: “Was it your perception that anyone was treated inappropriately or differently based on gender, race, ethnicity, religion, age, disability status, sexual orientation, economic status, etc.? If yes, please explain.” No: 426; Yes: 9.

Court communicates with the public, which may perceive discrimination even where none is intended:

The Judge made a comment to a [male] defendant after asking if he had a wife or girlfriend, [saying] 'I'm not going to ask about a boyfriend,' [then] chuckl[ing]. I think this is flirting with sexual orientation unnecessarily.

The Judge told jokes to the court reporter - at least 14 jokes about the Bible, Jesus, and more followed by a big laugh.

The Judge made a comment to a defendant about his rosary beads and asked when the last time he went to church was. The defendant said it had been a while and the Judge responded, "Yeah, well, doesn't everybody find Jesus in the back.

Defendants are supposed to be innocent until proven guilty, but at one point the Judge said to a defendant, "You haven't convinced me of your innocence," and then told him to sit down. It seemed very rude and unfair and unusual.

The Judge rudely said he needed to go to an ear doctor because he couldn't understand an African-American talking to him. (I think the man had a speech impediment or he might have had a mental disability - I couldn't tell). He also asked if anyone in the room speaks English when another African-American defendant started talking... [Instead, the Judge] could've politely asked the [man] to speak into a microphone or to come closer.

I am concerned that a woman who was charged with domestic battery, and who asked for a court-appointed attorney because she receives SSI, was denied the court-appointed attorney because she was out on bail. The Judge said if she could pay bail, she could pay an attorney. Then the Judge told her the ADA had a plea [deal] for her, and if she wanted to take that today, she could consult with a public defender for the purpose of the plea. If she did not take the plea, the Judge said, she would have to hire an attorney. It seems like the woman was kind of forced to take the plea.

2. Connecting with Defendants While Accepting Pleas

To ensure that defendants who enter guilty pleas (usually as part of a deal with the State) do so knowingly and voluntarily, Judges usually read the defendants a script explaining what rights they are waiving by pleading guilty, then ask them if they understand the waived rights. Because Judges are constrained in how they can interact with defendants during this colloquy, volunteer ratings regarding these interactions were not factored into CWN's procedural fairness rankings. Volunteers nevertheless closely observed whether the Court was respectful, helpful, and used plain English during these interactions and generally rated the Judges very favorably. Volunteers were asked to watch for the following:

- 1) Did the Judge ask each defendant if he or she had enough time to discuss the case with counsel before sentencing?⁹¹
- 2) Were Defendants offered the opportunity to speak or ask questions before getting sentenced?⁹²
- 3) Did the Judge explain the sentences &/or orders he or she imposed in plain English?⁹³
- 4) Did the Judge ask each defendant if he or she understood the sentence, or to repeat his/her understanding of the sentence?⁹⁴

Most Criminal Court Judges, and, in particular, Sections B, F, H, & L (in alphabetical order) performed very well on these metrics during the first half of 2014, according to CWN volunteers. The typical sentencing pattern, as one volunteer explained, is “first legal jargon, then plain English.” Many Judges will also “ask [the defendant] if he understood [his sentence], but not ask him to repeat his understanding of the sentence.” Other frequent volunteer concerns include asking the defendant to confirm his initials on the guilty plea form from twenty feet away, or reading the guilty plea colloquy too quickly for the defendant to understand and digest its meaning.

Nevertheless, volunteers generally had praise for the Judges’ handling of guilty pleas:

Judge Buras provided a lot of information about repeat offenses and repeatedly asked the three accepting plea deals if they understood what they were accepting.

[Judge Herman] even told the [defendants] if they had questions they could call her.

And to ensure that one defendant understood a probation sentence Judge Hunter:

used very casual language when speaking with defendants and attorneys... [A]t one point, the Judge told a defendant ‘If you mess up, you’re going straight to Angola.’

Judge Flemings-Davillier, another volunteer observed, focused on rehabilitation:

I liked how the Judge asked a couple of the defendants to set 5 goals for when they get out of the correctional facility.

⁹¹ Center for Court Innovation and National Judicial College, *Enhancing Procedural Fairness: Draft Menu of Best Practices* (“Ask defendant if he/she feels he/she had enough time to discuss case with counsel.”).

⁹² Burke and Leben, Ex. 1, at 11-12 (voice a key aspect of procedural fairness); Nat’l Center for State Courts, *CourTools: Access and Fairness* at 3 (“The judge listened to my side of the story before he or she made a decision.”).

⁹³ Burke and Leben, Ex. 1, at 20 (“While it is understandable to believe that a lawyer will explain judicial orders, not every litigant has a lawyer who will ensure an order is understood. It’s your order. You have a responsibility to explain it in understandable terms.”).

⁹⁴ Berman and Gold at 21-22 (“Instead of using a rote series of questions during plea allocutions, judges can ask defendants to repeat back their understanding of the plea agreement. This can help give defendants an opportunity to be heard, as well as ensure understanding.”).

Another volunteer praised Judge Parker’s humanity when accepting a plea:

There was a lunacy hearing for a tiny, young, 8 months pregnant illiterate girl. The Judge eliminated her fines and showed great concern for her. He asked the [public defender] to ask [his office’s] social worker to get the girl to a doctor - she has no doctor and is anemic. The [public defender] said he would see if it was possible [but was worried about the regulations]. The Judge was upset and, describing the girl’s plight, said... "Where’s your heart, man?" It was a touching moment, and quite a genuine expression of the Judge’s feelings.

X. “THIS IS THE END”

Criminal Court visitors rarely know how long their visit to Court will last. The time Court ends for the day depends on a variety of factors, including how early Court starts, how quickly hearings are held, and, perhaps most importantly, whether a trial – especially a jury trial – occurs, since these can stretch into the evening. Thus, while Court Watch NOLA volunteers collected information on when court adjourns for the day – and the average time across all sections in the first half of 2014 was 11:34⁹⁵ – this does not include information on what time court ends when a trial is in progress (because the volunteers cannot usually stay into the evening), and therefore undercounts the actual average time. Nevertheless, this information does demonstrate that on the majority of court days, when trials do not occur, Court is often only in session for about half of the day.

⁹⁵ VR: “What time did Court end for the day? (Ex: 1:37 P.M.; do not complete if unsure; lunch recess is not necessarily when court ends for the day)” Overall court average: 11:34 (n=87) (duplicates eliminated).

XI. "STRONGER": CONCLUSION AND RECOMMENDATIONS

Based on the above data, observations, and judicial best and evidence-based practices, Court Watch NOLA makes the following recommendations that, if followed, would make Orleans Parish Criminal District Court more efficient, transparent, and procedurally fair. These recommendations are Court Watch NOLA's alone, and do not necessarily represent the opinions of its volunteers, contributors, or any individual CWN director or officer. While Court Watch NOLA recognizes the significant revenue problems facing Criminal Court, the City of New Orleans, and the State of Louisiana, many of these recommendations can be implemented at little or no cost, and those that are more costly should at least be put "in the queue" for future budget cycles.

FINDING THE COURTHOUSE

- 1) Place additional signage, speed cameras, and/or reduce traffic to two lanes on Broad Street near the courthouse to improve pedestrian safety.
- 2) Improve outdoor signage generally and add a map clearly showing the locations of the Criminal Court main and ground-level entrances, as well as Municipal / Traffic Court, at the corner of Tulane and Broad streets.
- 3) Install bike locking stands outside the courthouse for bicycle commuters.

SECURITY AND SAFETY

- 4) Allow members of the public to bring their cell phones into the courthouse so that they can contact their families, call missing attorneys, and quietly entertain themselves during courtroom delays. If cell phones can be safely brought on airplanes, the public should be able to bring them into the courthouse.
- 5) Construct a modern and properly manned and protected security checkpoint at the courthouse entrance, so that the public can wait in line while sheltered from the elements.
- 6) Improve and make more uniform the training that courtroom security deputies receive, with an emphasis on the need to remain alert and attentive at all times.

ACCESS ISSUES

- 7) Make the courthouse's ground-level entrance more visible to visitors.
- 8) Ensure that all new signage and maps are multi-lingual and in Braille.

- 9) Renovate Criminal Court so that every courtroom is modern and accessible, including sections B & L, the two cramped attic courtrooms.⁹⁶

FINDING THE RIGHT COURTROOM

- 10) Erect a map and directory at each courthouse entrance, as well as in the main floor hallway across from the elevators and stairway.

COURTROOM FACILITIES

- 11) Improve courthouse maintenance, including touch-up painting throughout the courthouse to fix peeling paint, replacing malfunctioning courtroom clocks, and replacing loud and uncomfortable courtroom benches.
- 12) For security reasons, provide all Judges with private access to their chambers and courtroom, so they do not have to wade through the public in order to take the bench.

OTHER COURTHOUSE FACILITIES

- 13) Provide climate-controlled hallways and more hallway seating for the public to use while waiting for courtrooms to open.
- 14) Re-install a help desk at the courthouse entrance to answer the public's questions.
- 15) Add more and clean the existing water fountains.
- 16) Consider starting or encouraging the opening of a nearby day care center, as one volunteer suggested: "One thing I observed were people bringing their babies/young children to court. The sheriffs asked the parties to remove them from the courtroom. I think the court should consider having a daycare center with volunteer supervision so there are no complications for parents on court dates, especially for people who cannot afford babysitters/daycare."

STARTING TIMES

- 17) Start court on time as often as humanly possible, and, when it is known in advance that a section will be closed or start late, post this information on the Criminal Court website and/or arrange for an *ad hoc* substitute Judge to preside over the section.
- 18) When court does not start on time, have court staff provide the public with an estimate of when court is likely to start, and, once court begins, an explanation of and apology for the delay.

⁹⁶ In the alternative, should the number of Criminal Court judgeships be reduced, the attic courtrooms should be converted to other uses. See Bureau of Governmental Research, *Benchmarking the Bench: Are Public Dollars Being Wasted on Excess Judgeships in Orleans Parish?* (2013), available at <http://www.bgr.org/reports/are-public-dollars-being-wasted-on-excess-judgeships-in-orleans-parish/> (last visited Mar. 11, 2014).

19) For those sections with a substantial median delay, consider changing the subpoena start time to better reflect when court actually starts.

PRIORITIZING LAW ENFORCEMENT

20) Start court on time and continue to prioritize cases involving testifying law enforcement.

STARTING COURT

21) Have the Judge introduce him or herself by name to the public after the bailiff calls the courtroom to order.

22) Post the docket and courtroom rules and etiquette outside the courtroom every day court is in session.

23) Communicate to the public the general order in which cases may be called so that visitors have some idea of how long they may have to wait.

AUDIBILITY

24) Force attorneys to use the microphone when speaking and to avoid loud chatter when other cases are being heard.

SIDEBARS

25) Allow sidebars only when absolutely necessary. At the very least, announce on the record the reasons for and/or results of sidebars.

REDUCING DELAYS AND CONTINUANCES

26) Pressure prosecutors, doctors, testifying law enforcement, and especially defense attorneys to be prompt and prepared. When delays occur and court business cannot proceed, explain this to the public along with the reason court is at a standstill.

27) Implement a universal scheduling system, as previously recommended by CWN and the Metropolitan Crime Commission. As one CWN volunteer put it: "No wonder criminal court is so inefficient, the defense attorneys are all running from section to section without knowing what time their cases will be called. Court would have been significantly shorter had there been a better scheduling system in place."

28) See Court Watch NOLA's 2013 Report at 45-49 for additional recommendations related to reducing continuances and making Criminal District Court more efficient, transparent, and accountable.

IMPROVING PROCEDURAL FAIRNESS

While CWN volunteers rated most Criminal Court Judges highly on many procedural fairness-related metrics, there is always room for improvement. Therefore, and in addition to the above suggestions, the Court should consider making efforts to improve in the following areas:

- 29) Paying close attention to each case, including making eye contact with defendants and using a respectful tone to all who appear in court.
- 30) Explaining the purpose of each court appearance to all defendants.
- 31) Using plain English to ensure that defendants understand court orders and courtroom procedure.
- 32) Avoiding even the appearance of favoritism or bias towards the state or defense, and using neutral, respectful speech at all times to avoid the appearance of prejudice with regards to race, religion, sexual orientation, etc.
- 33) Maintaining a transparent and controlled courtroom so that the public can see how seriously the Court takes each case, and carefully weighs all evidence and argument from both sides.
- 34) Observing the courtroom from the visitor's perspective by videotaping a typical day in court and then analyzing it with an eye towards making the Court more procedurally fair. Even for Judges already dedicated to the principles of procedural fairness, additional training can lead to significant improvements in how the public perceives the court system.⁹⁷
- 35) Getting rid of the "cattle call," in which all cases are set for the time court starts, and, to the extent possible, instead set different types of cases at different times during the day. Grouping similar types of hearings together can improve the public's perception of fairness because it gets to see that all similar types of cases are handled in the same manner.⁹⁸
- 36) Pursuing courthouse renovations with procedural fairness in mind. Better courtroom design can significantly improve the public's perception of the criminal justice system.⁹⁹

⁹⁷ Milwaukee Report at 24, 26.

⁹⁸ Brooklyn at 88-89. This practice also has the potential to make the courthouse more efficient.

⁹⁹ Brooklyn at 184.

XII. "KIND AND GENEROUS": ACKNOWLEDGMENTS

A. VOLUNTEERS AND BOARD OF DIRECTORS

Court Watch NOLA would like to thank the following 2014 volunteers:

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For their financial, technical and other assistance since Court Watch NOLA's founding in 2007 as well as throughout 2014, Court Watch NOLA would like to thank: the Business Council of New Orleans and the River Region; Citizens For 1 Greater New Orleans; Common Good; the Criminal District Court Judges, security, staff, and Judicial Administrator's office; the Orleans Parish Clerk of Court; and the Carrollton Group. To learn more about Court Watch NOLA, or to make your own secure, tax-deductible donation, visit www.courtwatchnola.org.

Court Watch NOLA would like to thank all of its 2014 donors for their continued support, including the following major donors:

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PROCEDURAL FAIRNESS:
A KEY INGREDIENT IN
PUBLIC SATISFACTION

A WHITE PAPER
OF THE
AMERICAN JUDGES ASSOCIATION
THE VOICE OF THE JUDICIARY[®]

JUDGE KEVIN BURKE
JUDGE STEVE LEBEN

SEPTEMBER 26, 2007

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EXECUTIVE SUMMARY

Americans are highly sensitive to the processes of procedural fairness. It is no surprise, then, that the perception of unfair or unequal treatment “is the single most important source of popular dissatisfaction with the American legal system.”¹ Even first-graders react negatively to a situation where a mother punishes her child for a broken vase without consulting a witness first. This negative reaction signifies powerfully that children are already sensitive to the principles of procedural fairness.² If children in early elementary school already react negatively to perceived violations of procedural fairness, it is only that much more imperative to address the needs of the adults who appear in the courts to fight for custody of their children, file bankruptcy, contest a speeding ticket, or respond to allegations of felonious criminal behavior.

Judges can alleviate much of the public dissatisfaction with the judicial branch by paying critical attention to the key elements of procedural fairness: voice, neutrality, respectful treatment, and engendering trust in authorities. Judges must be aware of the dissonance that exists between how they view the legal process and how the public before them views it. While judges should definitely continue to pay attention to creating fair outcomes, they should also tailor their actions, language, and responses to the public’s expectations of procedural fairness. By doing so, these judges will establish themselves as legitimate authorities; substantial research suggests that increased compliance with court orders and decreased recidivism by criminal offenders will result. Procedural fairness also will lessen the difference in how minority populations perceive and react to the courts.

Many people have little contact with the court system in their daily life, so it is understandable that they feel overwhelmed and lost when they are confronted with an unfamiliar legal system. This lack of knowledge about the court has resulted in a state of ambivalence—accentuated by the lack of depth to most news coverage of the courts and the misinformation of entertainment television. In many ways, procedural fairness bridges the gap that exists between familiarity and unfamiliarity and the differences between each person regardless of their gender, race, age, or economic status. It is a value that the American public expects and demands from judges, and many judges have embodied the concepts of procedural fairness in their everyday lives. While the American Judges Association recognizes the achievements of these individuals and many courts already intent on promoting procedural fairness, the purpose of this white paper is to identify and advocate for more changes that will improve the daily work of the courts and its judges.

¹ Jason Sunshine & Tom R. Tyler, *The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing*, 37 LAW & SOC’Y REV. 513, 517 (2003).

² Robert J. MacCoun, *Voice, Control, and Belonging: The Double-Edged Sword of Procedural Fairness*, Center for the Study of Law and Society Jurisprudence and Social Policy Program, JPS/Center for the Study of Law and Society Faculty Working Papers, Paper 30, at 14 (May 5, 2005).

This paper addresses research on courts within the United States and makes recommendations for the judiciary there. In addition to our 2,500 member judges in the United States, however, the American Judges Association also has about 150 members in Canada. Although we make no recommendations regarding the courts in Canada, we believe that the baseline social-science research upon which this paper is based would also be applicable there, given the similarities between the legal systems of these two countries.

PROCEDURAL FAIRNESS IS THE CRITICAL ELEMENT
IN PUBLIC PERCEPTION AND SATISFACTION
WITH THE COURT SYSTEM.

Most people care more about procedural fairness—the kind of treatment they receive in court—than they do about “distributive justice,” *i.e.*, winning or losing the particular case.³ This discovery has been called “counterintuitive”⁴ and even “wrong-headed,”⁵ but researcher after researcher has demonstrated that this phenomenon exists.⁶ Thus, procedural fairness is a critical part of understanding how the public interprets their experience with the court system and translates that experience into a subjective valuation of the court system as whole.

Citizens have high expectations for how they will be treated during their encounters with the judicial system. In particular, they focus on the principles of procedural fairness because “people view fair procedures as a mechanism through which to obtain equitable outcomes—which is the goal in cases of conflict of interest.”⁷ People value fair procedures because they are perceived to “produce fair outcomes.”⁸

³ Jonathan D. Casper, et al., *Procedural Justice in Felony Cases*, 22 LAW & SOC’Y REV. 483 (1988); TOM. R. TYLER, ET AL., SOCIAL JUSTICE IN A DIVERSE SOCIETY (1997); and Jason Sunshine & Tom R. Tyler, *The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing*, 37 LAW & SOC’Y REV. 513 (2003).

⁴ M. Somjen Frazer, *The Impact of the Community Court Model on Defendant Perceptions of Fairness: A Case Study at the Red Hook Community Justice Center*, Center for Court Innovation 3 (2006).

⁵ TOM R. TYLER, WHY PEOPLE OBEY THE LAW 22 (2006) [Hereinafter WHY PEOPLE OBEY].

⁶ Tom R. Tyler, *Psychological Models of the Justice Motive: Antecedents of Distributive and Procedural Justice*, 67 J. PERS. SOC. PSYCHOL. 850-863 (1994); Tom R. Tyler, *The Relationship of the Outcome and Procedural Fairness: How Does Knowing the Outcome Influence Judgments about the Procedure?*, 9 SOC. JUSTICE RES. 311-325 (1996); Larry Heuer, et al., *The Generality of Procedural Justice Concerns: A Deservedness Model of Group Value and Self-interest Based Fairness Concerns*, 25 PERS. SOC. PSYCHOL. BULL. 1279-1292 (1999); J. Greenberg, *Determinants of Perceived Fairness of Performance Evaluations*, 71 J. APPL. PSYCHOL. 340-342 (1986); J. Greenberg, *Looking Fair Versus Being Fair: Managing Impressions of Organizational Justice*, 12 RESEARCH IN ORGANIZATIONAL BEHAVIOR 111-157 (B. Staw & L. Cummings eds.1990); J. Greenberg & R. Folger, *Procedural Justice, Participation, and the Fair Process Effect in Groups and Organizations*, BASIC GROUP PROCESSES 235-256 (P. B. Paulus ed. 1983); E. A. LIND, & TOM R. TYLER, THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE, (1988); J. THIBAUT & J. WALKER, PROCEDURAL JUSTICE: A PSYCHOLOGICAL ANALYSIS (1975); K. Van den Bos, et al., *Sometimes Unfair Procedures Have Nice Aspects: On the Psychology of the Fair Process Effect*, 77 J. PERSONALITY & SOCIAL PSYCHOL. 324-336 (1999); K. Van den Bos, et al., *Evaluating Outcomes by means of the Fair Process Effect: Evidence for Different Processes in Fairness and Satisfaction Judgments*, 74 J. PERSONALITY & SOCIAL PSYCHOL. 1493-1503 (1998).

⁷ Tyler, et al., *supra* note 3, at 75.

⁸ MacCoun, *supra* note 2, at 12.

Psychology professor Tom Tyler, a leading researcher in this area, suggests that there are four basic expectations⁹ that encompass procedural fairness:

- **Voice:** the ability to participate in the case by expressing their viewpoint;
- **Neutrality:** consistently applied legal principles, unbiased decision makers, and a “transparency” about how decisions are made;
- **Respectful treatment:** individuals are treated with dignity and their rights are obviously protected;
- **Trustworthy authorities:** authorities are benevolent, caring, and sincerely trying to help the litigants—this trust is garnered by listening to individuals and by explaining or justifying decisions that address the litigants’ needs.¹⁰

Procedural fairness matters to every litigant who appears before a judge, but “[w]hat is striking about procedural justice judgments is that they also shape the reactions of those who are on the losing side.”¹¹ People are in fact more willing to accept a negative outcome in their case if they feel that the decision was arrived at through a fair method. Significantly, even a judge who scrupulously respects the rights of litigants may nonetheless be perceived as unfair if he or she does not meet these expectations for procedural fairness.

Of course, this does not mean that people are happy if they lose their case and fail to obtain the outcomes they desire. It does mean, however, that they are more willing to accept and abide by the decisions of judges when those decisions seem to have been made fairly. And their views of judges, the court system, and the law are more favorable following an experience in which their case is handled via a fair procedure.

⁹ WHY PEOPLE OBEY, *supra* note 5, at 23.

¹⁰ *Id.* at 22-23. See also David B. Rottman, *Adhere to Procedural Fairness Principles Throughout the Justice System*, CRIM. & PUB. POL’Y (publication pending 2007), manuscript at 1.

¹¹ WHY PEOPLE OBEY, *supra* note 5, at 23.

PROCEDURAL FAIRNESS INCREASES COMPLIANCE WITH COURT ORDERS.

Procedural fairness reduces recidivism because fair procedures cultivate the impression that authorities are both legitimate and moral.¹² Further, “[o]nce the perception that legal authorities are legitimate has been shaped, compliance with the law is enhanced, even when it conflicts with one’s immediate self-interest.”¹³ Legitimacy is created by respectful treatment, and legitimacy affects compliance. This is not to say that judges are unable to sanction defendants, but “sanctions, when imposed in such a manner as to insult the dignity of persons, can also function to increase rather than reduce future offending.”¹⁴ Judges are responsible for upholding the law and that requires punishing defendants when they have broken the law, but judges also have the further responsibility of protecting the rights and human dignity of the defendant whom they have sentenced.

Policies of procedural fairness can have wide-spread application and impact. For example, there is “at least moderate support”¹⁵ for the assertion that batterers who are treated according to the precepts of procedural fairness are less likely to recidivate “even in the face of adverse outcomes,”¹⁶ such as arrest. However, “those who felt they were treated less fairly, were less satisfied with the court process, and were less likely to view the court as legitimate were more likely to have new criminal cases.”¹⁷ Batterers are even less likely to violate an order for protection if they feel that their cases were handled in a fair manner.¹⁸

There have been many innovative approaches to implementing procedural fairness policies in order to raise perceptions of legitimacy and in turn compliance rates. The Red Hook Community Justice Center in Brooklyn, New York, was established as an experiment in order to focus on these precise types of issues: “[Community courts] address concerns that courts have become revolving doors in which ‘the process is the punishment’—all too many defendants leave court following a brief but unpleasant experience only to return on similar charges with no effort having been made to address either their underlying problems or the effects of their anti-social

¹² Tom R. Tyler, *Legitimacy and Legitimation*, 57 ANN. REV. PSYCHOL. 375 (2006).

¹³ Raymond Paternoster, et al., *Do Fair Procedures Matter? The Effect of Procedural Justice on Spouse Assault*, 31 LAW & SOC’Y REV. 169 (1997); Tom R. Tyler, et al., *Reintegrative Shaming, Procedural Justice, and Recidivism: The Engagement of Offenders’ Psychological Mechanisms in the Canberra RISE Drinking-and-Driving Experiment*, 41 LAW & SOC’Y REV. 553 (2007).

¹⁴ Paternoster, *supra* note 13, at 169.

¹⁵ *Id.* at 192.

¹⁶ *Id.* at 163.

¹⁷ Deborah A. Eckberg & Marcy R. Podkopacz, *Family Court Fairness Study*, Fourth Judicial District Research Division (Hennepin Co., Minn.) 34-35 (2004).

¹⁸ *Id.* at 34-35.

behavior on the community.”¹⁹ Red Hook’s goal as a community-court model was to focus both on procedural fairness and on helping litigants address the problems behind their criminal behavior with more drug treatment options, job placement, and educational programs. Red Hook’s ability to provide individualized treatment to their defendants through different sentencing criteria and more one-on-one interaction with the judge has transformed the community. After two years in operation, “the public’s fear of crime dropped and public confidence in local justice system agencies more than doubled, suggesting that the community court has had positive effects on neighborhood perceptions of the legitimacy of the court system.”²⁰

¹⁹ Frazer, *supra* note 4, at 5.

²⁰ *Id.* at 8.

ALTHOUGH THE PUBLIC PERCEPTION OF THE COURTS
IN RECENT YEARS HAS BEEN AMBIVALENT,
THERE IS REASON TO BE OPTIMISTIC.

The judicial branch does not escape the general dissatisfaction Americans have with the legislative and executive branches of government. Perceptions of the court system have been “more stable” than the other governmental branches since the 1970s and 1980s,²¹ but public confidence in the judicial branch is still quite low when it is compared with many other institutions.²²

One of the major factors behind the general ambivalence is widespread misinformation about the judicial branch. The public has a tendency to see the judicial branch as intimately connected with other groups that help constitute the legal process, from the legislators who draft laws to the police who enforce them. The actions of these other institutions tend to “spill over onto defendant evaluations of their experience with courtroom personnel and their general sense of fair treatment.”²³ While it may not be feasible for judges to tackle widespread public education, it is especially important for judges to realize that “people’s experience with any one part of the criminal justice system affects the views of all the others, any contact with the courts, including everything from official notifications to the condition of the courthouse itself, can affect public trust and confidence.”²⁴ Security guards and even janitors affect the public’s experience in the courthouse, but judges uniquely shape public perceptions because of their position in the courts.

When California citizens were surveyed in 2005 about their perceptions of their state courts, 30% believed that the state courts were doing “excellent” or “very good” whereas 33% thought they were only “fair” or “poor.”²⁵ The dichotomous split of approval for the court system is not only in California. The State of Minnesota conducted a study with similar results in 2006.²⁶ In Brooklyn, New York, 57% of people reported a generally “positive” outlook towards the courts before the 2002 opening of the Red Hook Community Justice Center.²⁷ After two years in operation, the public’s positive perception of the local court system in Red Hook increased to an impressive 78%.²⁸

²¹ David B. Rottman, *Trust and Confidence in the California Courts*, Administrative Office of the Courts, 10 (2005) [Hereinafter Rottman 2005].

²² Frazer, *supra* note 4, at 1.

²³ Casper, *supra* note 3, at 498.

²⁴ Public Agenda & Dobbie Research, *Trust and Confidence in the California Courts*, Administrative Office of the Courts, 10 (2006).

²⁵ Rottman 2005, *supra* note 21, at 8.

²⁶ Minnesota has conducted a similar study: Decision Resources, Ltd., *Minnesota State Courts: 2006 Survey of Minnesota Residents* (2006).

²⁷ Frazer, *supra* note 4, at 5.

²⁸ *Id.*

**THE PUBLIC EXPANDS THEIR KNOWLEDGE ABOUT THE COURTS
BOTH THROUGH DIRECT EXPERIENCE IN THE COURTROOMS
AND THROUGH VARIOUS MEDIA SOURCES.**

People can increase their approval of the courts by interacting directly with the court system as jurors, witnesses, victims, and litigants. A person who has served on a jury is more likely to give the court system a higher overall approval rating than someone who has not.²⁹ After jury duty ends, approximately 55% of jurors reported being “somewhat more” or “much more” confident in the court system.³⁰ But direct experience does not always lead to an increase in approval, especially in high-volume courts like family or traffic court.³¹ Importantly, litigants in family or traffic court—areas large segments of the population experience personally—are significantly less likely to approve of the court system because of the perception that they are less procedurally fair.³²

Direct interaction with the courts is a way to gain knowledge about the courts, but most members of the public receive information about the courts indirectly through various media outlets. Approximately 69% of surveyed Californians said that they “often” or “sometimes” receive information about the courts from TV news programs and 59% gain knowledge about the courts from newspapers or magazines.³³ These forms of media are all legitimate avenues for understanding court decisions, but TV news programming rarely delves into the depth necessary to increase the public’s understanding of the legal process and the courts’ responsibilities. Media discussion of the role of the court vis-à-vis the other branches of government is rare.

While TV news programming aims to provide information to its audience, entertainment television, such as *Law and Order* or *Judge Judy*, is strictly for leisurely amusement. Forty-nine percent of people claim that they receive knowledge about courts from television shows whose goal is to entertain rather than enlighten. Many people will not interact directly with the court system, but almost all Americans have some access to television. People who get knowledge about the courts from entertainment television actually report that they feel less familiar with how the courts operate.³⁴ Moreover, indirect exposure to the courts via the media often has a divisive effect. TV news programs provide legitimate access to the courts but no true depth to the coverage, while entertainment television provides lots of detail that is often inaccurate or misconstrued. The best way for Americans to glean knowledge about the court system is to interact directly with it, and the content of that interaction certainly can affect public opinion.

²⁹ Rottman 2005, *supra* note 21, at 17.

³⁰ *Id.* at 16.

³¹ *Id.*

³² *Id.* at 17.

³³ *Id.* at 11.

³⁴ *Id.*

LITIGANTS HAVE A POWERFUL NEED
TO EXPRESS THEMSELVES VOCALLY
DURING THE COURT'S PROCEEDINGS.

People have a powerful urge and need to express their thoughts, experiences, or even their questions. “[B]eing listened to is *symbolically* important, as it reveals that group authorities value the individuals’ standing in their social group.”³⁵ Litigants make a strong correlation between the ability to speak and a judge’s respectful treatment of them as individuals; it demonstrates civic competence. After all, from a litigant’s point of view, if the judge does not respect litigants enough to hear their side or answer their questions, how can the judge arrive at a fair decision? The belief that one can go to legal authorities with a problem and receive a respectful hearing in which one’s concerns are taken seriously is central to most people’s definition of their rights as citizens in a democracy. Although many people never actually go to court, believing that they could go to court if they needed to—and that, if they did, they would receive consideration—is a key antecedent of trust and confidence in the legal system.³⁶

This need for people to speak is not primarily about whether or not they believe that their voice gives them more control of the situation.³⁷ Amazingly, even people who are told that their voice will have *no* impact on the decision will still perceive the situation as fairer if they get to speak. In Lind, Kanfer, and Earley’s study on voice,³⁸ participants were asked to rate the perceived fairness of a work interaction where the experimenter doled out a demanding workload. The study used three scenarios with differing levels of voice by the participants. In one voice condition, the experimenter only gave out the schedule and did not allow the participants to provide any feedback. In the “predecision voice” condition, the experimenter handed out a tentative schedule and asked for the participants’ opinions. After listening to them, he decreased the amount of work to more closely resemble their requests. In the “postdecision voice” condition, the experimenter gave out the work schedule and said that it would not be changed, but he asked for their opinions anyway. After listening to the participants, he restated his initial decision.

The researchers discovered that the predecision voice condition was perceived as the most fair. But even the postdecision voice was perceived as significantly fairer by the participants than the condition where no input was solicited at all even though they were explicitly told that what they

³⁵ Larry Heuer, *What’s Just about the Criminal Justice System? A Psychological Perspective*, J. LAW & POL’Y 211 (2005).

³⁶ Tyler, et al., *supra* note 3.

³⁷ MacCoun, *supra* note 2, at 23.

³⁸ E.A. Lind, R. Kanfer & C. Early, *Voice, Control & Procedural Justice*, 59 J. PERSONALITY & SOC. PSYCHOL. 952 (1990).

said would have no impact on the decision.³⁹ Although these participants in an experiment rated the postdecision voice as fairer than having no voice at all, we as judges cannot consider it fairer in reality to solicit an opinion from someone who has *no* potential to affect the outcome. The researchers called the postdecision voice “patently unfair,”⁴⁰ and we agree, of course, that litigants should not be granted an arbitrary voice in the courtroom merely to pacify this need to speak and participate. Judges should know, though, that voice has a positive influence on public perception of the courts as long as people believe that the judge sincerely considered what they said when making their decision.⁴¹

These studies demonstrate how much of an emphasis people place on the ability to speak about their experience or opinions. The strong desire to have a voice has a huge implication in how the public views the fairness of the courts, especially given that only 19% of the public surveyed in California would strongly agree that the courts presently allow people to express their views.⁴²

³⁹ MacCoun, *supra* note 2, at 23-44.

⁴⁰ *Id.* at 24 (quoting Lind, Kanfer, & Earley).

⁴¹ Tom R. Tyler, *Conditions Leading to Value Expressive Effects in Judgments of Procedural Justice: A Test of Four Models*, 52 J. PERSONALITY & SOC. PSYCHOL. 333-344 (1987).

⁴² Rottman 2005, *supra* note 21, at 26.

BODY LANGUAGE INFLUENCES HOW LITIGANTS PERCEIVE THE JUDGE AND THE JUDGE'S DECISION.

The old adage that actions speak louder than words holds a powerful amount of truth for attorneys, litigants, and judges alike. It's difficult to do controlled, double-blind studies in the courtroom to get specific measurements of the effect there of nonverbal behavior. But general research indicates that nonverbal cues are often more important than verbal ones in ordinary communication.

In interpersonal communication generally, studies indicate that nonverbal behaviors account for 60% to 65% of the meaning conveyed.⁴³ Significantly, when nonverbal cues conflict with what is actually being said in words, people are more likely to believe what is being conveyed to them nonverbally.⁴⁴ And nonverbal communication is the main means for expressing or experiencing emotion.⁴⁵

In 2001, researcher Laurinda Porter conducted in-court observations of trial judges' nonverbal behavior in the Fourth Judicial District of Minnesota (Hennepin County). She followed up these observations with an attitude survey that explored how they those judges felt about nonverbal communication.

Porter noted that "almost all the judges observed used nonverbal behaviors . . . that are considered to be ineffective and in need of improvement. About one-third of the judges used these ineffective behaviors frequently."⁴⁶ Some of these behaviors on the bench included the more obvious concerns such as a failure to make eye contact, focusing on a cup of coffee, and the use of a sarcastic, neutral, or exasperated tone of voice. She also noted actual displays of negative emotions, such as anger or disgust, sighing audibly, kicking feet up on the table, and "using self-oriented gestures such as rubbing, scratching, picking, licking, or biting parts of the body (to excess)."⁴⁷

Despite needing some improvement at effective nonverbal communication, 89% of the surveyed judges in Hennepin County said that they believed their behavior in the courtroom affected the

⁴³ Laura K. Guerrero & Kory Floyd, *Nonverbal Communication in Close Relationships* 2-3 (2005).

⁴⁴ *Id.*

⁴⁵ *Id.* at 3.

⁴⁶ Laurinda L. Porter, *Nonverbal Communication in Courtrooms at the Hennepin County Government Center: A Report on Observations of Fourth Judicial District Judges in March and April 2001* 4 (Hennepin Co., Minn., June 2001).

⁴⁷ *Id.*

litigants' satisfaction with the outcome of their case.⁴⁸ As Porter notes, "If judges do care about showing care and concern and understand that their behavior has something to do with the parties' satisfaction, then it follows logically that judges will want to do something about their nonverbal communication to assure that the message they want to send is in fact the message that is received."⁴⁹

Examples of nonverbal communication include facial expressions, the speed of speech, the pitch and volume of the voice, the use of gap-fillers like "uh" and "umm," gestures, posture and body position, attire, eye contact, and the distance between speaker and listener. Nonverbal communication cues may differ from culture to culture; some might be offended by too much eye contact, while others would find the presentation more engaging.⁵⁰

Porter's study of judges in Hennepin County, combined with general research on the importance of nonverbal communication, suggests that this is an area of great potential for improvement by judges. Even without court-specific data, the available research and common sense both tell us that many litigants are affected by the nonverbal behavior of judges. Porter's in-court observations showed judges how their specific behaviors in court might affect litigants, including by detracting from the messages the judges were trying to convey of concern for the litigants, fairness and impartiality, and competence.

Educators, psychologists, speech and communication researchers, and others have done significant work to make suggestions of ways to improve nonverbal communication skills.⁵¹ Most trial judges could benefit from objective feedback about the nonverbal cues they are giving in the courtroom, along with specific suggestions for improvement.

⁴⁸ *Id.*, Appendix at 5.

⁴⁹ *Id.* at 6.

⁵⁰ See R.E. AXTELL, *GESTURES: THE DO'S AND TABOOS OF BODY LANGUAGE AROUND THE WORLD* (1998).

⁵¹ See generally JULIA T. WOOD, *COMMUNICATION MOSAICS: AN INTRODUCTION TO THE FIELD OF COMMUNICATION* Chap. 5 (2006). For a list of techniques for improving nonverbal communication skills tailored to the workplace, see MARY ELLEN GUFFEY, *BUSINESS COMMUNICATION: PROCESS & PRODUCT* 90 (5th ed. 2006).

UNLIKE THE PUBLIC,
JUDGES FOCUS ON THE FAIRNESS OF CASE OUTCOMES
INSTEAD OF THE PROCESS.

While the public emphasizes fair procedures, judges and attorneys focus on fair outcomes, often at the expense of attention to meeting the criteria of procedural fairness that are so important to the public's perception of the court. Perhaps because of this different focus, in California, "on average, attorneys tend . . . to view procedures in the California courts as fairer than do members of the public: an average of 3.0 for attorneys compared to 2.85 for the public."⁵² Attorneys may perceive procedures to be fairer because that is not as much of a critical point of attention for them,⁵³ or also because they are more familiar with the court's typical procedures and thus do not feel as lost during the process.⁵⁴

An interesting study provides some insight. A number of federal appellate judges reviewed police-citizen encounters raising Fourth Amendment issues. Half the judges read about a search that was conducted fairly, with polite police who identified themselves from the outset and who listened to the citizen's side of the story; the other half read about a search that was conducted without much procedural fairness, with rude and hostile officers who didn't initially identify themselves and who never gave the citizen a chance to explain the situation. While judges recognized differences in the police behavior, those differences made no difference in the way the judges decided the cases under the Fourth Amendment.⁵⁵ Judges are trained to focus on the relevant legal issues and to provide fair outcomes. In the public's eye, however, disrespect and blatant bias are certain ways to create dissatisfaction and to be perceived as procedurally unfair. This dissonance between the expectations of judges and the public suggests "that the meaning of fairness among judges is considerably different . . . [and] outcome concerns had a greater influence among judges than the procedural criteria of trust, neutrality, and standing" that constitute the public's conception of procedural fairness.⁵⁶

This difference may be more than just a little problematic since perceptions of procedural fairness have a substantial impact on both satisfaction *and* compliance for the public. However, this is not a difference that affects only judges and litigants; this is perhaps the inherent dissonance that exists between all decision makers and decision recipients. Social psychology professor Larry Heuer found generally in an experiment involving college students, who were tasked randomly either to be the decision maker or the decision recipient, that "decision recipients [were] oriented primarily to procedural information, while decision makers [were]

⁵² Rottman 2005, *supra* note 21, at 25.

⁵³ Rottman 2007, *supra* note 10, at 8.

⁵⁴ Rottman 2005, *supra* note 21, at 11, 18.

⁵⁵ Heuer, *supra* note 34, at 217.

⁵⁶ *Id*

oriented primarily to societal benefits,"⁵⁷ which are generally the outcomes. Decision makers, or judges, who are aware of these differences can better cater their remarks to the needs and expectations of litigants and the public so as to ensure better satisfaction and compliance.

The mediation process is one attempt to bridge this expectation divide by meeting the needs of both groups.⁵⁸ Judges, who were focusing upon achieving legal solutions, historically have employed a variety of types of procedures to meet those ends, including settlement conferences. But litigants were often excluded from key moments during such conferences. When lawyers emerged from a back room and announced to their clients that they had achieved a good outcome, the lawyers were surprised to find that their clients were often angry instead of pleased. From a traditional point of view, lawyers and judges were confused. They had come upon a legally appropriate outcome and thought that they had done their job. But the parties had no voice and could not see that the procedures were neutral because there was no transparency in the process. They did not see any evidence that their concerns were being taken seriously because they had minimal contact with the judge. As a result, public dissatisfaction could be high, and the parties might not abide by the agreement.

Mediation, or court-annexed arbitration, was initiated to give people a forum that was more consistent with what they were expecting out of their involvement with the court. Mediation leads to greater satisfaction and compliance with the agreements. People are directly involved in a mediation session; they get to have a voice and see evidence that the authority figure is listening to and addressing their concerns.

⁵⁷ *Id.* at 218.

⁵⁸ Tom R. Tyler, *The Quality of Dispute Resolution Procedures and Outcomes: Measurement Problems and Possibilities*, 66 DEN. U. L. REV. 419 (1989).

**CASE VOLUME OF COURTS
IS A MANAGEMENT CHALLENGE FOR JUDGES,
NOT AN EXCUSE FOR DEEMPHASIZING PROCEDURAL FAIRNESS.**

All judges face real-world pressures. For many judges, volume creates pressure to move cases in assembly-line fashion—a method that obviously lacks in opportunities for the people involved in that proceeding to feel that they were listened to and treated with respect.

The vast majority of cases do not go to trial. Judges cannot rely then on the safeguards attendant to trial to provide litigants and others with a feeling of respect, voice, and inclusion. Their impressions of judges and our justice system—for better or worse—largely will be formed by their participation in mass-docket arraignments, probation revocations, calendar calls, and other settings, not trials.

Due process is a legal term, and judges are trained to provide due process. Litigants, jurors, witnesses, and courtroom observers are not trained in due process, but they do form opinions of us based on their observations. Even if minimum standards of procedural due process are met at all times, damage may be done to the court system in mass-docket proceedings that leave large segments of the public feeling that the courts were not fair. This may be reflected in the results of a California survey that found significantly greater dissatisfaction with the courts by respondents who had court experience in traffic or family-law cases, which often are handled in high-volume dockets.⁵⁹

Everyone who comes through the court system has a right to be treated with respect 100% of the time, a right to be listened to during the process, and a right to have key rulings in the proceeding explained in terms that they can understand. Sufficient judicial officers need to be provided so that every docket in the courthouse can be handled in a manner that respects these rights, and in turn enhances public respect for the judicial system and its judges.

⁵⁹ Rottman 2005, *supra* note 21, at 16.

PERCEPTIONS OF PROCEDURAL FAIRNESS
DIFFER DRAMATICALLY
AMONG MINORITY AND MAJORITY POPULATIONS.

A wide division exists among different minority populations in the frequency with which people express approval of the court system. Asian populations generally hold significantly higher approval ratings for the judicial branch than do Hispanics, African Americans, or even Caucasians.⁶⁰ However, when asked about the probability of fair outcomes in court, all of these major ethnic groups "... perceive 'worse results' in outcomes for African-Americans, low-income people, and non-English speakers."⁶¹ It is troubling that a wide consensus believes these groups consistently receive less fair outcomes.

As a group, African Americans feel that they receive less fair outcomes in their cases. When compared to Hispanics and Caucasians, 70% of African Americans believe that they are treated "somewhat" or "far" worse. African Americans are also two times more likely to believe that a court's outcome will "seldom" or "never" be fair as they would believe that the outcome will "always" or "usually" be fair.⁶² Further, African-American defendants who enter the courtroom "report worse treatment, more negative outcomes, lower perceptions of the quality of the court's decision-making process, and less trust in the motives of court actors. After the case is decided, these negative perceptions translate into less satisfaction with the court overall and less acceptance of the court's decision, all of which in turn lower compliance"⁶³ It's little wonder that these attitudes negatively impact recidivism. And these perceptions may well be reality-based: though true apple-to-apple case comparisons are difficult to make, African Americans are 4.8 times more likely to be incarcerated and are generally given much harsher sentences than white defendants.⁶⁴

While people with different ethnic and racial backgrounds differ in the degree to which they have trust and confidence in the legal system, people are concerned about fair procedures irrespective of their ethnicity and economic status and are willing to defer to a court's judgment if procedural fairness exists.⁶⁵ Procedural fairness is the primary factor that shapes perceptions of the judicial system.⁶⁶ However, since African Americans perceive less fairness, it is critical to

⁶⁰ Rottman 2005, *supra* note 21, at 8.

⁶¹ *Id.* at 30.

⁶² Frazer, *supra* note 4, at 4.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Tom R. Tyler, *What Do They Expect? New Findings Confirm the Precepts of Procedural Fairness*, CALIF. CTS. REV., Winter 2006, at 23.

⁶⁶ Tom R. Tyler, *Governing Amid Diversity: Can Fair Decision-Making Procedures Bridge Competing Public Interests and Values?*, 28 LAW & SOC'Y REV. 701 (1994); Tom R. Tyler, *Multiculturalism and the Willingness of Citizens to Defer to Law and Legal Authorities*, 25 LAW & SOC. INQUIRY 983 (2000); Tom R. Tyler, *Public Trust*

focus on what alleviates or aggravates that difference. Interestingly, “[d]efendants at Red Hook were not only more generally satisfied than those at the traditional court, but there was less variation by race and socioeconomic status.”⁶⁷ The Red Hook Community Court in Brooklyn seems to have eliminated the distinctions between perceived levels of fairness among economic *and* ethnic divisions. This is of paramount importance because of the demonstrated and pervasive level of distrust of the judicial system among African Americans; “[i]f community courts neutralize this effect, they make an important contribution to improving the legitimacy of the court in the eyes of a population disproportionately affected by the criminal justice system.”⁶⁸

and Confidence in Legal Authorities: What Do Majority and Minority Group Members Want from Law and Legal Authorities?, 19 BEHAV. SCI. & L. 215 (2001).

⁶⁷ Frazer, *supra* note 4, at IV.

⁶⁸ *Id.* at 27.

RECOMMENDATIONS FOR CHANGE

What can an individual judge do?

1. As a matter of practice, explain in understandable language what is about to go on to litigants, witnesses, and jurors. The more they know what to expect, the more likely they will be able to comprehend. Judges need to accept that it is their ultimate responsibility to ensure people understand their processes and orders.
2. Learn how to listen better. Listening is not the absence of talking. There are some excellent books about improving listening. The first step is good self-analysis. Each of us has different strengths and weaknesses. All of the literature concludes that you can become a better listener. The local academic community might be a good repository of advice.
3. While it is understandable to believe that a lawyer will explain judicial orders, not every litigant has a lawyer who will ensure an order is understood. It's your order. You have a responsibility to explain it in understandable terms.
4. Put something on the bench as a mental reminder that patience is a virtue not always easily practiced.
5. At the start of a docket, explain the ground rules for what will happen. For example, explain why certain cases will be heard first or why what litigants or defendants can say is limited in time or scope.
6. Share and discuss this paper with the courtroom staff. They can play a critical role in giving a judge feedback, reminders, and support.
7. Arrange to have yourself videotaped, particularly when you preside in heavy calendars. Ideally, review the tape with a professional or colleagues who will aid your analysis, but even if no one sees it except you (and perhaps a partner or spouse), you can still learn a lot about how you are perceived by the people before you.
8. Enlist the local academic community. Professors who specialize in communication and nonverbal behavior can offer great insight.
9. Thank people for their patience.

What can your court do?

1. Adopt the National Center for State Courts' CourTools, a set of ten trial-court-performance measures that offer perspective on court operations. If all ten are more than is feasible, start with number one: Access and Fairness.
[Go to http://www.ncsconline.org/D_Research/CourTools/tcmp_courttools.htm.]
2. Examine how your court deals with the three most troubling areas courts have in affording a high degree of procedural fairness: self-represented people, family law, and traffic offenses.
 - a. There is increasing understanding that a good trial judge must change not only the processes that lead up to the courtroom, but also the way the courtroom itself is conducted. Judicial officers and those who work with them are beginning to think of ways to manage the courtroom so that neutrality is enhanced by making the systems work for all, regardless of whether they have a lawyer. People who appear pro se are more likely to be poor, a minority, and overwhelmed by the legal process.
 - b. Some fear that changing court procedures to be friendly to the self-represented undercuts judicial neutrality. The American Judges Association is a member of the Self-Represented Litigant Network, which has resources online at www.selfhelpsupport.org.
 - c. Courtroom procedures as a whole must be designed to support the type of relaxed neutral communications between judges and self-represented litigants that is optimal for obtaining the facts necessary on which to base high quality decision-making.
3. Use the research cited in this paper to demand adequate numbers of judicial officers to be able to handle high-volume dockets in ways that *both* move the cases toward a timely disposition *and* allow those coming through the court to feel that they have been respected and listened to.
4. Consider how procedures may affect perceptions of fairness. For example, providing a small-claims litigant a written explanation, even consisting of a few sentences, may be preferable to using a check-the-box form judgment. Or it may be that providing an oral decision from the bench will be seen as fairer than a cursory decision that arrives in the mail.

What can court administrators do?

1. Share this paper with court employees. Engage them in a discussion of the importance of fairness in our courts. As important as the judge may be in the process, the judge is just one piece of the puzzle when it comes to the public's interaction with the court system.

Conduct courtwide training so that all employees understand the important role they play in providing procedural fairness. How litigants are treated by court employees from the moment they enter the courthouse door—or the moment they encounter security personnel at a metal detector—sets the tone.

2. Make it a major project for 2008 to analyze the tone of public interaction that is set in your courthouse. Does it convey respect and care for the people who, often in stress, come there? Could it be improved? Many courthouses have child-care facilities, adequate handicapped-accessible areas (now required by the ADA), and domestic-violence waiting rooms. Are there improvements that should be made at your courthouse? Involve all stakeholders (judges, staff, attorneys, litigants, and the general public) in this process.
3. Treat employees fairly. If court employees do not feel that they are fairly treated in their jobs by court leaders, it is unlikely that they will treat the public any better. The National Center for State Courts' CourTools has a specific measurement tool for employee satisfaction. Court administrators need to strive to create a courthouse work environment that doesn't breed cynicism.
4. Work to provide sufficient support staff so that judges are not distracted by activities that may interfere with their perceived attention to the presentation of cases in the courtroom. For example, if a judge is fiddling with tape recorders and making constant notes of tape counter numbers, that judge is not going to be looking at the litigants and attorneys and is not going to be perceived as having paid careful attention to the parties' dispute. There are many roles that judges take on in understaffed courts and courtrooms. Those roles should be carefully monitored for possible interference with the judge's primary role—hearing and deciding the matter at hand in a way that clearly adheres to the requirements for a high public perception of procedural fairness. Having judges perform duties that might more appropriately be done by a clerk should especially be avoided in high-volume dockets.
5. Provide opportunities for courthouse visitors to evaluate their experience before they leave the courthouse. Doing so communicates respect and gives an opportunity for voice.

What can researchers do?

1. For more than thirty years, the social-science academic community has learned a great deal about fairness in our courts. The knowledge that they have gained, however, has too often remained within the confines of academia. The truth is that most judges don't know about the journals the research appears in and often don't easily understand the jargon. The National Science Foundation and others who fund social-justice research need to reach out to judges to develop strategies to ensure that sound academic social-science research is shared in forms that are likely to produce change within the courts—journals like *Court Review*, the quarterly journal of the American Judges Association, and judicial-education conferences are key venues for the dissemination of this information.

2. While there is a lot of research at the trial-court level on the issue of procedural fairness, there is little research about how the concept applies at the appellate level. This could be an important area for additional thought and research.
3. The American Judges Association encourages the National Highway Traffic Safety Administration to fund research specifically targeted to improving the procedural fairness of courts dealing with traffic cases.
4. Substantial research documents the need to have a voice in the proceedings. Usually, litigants express themselves in court through their attorneys. Researchers could attempt to determine whether it is always sufficient for the litigant to be represented by an attorney in a forum in which the litigant is present, or whether litigant satisfaction would be substantially improved by having some time in which the litigant is heard from directly. This sort of research could be done in a variety of contexts, civil and criminal.
5. Help to evaluate the potential consequences on perceptions of procedural fairness through pilot projects on changes in court procedure. At a minimum, changes in procedure should not reduce the sense of procedural fairness by people who come to court.

What can judicial educators do?

1. The American Judges Association encourages judicial educators to simply distribute this paper as a start. (We'll happily provide it in electronic form.) Judicial education is driven by advocacy; that is, educators try to get judges to *do* something by *telling them about* something. If judicial educators simply make good, accessible information about procedural fairness known to judges, change will begin to occur even without a call for specific action.
2. Judges should be formally educated on the implications of research regarding procedural issues and action steps they might take. Procedural Fairness might be developed as an intensive course of study presented by the National Judicial College. But, in addition to considering Procedural Fairness as a stand-alone subject, it also should be integrated into virtually all judicial-education subject areas.
3. Judicial education must include—for lack of a better term—“leadership” development. Programs like the Leadership Institute in Judicial Education at the University of Memphis help participating judges to understand themselves better, as well as how others learn and change. Such programs teach the role of emotions in those processes in ways that can be useful in educating others, in judging, and in life. Judges need honest feedback in a safe environment in order to build self-awareness and continue to develop as leaders in their courtrooms.

4. Judicial educators need to train judicial mentors. The habits and values judges adopt within the first 24 months are likely to be the ones they keep throughout their careers. Effective mentoring is a key in shaping this.

What can court leaders do?

1. The American Judges Association encourages the Conference of Chief Justices to place the issue of procedural fairness in state courts on their agenda during 2008. Each state Chief Justice has enormous influence on the agenda for justice in their state. Collectively the Conference of Chief Justices can set the agenda for our nation's state courts. It may at first glance seem presumptuous for the American Judges Association to encourage the Conference to place this issue on their agenda in 2008. Many states already are deeply committed to improving the procedural fairness of their courts, and many individual Chief Justices are champions of this issue. But the performance of our courts on matters of procedural fairness has certainly not been perfected, which is why the Conference of Chief Justices should place this issue on their agenda.
2. Similarly, the American Judges Association encourages the Conference of State Court Administrators to place the issue of procedural fairness on their agenda during 2008. We acknowledge the leadership of COSCA in developing excellent white papers to guide future action; we have modeled our white-paper process on COSCA's excellent efforts. State-court administrators have been the traditional champions of improved case management. The new mantra of court administration should be that effective case management that also affords procedural fairness to litigants is the essence of effective court administration. Unless both goals are achieved, the system of justice will flounder.
3. The American Judges Association encourages courts to examine the National Center for State Courts' CourTools. Our goal is to have at least 100 additional courts adopt and implement the CourTool on access and fairness in 2008.
4. The American Judges Association invites the courts community to plan for a national conference on procedural fairness in 2009. The National Center for State Courts, the National Judicial College, the Center for Court Innovation, the Institute for the Reform of the American Legal System, Justice at Stake, and the American Judicature Society all have tried to improve the fairness of our courts. If these organization and others were willing to partner with the American Judges Association to plan and seek funding for a national conference on procedural fairness, the issue of fairness in our courts could be advanced exponentially.
5. The American Judges Association encourages bar-association leaders to join with the courts to ensure greater procedural fairness in our courts. Lawyers need to be educated on the social-science research described in this paper so that all of the players within the court system can work together toward a justice system that can be respected by all.

6. The American Judges Association encourages the Urban Court Manager Network, working with the Justice Management Institute and others, to examine the issue of how to improve the sense of procedural fairness for racial minorities.
7. By embracing procedural fairness, courts can embrace judicial accountability without reference to specific decisions on the merits of individual cases. Judges should be held accountable for running a courtroom in which everyone is treated with respect, has the opportunity to be heard, and receives an adequate explanation of court orders. Judges cannot avoid controversy—we must decide the cases before us. But in the face of potentially unfair criticism for specific decisions, it should be an effective defense by a judge to be able to say that the people who appear in my courtroom feel they have been treated fairly.

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K. Van den Bos, et al., *Sometimes Unfair Procedures Have Nice Aspects: On the Psychology of the Fair Process Effect*, 77 J. PERSONALITY & SOC. PSYCHOL. 324-336 (1999).

ABOUT THE AUTHORS

Kevin Burke (Kevin.Burke@courts.state.mn.us) has been a district judge in Hennepin County, Minnesota, since 1984. He served as chair of the AJA's White Paper Committee in 2006-2007; he is also a member of the AJA's Board of Governors. He has been elected to four terms as chief judge and three terms as assistant chief judge of the Hennepin County District Court, which has 61 judges and more than 750,000 annual case filings.

Burke received the William H. Rehnquist Award from the National Center for State Courts in 2003; the Rehnquist Award is presented annually to a state judge who meets the highest level of judicial excellence, integrity, fairness, and professional ethics. Among his many other awards, *Governing* magazine named him the Public Official of the Year in 2004; the Minnesota Chapter of the American Board of Trial Advocates named him the trial judge of the year in 2005; and the magazine *Law & Politics* named him one of the 100 most influential lawyers in the history of Minnesota. Burke is a past chair of the Minnesota State Board of Public Defense and was a leader in efforts to improve and expand the state's public defender system.

Burke teaches at the University of Minnesota and University of St. Thomas law schools. He has been a speaker in many states, as well as in Canada, Mexico, China, India, and Ireland regarding improvement in judicial administration and court leadership.

Steve Leben (lebens@kscourts.org) is a judge on the Kansas Court of Appeals, which he joined in June 2007 after nearly 14 years as a general-jurisdiction trial judge in Johnson County, Kansas. He served as president of the American Judges Association in 2006-2007 and has served on the AJA's Board of Governors since 1999 and its Executive Committee since 2002.

Leben received the Distinguished Service Award from the National Center for State Courts in 2003, one of two trial judges recognized that year for contributions nationally to the administration of justice. He has served as the editor of *Court Review*, the journal of the American Judges Association, since 1998.

Leben has presented lectures to lawyers in Kansas and at national and international conferences. He has taught a course on statutory interpretation to law students at both the University of Kansas and University of Missouri-Kansas City law schools. He has published 13 law review articles in the areas of evidence, civil procedure, ethics, and jurisprudence and is the editor of a multivolume practice manual on Kansas family law.

ABOUT THE AMERICAN JUDGES ASSOCIATION

The [American Judges Association](#) (AJA) is the largest independent association of judges in the United States, and it also has about 150 members who are Canadian judges. Formed in 1959, it has about 2,500 members from all levels of the judiciary—municipal, state or provincial, and federal; trial, appellate, and administrative. The majority of its membership consists of state trial-court judges.

The American Judges Association seeks to serve as the Voice of the Judiciary[®] by speaking out on issues of concern to judges and by working to improve the work done by judges and the judiciary. The AJA provides high-quality educational programs for judges at an annual educational conference and publications with information useful to judges. The AJA supports a variety of programs and initiatives that promote fair and impartial courts, including the work of Justice at Stake (www.justiceatstake.org), a partnership of more than thirty organizations, including AJA, dedicated to maintaining fair and impartial courts.

The American Judges Association is governed primarily by a 45-member Board of Governors and an eight-member Executive Committee. This white paper was approved by American Judges Association acting through its General Assembly at its meeting on September 29, 2007.

ACKNOWLEDGMENTS

The authors and the American Judges Association wish to thank the following people for their advice and help in developing this position paper: Paul Anderson, Seth Anderson, Michael Bender, Greg Berman, Bert Brandenburg, Frank Broccolina, Colin Campbell, Alan Carlson, Mary Celeste, John Conery, Douglas Denton, Jay Dilworth, Gordon Doerfer, Sue Dosal, Gerald Elliott, Donovan Frank, Gene Flango, Geoff Gallas, Timothy Fautsko, Larry Heuer, Elizabeth Hines, Collins Ijoma, Dallas Jamison, William Johnston, Alan Kalmanoff, Rebecca Kourlis, Susan Ledray, Dale Lefever, Barry Mahoney, Tanja Manrique, Lynn Mather, Thomas Mengler, Alanna Moravetz, Gayle Nachtigal, Brian Ostrum, Diane Pawlowicz, Bruce Peterson, Kathleen Flynn Peterson, Marcy Podkopacz, David Rottman, Steve Schele, Roy Schotland, Noreen Sharp, Steve Swanson, James Swenson, Sandra Thompson, Tom R. Tyler, Chelle Uecker, Kent Wagner, Roger Warren, David Wexler, Russell Wheeler, Penny White, and Richard Zorza. Thanks also to Laura Taken, who is Judge Burke's law clerk. Special thanks to Rachel Cuning, judicial assistant to Judge Leben, who provided substantial research and drafting assistance for the paper.

Section A: General Information

General Information		Notes	
4. Observation Start Time:	__ : __ A.M. / P.M.		
5. Observation End Time:	__ : __ A.M. / P.M.		
6. Were you able to observe court in the assigned courtroom?	Yes	No	
a. If no, why not?			

Section B: Courthouse Access and Facilities (complete questions 7-20 for first visit to courthouse, then intermittently; complete 21-28 for first visit to each courtroom, then intermittently)

Signage			
7. Were you able to easily find the courthouse? ⁱ	Yes	No	
8. Were there accurate and easy to follow signs directing public to courthouse entrance? ⁱⁱ	Yes	No	
9. As you enter courthouse, were there accurate and easy to follow signs to courtrooms and offices? ⁱⁱⁱ	Yes	No	
10. Did you easily find the courtroom or office you needed? ^{iv}	Yes	No	
11. Was all signage multi-lingual / in Braille? ^v	Yes	No	
Courthouse Facilities			
12. Were there long lines getting through security? ^{vi}	Yes	No	
13. Were you protected from weather while in the security line? ^{vii}	Yes	No	
14. Were the restrooms clean & well maintained?	Yes	No	
15. Was the cafeteria clean / well maintained?	Yes	No	
16. Did the elevators / escalators work properly?	Yes	No	
17. Did you feel safe in the courthouse? ^{viii}	Yes	No	
18. Does the court provide factsheets and/or other written information that is clearly marked and accessible? ^{ix}	Yes	No	
19. Was access for people with disabilities available (e.g. ramps, elevators, railings, restroom facilities, etc.)? ^x	Yes	No	
a. If no, please explain.			
20. Describe any aspect of the courthouse that could be improved.			
Inside the Courtroom			
21. Is there enough seating in the courtroom?	Yes	No	
22. Is there enough space for the staff, attorneys, and Judge?	Yes	No	
23. Is the courtroom clean / well maintained?	Yes	No	
24. Does the judge have a private entrance to the courtroom?	Yes	No	
25. Is the courtroom well lighted?	Yes	No	
26. Is the courtroom temperature comfortable (re: heat or a/c)?	Yes	No	
27. Is there sufficient distance between the parties and the Judge?	Yes	No	
28. Is there a safe distance between the parties, witnesses, and the public in the event an argument occurs?	Yes	No	

Section C: Starting Court

Observations		Notes	
29. What time did the Judge first take the bench? __:__ A.M. / P.M. ^{xi}		(do not complete if unsure)	
30. How many uniformed police officers (not sheriff deputies) were waiting in the courtroom for the Judge to begin court? _____			
31. Did the Judge attempt to promptly hear the cases involving uniformed police officers present in court?	Yes	No	
32. Did the Judge introduce him/herself to the public by name at the beginning of court? ^{xii}	Yes	No	
33. Did the Judge apologize for any delay in starting? ^{xiii}	Yes	No	N/A - no delay occurred
34. Was court etiquette and rules clearly posted or explained by the Judge or court staff before court began? ^{xiv}	Yes	No	
35. Did the Judge or court staff provide an explanation for the order in which cases would be called? ^{xv}	Yes	No	

Section D: Case Observations

Delays (i.e. brief delays, not continuances)		Notes	
36. How many delays occurred during court? _____			
37. Estimate the total length of the delays: _____			
38. Did the Judge explain to the public the reason for any delays? If so, what did he/she say?	Yes	No	
Sidebars			
39. How many sidebars occurred while you were observing court? _____			
40. Did the Judge or attorneys explain on the record the results of the sidebars?	Yes	No	
Sentencing			
41. Did the Judge ask each defendant if he or she had enough time to discuss the case with counsel? ^{xvi}	Yes	No	
42. Were Defendants offered the opportunity to speak or ask questions before getting sentenced? ^{xvii}	Yes	No	
43. Did the Judge explain the sentences &/or orders he or she imposed in plain English? ^{xviii}	Yes	No	
44. Did the Judge ask each defendant if he or she understood the sentence, or to repeat his/her understanding of the sentence? ^{xix}	Yes	No	

Other			
45. Could you clearly hear the court proceedings? If not, why not?	Yes	No	
46. Was an interpreter requested at any time?	Yes	No	
47. If so, was one made available?	Yes	No	

Section E: Continuance Chart: Please track the total number of cases observed that were continued, who requested the continuance, and for what reason:

Continued By	Reason for Continuance	Tally	Total
Court	48. Court – Trial in Progress		
	49. Court – Jury unavailable		
	50. Court – Court Closed		
State	51. State – Ass’t District Att’y in trial elsewhere		
	52. State – Witness unavailable		
	53. State – State owes discovery to defense		
	54. State – Didn’t request that in-custody defendant be brought to court		
Defense	55. Defense – Defense attorney in trial elsewhere		
	56. Defense – Witness unavailable		
	57. Defense – Defense attorney no show		
	58. Defense – New / change in defense counsel		
	59. Defense – Defense owes discovery to state		
	60. Defense – Defendant not in custody, did not appear		
Other	61. Other – Defendant in custody, state requested s/he be brought, but s/he was not		
	62. Other – Unexplained joint continuance		

Section F: Disposition Chart: Please track the final disposition of all observed cases that were closed today:

Final Case Disposition (“DEF” = defendant)	Tally	Total #	Notes
63. DEF pled guilty as charged			
64. DEF pled guilty to lesser charge(s)			
65. The Court dismissed or quashed the charge(s)			
66. The State dismissed (<i>nolle prosequi</i>) the charge(s)			
67. The Court found the DEF guilty as charged			
68. The Court found the DEF guilty of lesser charge(s)			
69. The Court found the DEF not guilty			
70. A jury found the DEF guilty as charged			
71. A jury found DEF guilty of lesser charge(s)			
72. A jury found the DEF not guilty			

Section G: General Impressions: Please rate the following on a scale of 1 to 5, where five is “always,” four is “usually,” three is “sometimes,” two is “rarely,” and one is “never.”

Observations		
73. What time did Court end for the day? ___:___ A.M. / P.M.		<i>(do not complete if unsure; lunch recess is not necessarily when court ends for the day)</i>
State ("ADA"): Was the ADA...	Rating (1-5)	Notes
74. ... ready to promptly call the next case?		
75. ... prepared and organized?		
76. ... respectful to all?		
77. ... audible?		
Defense: Were the defense attorneys...	Rating (1-5)	Notes
78. ... present when their case was called?		
79. ... prepared and organized?		
80. ... respectful to all?		
81. ... audible?		
Judge: Was / Did the Judge...	Rating (1-5)	Notes
82. ... ready to promptly call the next case? ^{xx}		
83. ... appear to pay attention to all proceedings? If not, please explain. ^{xxi}		
84. ... explain the purpose of today’s court appearance to all defendants? ^{xxii}		
85. ... respectful to all defendants (e.g., making eye contact, greeting them by name, using a respectful tone, etc.)? ^{xxiii}		
86. ... avoid intimidating defendants?		
87. ... adequately describe what was happening to defendants using plain English? ^{xxiv}		
88. ... respectful to all attorneys? ^{xxv}		
89. ... avoid showing favor towards ADAs or defense attorneys? If no, please explain. ^{xxvi}		
90. ... maintain control of the court, including minimizing disruptions and keeping jurors attentive? ^{xxvii}		
91. ... transparent and stay on the record? ^{xxviii}		
92. ... audible?		
Sheriff’s Deputies: Did they...	Rating (1-5)	Notes
93. ... maintain control of the courtroom?		
94. ... stay alert and pay attention?		
95. ... behave courteously to all?		

End Notes

In addition to the sources cited below, the Center for Court Innovation and the National Judicial College's Improving Courtroom Communication project's Evaluating Procedural Justice: Court Session and Appearance Observation Protocol, the Council for Court Excellence Court Community Observers Project's Criminal Division Observation Form, the Fund for Modern Courts' Family Court General Monitoring Form were all consulted and relied upon during the creation of this instrument.

ⁱ Nat'l Center for State Courts, *CourTools: Access and Fairness* at 3 ("Finding the courthouse was easy.").

ⁱⁱ Nat'l Center for State Courts, *CourTools: Access and Fairness* at 3 ("Finding the courthouse was easy.").

ⁱⁱⁱ Nat'l Center for State Courts, *CourTools: Access and Fairness* at 3 ("I easily found the courtroom or office I needed."); Berman and Gold, *Procedural Justice from the Bench: How Judges Can Improve the Effectiveness of Criminal Courts*, *The Judges Journal*, Vol. 51, No. 2 at 22 ("Court administration can ensure that directional signage within the courthouse is clearly worded and easy to read to minimize confusion.").

^{iv} Nat'l Center for State Courts, *CourTools: Access and Fairness* at 3 ("I easily found the courtroom or office I needed."); Berman and Gold, *Procedural Justice from the Bench: How Judges Can Improve the Effectiveness of Criminal Courts*, *The Judges Journal*, Vol. 51, No. 2 at 22 ("Court administration can ensure that directional signage within the courthouse is clearly worded and easy to read to minimize confusion.").

^v Nat'l Center for State Courts, *CourTools: Access and Fairness* at 3 ("The court makes reasonable efforts to remove physical and language barriers.").

^{vi} Berman and Gold, *Procedural Justice from the Bench: How Judges Can Improve the Effectiveness of Criminal Courts*, *The Judges Journal*, Vol. 51, No. 2 at 21 ("Judges might also publicly acknowledge problems that are beyond their control, such as long wait times to get through security."); Center for Court Innovation and National Judicial College, *Enhancing Procedural Fairness: Draft Menu of Best Practices* ("Reduce waiting time.").

^{vii} Center for Court Innovation and National Judicial College, *Enhancing Procedural Fairness: Draft Menu of Best Practices* ("Whenever possible, make indoor waiting area accessible and respectful.").

^{viii} Nat'l Center for State Courts, *CourTools: Access and Fairness* at 3 ("I felt safe in the courthouse.").

^{ix} Nat'l Center for State Courts, *CourTools: Access and Fairness* at 3 ("The forms I need were clear and easy to understand."); Tyler, *Court Review*, vol. 44 at 31 ("Brochures or websites explaining court procedures, as well as aids such as help desks, are found to be valuable.").

^x Nat'l Center for State Courts, *CourTools: Access and Fairness* at 3 ("The court makes reasonable efforts to remove physical and language barriers.").

^{xi} Center for Court Innovation and National Judicial College, *Enhancing Procedural Fairness: Draft Menu of Best Practices* ("Court session should begin promptly at the time scheduled to demonstrate respect of defendants' time. You can thank the audience members for being on time to show mutual respect. If court does not start on time, court staff may [] should update audience members of when they expect court to start.").

^{xii} Center for Court Innovation and National Judicial College, *Enhancing Procedural Fairness: Draft Menu of Best Practices*.

^{xiii} Center for Court Innovation and National Judicial College, *Enhancing Procedural Fairness: Draft Menu of Best Practices* ("Court session should begin promptly at the time scheduled to demonstrate respect of defendants' time. You can thank the audience members for being on time to show mutual respect. If court does not start on time, court staff may [] should update audience members of when they expect court to start.").

^{xiv} Burke and Leben, *Procedural Fairness: A Key Ingredient in Public Satisfaction* at 20, American Judges Association, 2007 ("As a matter of practice, explain in understandable language what is about to go on to litigants, witnesses, and jurors. The more they know what to expect, the more likely they will be to comprehend. Judges need to accept that it is their ultimate responsibility to ensure people understand their processes and orders."); Berman and Gold, *Procedural Justice from the Bench: How Judges Can Improve the Effectiveness of Criminal Courts*, *The Judges Journal*, Vol. 51, No. 2 at 22 ("Court officers can rethink how courtroom rules are posted, explained, and enforced in a way that is clear and respectful.... Explaining courtroom procedures and rules at the beginning of each court session may reduce frequent interruptions and the need to answer questions and make reprimands."); Center for Court Innovation and National Judicial College, *Enhancing Procedural Fairness: Draft Menu of Best Practices* ("Rules should be simple, clearly posted, and consistent throughout the courthouse. Efforts should be made to use respectful language.... Court staff may choose to recite the basic rules and format of the court proceedings at the beginning of each court session. These procedures can also be posted in the courtroom.").

^{xv} Burke and Leben, *Procedural Fairness: A Key Ingredient in Public Satisfaction* at 20, American Judges Association, 2007 ("At the start of a docket, explain the ground rules for what will happen. For example, explain why certain cases will be heard first or why what

litigants or defendants can say is limited in time or scope.”); Center for Court Innovation and National Judicial College, *Enhancing Procedural Fairness: Draft Menu of Best Practices* (“Explain to court participants the order in which cases will be called (e.g. need lawyer to be present, jail cases take priority, etc.). This demonstrates respect for defendants who are waiting”).

^{xvi} Center for Court Innovation and National Judicial College, *Enhancing Procedural Fairness: Draft Menu of Best Practices* (“Ask defendant if he/she feels he/she had enough time to discuss case with counsel.”).

^{xvii} Burke and Leben, *Procedural Fairness: A Key Ingredient in Public Satisfaction* at 11-12, American Judges Association, 2007 (voice a key aspect of procedural fairness); Nat’l Center for State Courts, *CourTools: Access and Fairness* at 3 (“The judge listened to my side of the story before he or she made a decision.”).

^{xviii} Burke and Leben, *Procedural Fairness: A Key Ingredient in Public Satisfaction* at 20, American Judges Association, 2007 (“While it is understandable to believe that a lawyer will explain judicial orders, not every litigant has a lawyer who will ensure an order is understood. It’s your order. You have a responsibility to explain it in understandable terms.”); Center for Court Innovation and National Judicial College, *Enhancing Procedural Fairness: Draft Menu of Best Practices* (“Explain the terms of the sentence, including the benefits of compliance and the consequences of non-compliance.”).

^{xix} Berman and Gold, *Procedural Justice from the Bench: How Judges Can Improve the Effectiveness of Criminal Courts*, *The Judges Journal*, Vol. 51, No. 2 at 21-22 (“Instead of using a rote series of questions during plea allocutions, judges can ask defendants to repeat back their understanding of the plea agreement. This can help give defendants an opportunity to be heard, as well as ensure understanding.”); Center for Court Innovation and National Judicial College, *Enhancing Procedural Fairness: Draft Menu of Best Practices* (“Ask defendants to repeat their understanding of what the order says.... Consider asking defendants to repeat back to you their understanding of what rights they are surrendering by pleading guilty.... Ask defendants to repeat back what is expected of them and when.”).

^{xx} Berman and Gold, *Procedural Justice from the Bench: How Judges Can Improve the Effectiveness of Criminal Courts*, *The Judges Journal*, Vol. 51, No. 2 at 22 (“Calendaring cases in a way that minimizes wait times demonstrates respect for the busy lives of defendants, witnesses, family members, and jurors.”).

^{xxi} Burke and Leben, *Procedural Fairness: A Key Ingredient in Public Satisfaction* at 14-15, American Judges Association, 2007 (nonverbal cues regarding paying attention a key aspect of procedural fairness); Tyler, *Procedural Justice and the Courts*, *Court Review*, vol. 44 at 31 (“Authorities can provide evidence that they are listening to people and considering their arguments by giving people a reasonable chance to state their case [and] by paying attention when people are making that presentation.”); Berman and Gold, *Procedural Justice from the Bench: How Judges Can Improve the Effectiveness of Criminal Courts*, *The Judges Journal*, Vol. 51, No. 2 at 22 (“Judges who make eye contact and appear alert, engaged, and knowledgeable about the case before them demonstrate greater respect for the defendant and the process.”).

^{xxii} Center for Court Innovation and National Judicial College, *Enhancing Procedural Fairness: Draft Menu of Best Practices* (“State the purpose of each appearance in plain language (e.g. possible plea bargain). You can invite the defendant to tell you what he/she thinks the purpose is.”).

^{xxiii} Burke and Leben, *Procedural Fairness: A Key Ingredient in Public Satisfaction* at 11-12, American Judges Association, 2007 (nonverbal cues showing respect for litigants a key aspect of procedural fairness); Nat’l Center for State Courts, *CourTools: Access and Fairness* at 3 (“I was treated the same as everyone else.”); Berman and Gold, *Procedural Justice from the Bench: How Judges Can Improve the Effectiveness of Criminal Courts*, *The Judges Journal*, Vol. 51, No. 2 at 21-22 (“Appearing approachable and accessible is a key component of procedural justice. Judges should consider addressing defendants by name and thanking them and audience members for their cooperation while court is in session.... Judges who make eye contact and appear alert, engaged, and knowledgeable about the case before them demonstrate greater respect for the defendant and the process.”); Center for Court Innovation and National Judicial College, *Enhancing Procedural Fairness: Draft Menu of Best Practices* (“Greet each defendant by name and with eye contact.... You may choose to thank the defendant for appearing on time... Make eye contact. Consider your body language and reduce intimidating behaviors. Engage in active listening.”).

^{xxiv} Burke and Leben, *Procedural Fairness: A Key Ingredient in Public Satisfaction* at 20, American Judges Association, 2007 (“As a matter of practice, explain in understandable language what is about to go on to litigants, witnesses, and jurors. The more they know what to expect, the more likely they will be to comprehend. Judges need to accept that it is their ultimate responsibility to ensure people understand their processes and orders.”); Berman and Gold, *Procedural Justice from the Bench: How Judges Can Improve the Effectiveness of Criminal Courts*, *The Judges Journal*, Vol. 51, No. 2 at 21 (“Adapting courtroom language to be understood by all – including defendants, witnesses, and other audience members – encourages understanding of the process and makes the system more user-friendly.”).

^{xxv} Berman and Gold, *Procedural Justice from the Bench: How Judges Can Improve the Effectiveness of Criminal Courts*, *The Judges Journal*, Vol. 51, No. 2 at 22 (“Treating courtroom staff and attorneys courteously can also reinforce the impression that the courtroom is a place of mutual respect.”).

^{xxvi} Burke and Leben, *Procedural Fairness: A Key Ingredient in Public Satisfaction* at 6, American Judges Association, 2007 (“**Neutrality**: consistently applied legal principles, unbiased decision makers, and a ‘transparency’ about how decisions are made.”); Nat’l Center for State Courts, *CourTools: Access and Fairness* at 3 (“I was treated the same as everyone else.”); Center for Court Innovation and National Judicial College, *Enhancing Procedural Fairness: Draft Menu of Best Practices* (“Demonstrate neutrality by treating lawyers respectfully and without favoritism.”).

^{xxvii} Lee, C.G., F. Cheesman, D. Rottman, R. Swaner, S. Lambson, M. Rempel & R. Curtis (2013) *A Community Court Grows in Brooklyn: A Comprehensive Evaluation of the Red Hook Community Justice Center*. Williamsburg, VA: Nat'l Center for State Courts (“[E]xtraneous activity has the potential to distract and confuse both litigants and observers, and to create the impression that the case at bar is not the court’s most important concern.”).

^{xxviii} Burke and Leben, *Procedural Fairness: A Key Ingredient in Public Satisfaction* at 6, 16, American Judges Association, 2007 (“**Neutrality**: consistently applied legal principles, unbiased decision makers, and a ‘transparency’ about how decisions are made.... [T]he parties had no voice and could not see that the procedures were neutral because there was no transparency in the process. They did not see any evidence that their concerns were being taken seriously because they had minimal contact with the judge.”).

^{xxix} Nat'l Center for State Courts, *CourTools: Access and Fairness* at 3 (“Court staff paid attention to my needs.... I was treated with courtesy and respect.”).