

# JUSTICE SPEAKERS INSTITUTE TRAINING HANDOUT

## COLORADO PROBLEM SOLVING COURT JUDGES



THE PROCEDURALLY FAIR TEAM

**Hon. Brian MacKenzie (Ret.)**  
*Chief Financial Officer, Justice Speakers Institute*

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HOUSEKEEPING

- This is a 60 minute presentation with no breaks;
- Questions are welcomed;
- To ask a question please raise your hand; and,
- Please be respectful of the opinions of others.

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EVEN MONKEY'S UNDERSTAND FAIRNESS

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### WHICH IS THE MOST IMPORTANT?

1. Outcome Favorability
2. Outcome Fairness
3. Procedural Fairness

[https://www.judges.org/wp-content/uploads/2020/03/Procedural\\_Fairness\\_Bench\\_Card.pdf](https://www.judges.org/wp-content/uploads/2020/03/Procedural_Fairness_Bench_Card.pdf)

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### VIEW OF THE JUDGE

1. Outcome Favorability
2. Outcome Fairness
3. Procedural Fairness

[https://www.judges.org/wp-content/uploads/2020/03/Procedural\\_Fairness\\_Bench\\_Card.pdf](https://www.judges.org/wp-content/uploads/2020/03/Procedural_Fairness_Bench_Card.pdf)

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### CALIFORNIA STUDY

Trust and Confidence in the California Courts: 2005

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### THE PRINCIPLES OF PROCEDURAL JUSTICE/FAIRNESS

1. Voice
2. Neutrality
3. Respectful Treatment
4. Trustworthy Authorities

Don Lynn, President Emeritus, CJDCA 2011

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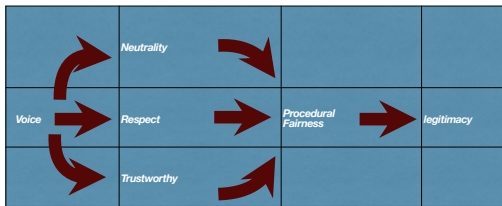
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### IT STARTS WITH VOICE AND ENDS WITH LEGITIMACY



Perspective and procedural justice: Attorney and litigant evaluations of court procedures

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### VOICE

“The personalized experience of appearing before and speaking to a judge in court appears to have a powerful effect ....”

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### VOICE

- The ability to be an active participant in the process;
- The ability to express viewpoints/facts/opinions; and,
- Active listening so they feel heard.

<http://www.courtinnovation.org/research/participant-and-coff/perspectives-4ug-courts>

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### ACTIVE PARTICIPANT

- Provide opportunity to participate;
- Find opportunities to invite the litigant to tell his/her side of the story;
- Learn about specific cultural differences to avoid miscommunications;
- Explain to litigants how information can be presented; and,

<http://www.courtinnovation.org/research/participant-and-coff/perspectives-4ug-courts>

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### EXPRESS THEMSELVES

- Explain to litigants how information can be presented;
- Where appropriate ask open ended questions;
- Ensure that all speakers in court speak clearly, while preventing people talking over each other; and,
- Consider ways to give voice to defendants, either directly or via their attorneys, during all hearings.

<http://www.courtinnovation.org/research/participant-and-coff/perspectives-4ug-courts>

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### ACTIVE LISTENING

- Spend time with the litigant;
- Face the speaker and make eye contact as you listen;
- Don't interrupt;
- Nod your head, and use other mannerisms to show that you're listening; and,
- Listening is not the absence of talking.

<http://www.courtinnovation.org/news/participate-and-empower-the-drug-court>

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### TIME SPENT WITH PARTICIPANT REDUCTION IN RECIDIVISM

The Judge is the Key Component: The Importance of Procedural Fairness in Drug Treatment Courts Court Review  
American Judges Association

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### IMPACT OF VOICE

- Probation Violations -4.4%
- Crimes Committed -6.0%
- Days of drug use -10.1%

<http://www.courtinnovation.org/news/participate-and-empower-the-drug-court>

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### NEUTRALITY

“The most striking finding in this research is the power of the judge, and judicial interactions with the offenders, to promote desistance .....”

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### WHAT DID YOU NOTICE?

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### NEUTRALITY

- Consistently applied legal principles;
- Unbiased decision making; and,
- Transparency and honesty about how decisions are made.

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### CONSISTENTLY APPLIED LEGAL PRINCIPLES

- Be consistent in behavior, treatment of court users, courtroom actions, and rulings;
- Explain court processes when they may appear inconsistent;
- Ensure litigants leave court with a clear understanding of the reasons for a decision; and,
- Spell out what is expected of them.

Burke, Kevin and Steve Lebar, "Procedural Fairness: A Key Ingredient in Public Satisfaction," Court Review American Judges Association

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### PREDICTABILITY OF SANCTIONS AVERAGE NUMBER OF CRIMES PREVENTED PER MONTH

- Medium predictability 4.3
- Low predictability 3.9
- High predictability 1.8

The Judge Is the Key Component: The Importance of Procedural Fairness in Drug Treatment Courts Court Review, American Judges Association

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### PREDICTABILITY OF SANCTIONS AVERAGE NUMBER OF DAYS COURTS PREVENTED SUBSTANCE USE

- Medium predictability 4.1
- Low predictability 2.0
- High predictability 2.7

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### WHAT DID YOU NOTICE?

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### COURT PROCESS

- At the start of a docket, explain the ground rules for what will happen;
- explain why certain cases will be heard first or why what litigants or defendants can say is limited in time or scope; and,
- Use understandable language about what is about to go on to litigants, witnesses, and jurors.

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### GIVING NOTICE

- No Notice 12.0%
- Reminder 10.9%
- Reminder & Consequences 8.3%

<https://www.ojp.gov/pdffiles1/nij/grants/234370.pdf>

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### TRANSPARENCY

- Introduce yourself;
- Explain why certain cases will be heard;
- Explain why what litigants or defendants can say is limited in time or scope;
- Explain sidebars;
- Go beyond rote colloquy questions; and,
- If a defendant seems unsure, offer a short recess so he/she can discuss with counsel.

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### THE IMPACT OF NEUTRALITY

- Probation violations -10.1%
- Crimes committed. -8.3%
- Days of drug use -13.3%

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### POSITIVE JUDICIAL INTERACTIONS

“The judge’s interactions with defendants are crucial in shaping perceptions. Even within the traditional court, defendants who were more satisfied with the judge were more satisfied with the court’s overall fairness.”

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### RESPECTFUL TREATMENT

- Treated with dignity;
- Rights are visibly and clearly protected; and,
- Interactions are appropriate.

Burke, Kevin and Steve Lebar, "Procedural Fairness: A Key Ingredient in Public Satisfaction," Court Review American Judges Association

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### TREATED WITH DIGNITY

- Make appropriate eye contact;
- Acknowledge parties and witnesses by name;
- Treat all people in the courtroom courteously; and,
- Be sensitive to parties and witnesses' discomfort.

Burke, Kevin and Steve Lebar, "Procedural Fairness: A Key Ingredient in Public Satisfaction," Court Review American Judges Association

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### RIGHTS PROTECTED

- Treat all lawyers and litigants respectfully without favoritism;
- Explain what factors will be considered during sentencing; and,
- Describe the benefits of compliance and the consequences of non-compliance when outlining a sentence or order.

Burke, Kevin and Steve Lebar, "Procedural Fairness: A Key Ingredient in Public Satisfaction," Court Review American Judges Association

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### INTERACTIONS

- Thank citizens for their cooperation;
- If you will be particularly busy, acknowledge it, and explain how you will handle it;
- If there are factors that will affect your conduct or mood, consider when appropriate, explain the issue; and,
- Appearing approachable and accessible is key.

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### IMPACT OF RESPECTFUL TREATMENT

- Probation violations -8.5%
- Crimes committed -8.1%
- Days of drug use -12.2%

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### A QUESTION OF TRUST

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### TRUSTWORTHY AUTHORITIES

- Explain decisions;
- Be sincere in the desire to help individuals; and,
- Caring.

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### EXPLAIN DECISION

- When ruling repeat each sides' arguments;
- Ask defendants to repeat back what is expected of them;
- Describe the benefits of compliance and the consequences of non-compliance when issuing an order;
- Explain immediate next steps related all orders, including probation, intake or pre-trial release mandates; and,
- Convey to defendants and to the audience that it is in everyone's best interest if the defendant is able to successfully obey the order of the court.

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### BEING HELPFUL

- It's your order. You have a responsibility to explain it in understandable terms;
- When possible, use simple terms to explain your actions, reasons, and any consequences they may have for the person;
- Ask defendants to repeat back what is expected of them; and,
- Empower staff to be important representatives of your court through their interactions with the public.

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### CARING

- Consider putting something on the bench as a mental reminder that patience is a virtue not always easily practiced;
- Demonstrate the interests and needs of all parties will be fairly considered;
- Emphasize that disputes will be resolved and rights will be protected; and,
- Communicate with the public in an open and ethical manner.

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### IMPACT OF TRUSTWORTHY AUTHORITIES

- Probation Violations -3.2%
- Crimes Committed -2.6%
- Days of Drug Use -1.9%

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### YOU ARE THE KEY

"The mechanism by which...courts reduce substance use and crime is through participants' attitudes toward the judge. When participants have more positive attitudes toward the judge, they have better outcomes. This is true across all subgroups of participants when examining demographics, drug use history, criminality, and mental health."



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### PROCEDURAL JUSTICE/FAIRNESS IMPACT

- Probation Violations -58%
- Crimes Committed -14.8%
- Days of Drug Use -28.1%

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### Thank You For Your Kind Attention

FOR MORE INFORMATION

Contact:

Hon. Brian MacKenzie (Ret.)

[judgemackenzie@justicespeakersinstitute.com](mailto:judgemackenzie@justicespeakersinstitute.com)

[Info@justicespeakersinstitute.com](mailto:Info@justicespeakersinstitute.com)

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