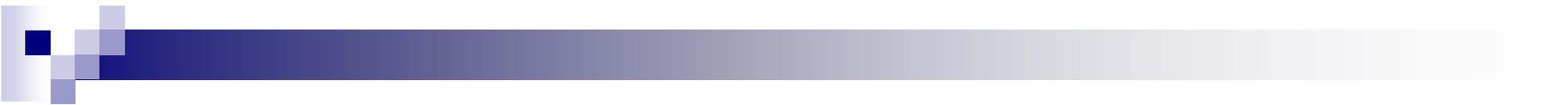


The Role of the Judge

Michael Rempel
Center for Court Innovation
(rempelm@courtinnovation.org)

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Drug Court Professionals, Denver, CO, April 10,
2012, 1:30-3:00 p.m.



Guiding Assumptions

- **Drug courts generally reduce recidivism:**
 - Of 92 adult drug courts evaluated, 88% reduced recidivism (Mitchell et al. 2012)
 - Average recidivism reduction = 8-12 percentage points (Gutierrez and Bourgon 2009; Mitchell et al. 2012; Shaffer 2011)
 - *NIJ's Multi-Site Adult Drug Court Evaluation* found significant reductions in crime and drug use (Rossman et al. 2011)
- **Some drug courts reduce recidivism more than others** (e.g., effects range from negative to cutting recidivism in half)
- **Variations in impact stem from variations in target populations and court policies**



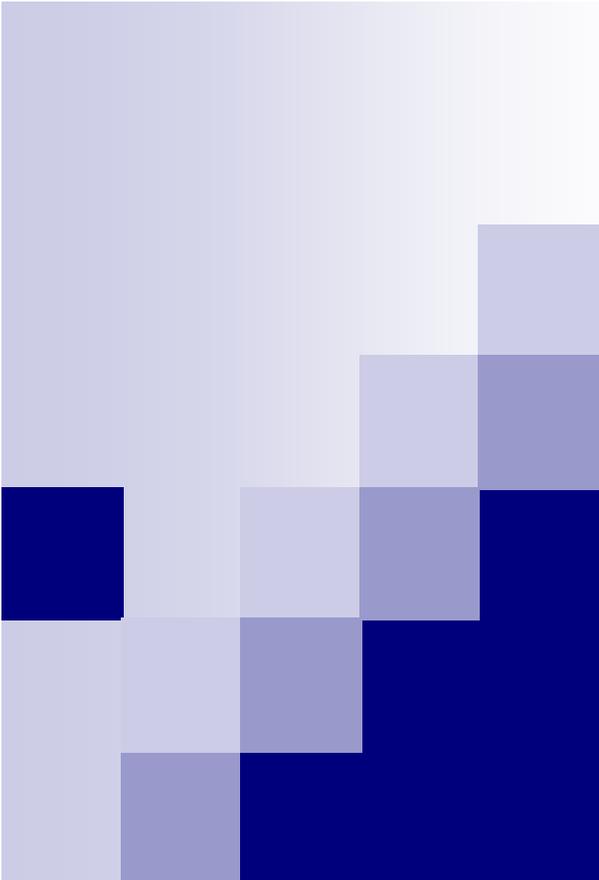
Core Theories of Change

- **Target Population:** High-Risk Offenders
- **Community-Based Treatment**
- **Deterrence:**
 - Drug testing
 - Threat of jail or prison for failing
 - Interim sanctions and incentives
- **Procedural Justice**



Questions for this Presentation

1. What is procedural justice?
2. How important is the judge in promoting procedural justice?
3. How can drug court judges maximize their effectiveness?
4. What sample tools and resources can assist courts and judges in this area?



Part One.
What is Procedural
Justice?



A Simple Definition

- **Procedural justice** concerns the perceived fairness of court procedures and interpersonal treatment while a case is processed.

As contrasted with:

- **Distributive justice** concerns the perceived fairness of the final outcome (i.e., whether the litigant “won” or “lost”)



Procedural Justice Dimensions

- **Voice:** Litigants' side is heard; opportunities to speak during judicial status hearings.
- **Respect:** Litigants treated with dignity and respect.
- **Neutrality:** Decision-making is unbiased, trustworthy, and consistent across cases
- **Understanding:** Litigants comprehend court language, decisions, and responsibilities.
- **Helpfulness:** Court shows interest in litigants' needs



Procedural Justice: Examples

■ Voice:

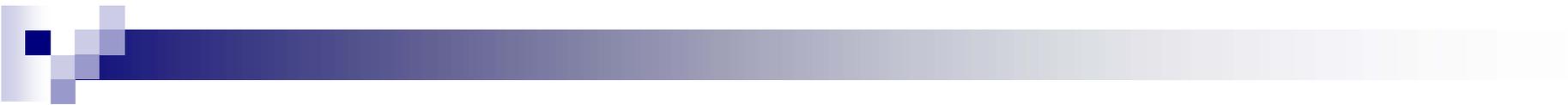
- *You felt you had the opportunity to express your views in the court.*
- *People in the court spoke up on your behalf.*

■ Respect:

- *You felt pushed around in the court case by people with more power than you.*
- *You feel that you were treated with respect in the court.*

■ Neutrality:

- *All sides had a fair chance to bring out the facts in court.*
- *You were disadvantaged in the court because of your age, income, sex, race, or some other reason.*



Procedural Justice: Examples

■ Understanding:

- *You understood what was going on in the court.*
- *You understood...your rights were during the processing of the case.*

■ Helpfulness:

- *Throughout your case, the court tried to understand your particular needs for services or any other needs you had.*
- *The court seemed very interested in helping you.*

Source: Items on this and the previous slide are all from Rossman et al. (2011), except for the sample helpfulness items, which are adapted from Frazer (2006).



Why Might Procedures Matter?

- **In general, people care about whether others:**
 - Treat them with dignity and respect
 - Respect their rights
 - Are interested in their needs, concerns, or opinions
 - Listen to their input
 - Consider their input when making decisions
 - Avoid favoritism (to other parties or views)
- **This applies especially when those others are in positions of authority**



Procedures vs. Outcomes

- **Most people like to win:** I.e., outcomes, or perceived distributive justice, matter too.
- **Procedural justice theory assumes that:**
 - People know they can't always win.
 - People will be more likely to accept losing if they perceive as fair the procedures and interpersonal treatment they received.

Source: Tyler (2012).



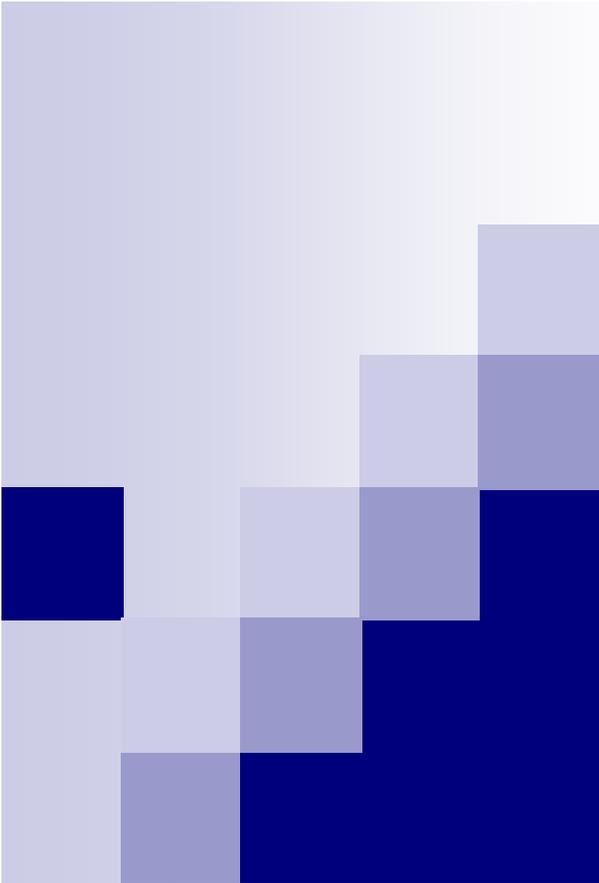
Research (Not in Drug Courts)

- **Compliance:** Perceived procedural justice can increase compliance with court orders and reduce illegal behavior (e.g., Lind et al. 1993; Paternoster et al. 1997; Tyler and Huo 2002)
- **Procedural Vs. Distributive:** Perceived procedural justice is more influential than perceptions of the outcome (win or lose) (see Tyler 1990; Tyler and Huo 2002):
- **Role of Race/Ethnicity:**
 - African-Americans come to court with lower expectations and, afterwards, perceive less fair treatment than others (Tyler and Huo 2002; Rottman et al. 2005)
 - Problem-solving courts may bridge differences based on race/ethnicity and socioeconomic status (Frazer 2006)



Drug Court Research

- **Baltimore Experiment:** More positive perceptions of procedural justice help to explain why the drug court reduced crime and drug use (Gottfredson et al. 2009)
- **NIJ's Multi-Site Adult Drug Court Evaluation**
(see Rossman et al. 2011):
 - More positive perceptions of procedural justice are associated with reduced crime and drug use.
 - Understanding may be a particularly important (vs. voice, neutrality, and respect): Greatest difference between drug court and comparison group was on understanding
 - The judge is the most important agent of procedural justice



Part Two.
How Important is
the Judge?

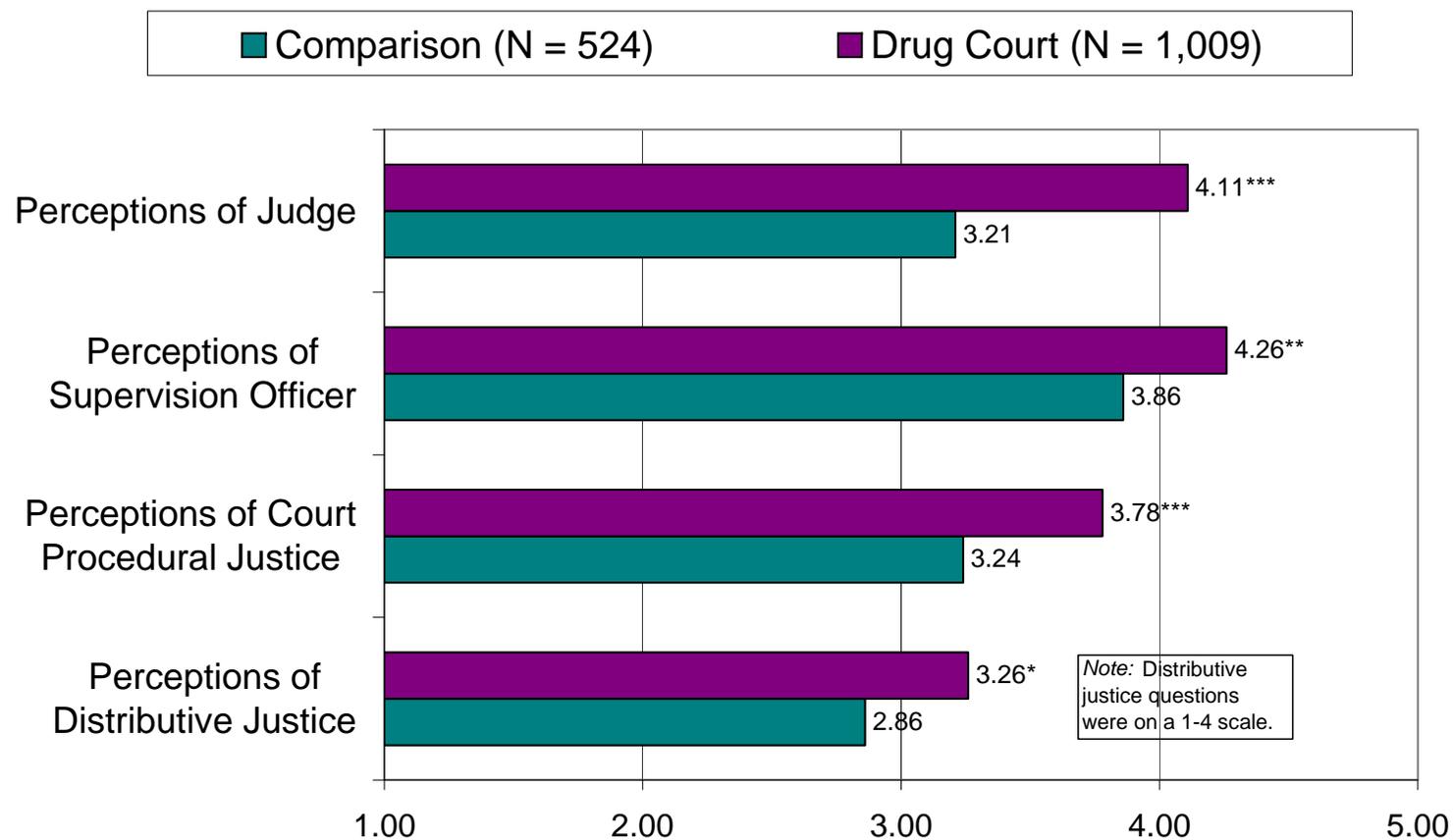


Procedural Justice Findings

- **Role of Judge = Critical** (Abuwala and Farole 2008; Curtis et al. 2011; Frazer 2006; Gottfredson et al. 2009)
 - Surveillance effect? More judicial status hearings lead to reduced crime and drug use (e.g., Gottfredson et al. 2007; Marlowe et al. 2003)
 - Motivational effect? Focus group participants always point to the effect of the judge (Farole and Cissner 2005; Goldkamp et al. 2002)
- **Red Hook Community Court:** Perceived fairness of the judge had more overall influence than perceptions of prosecutor, defense attorney, or court officers (Frazer 2006)
- **NIJ's Multi-Site Adult Drug Court Evaluation:** Drug court and comparison group particularly differed in perceptions of the judge (Rossman et al. 2011)

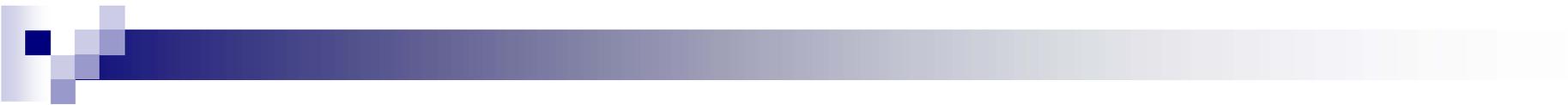
NIJ's Multi-Site Evaluation

Offender Perceptions of Fairness



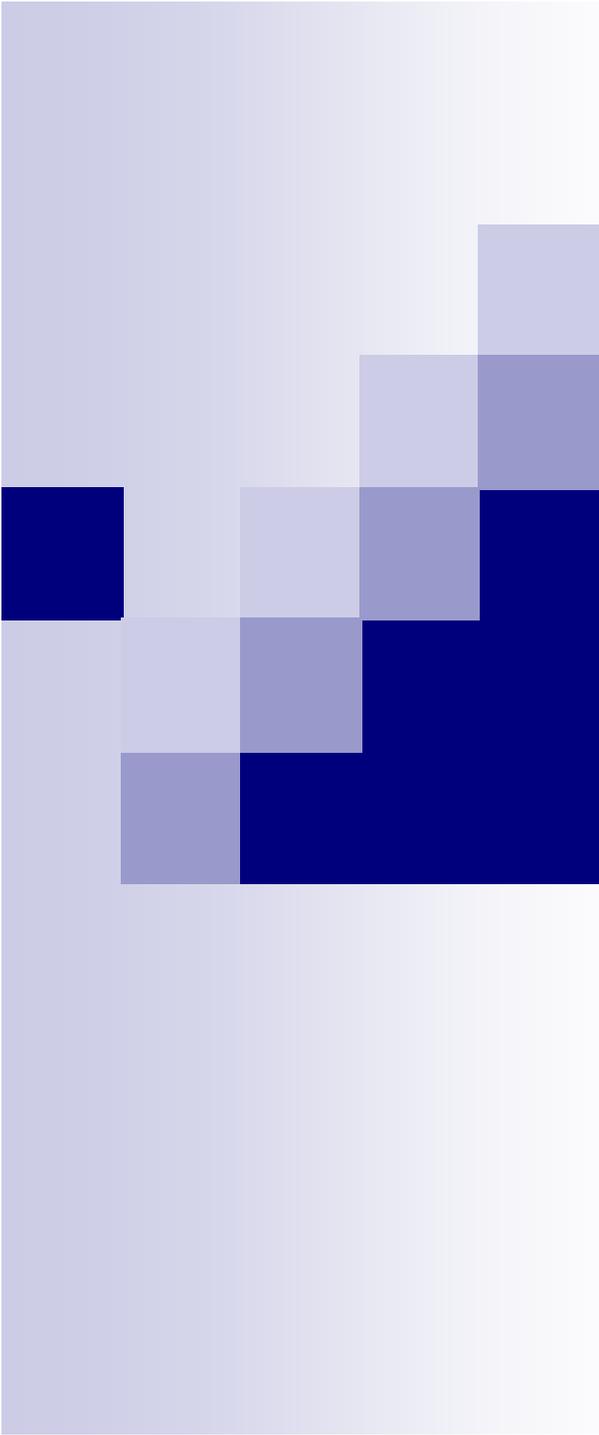
* p < .05 ** p < .01 *** p < .001

Source: The Multi-Site Adult Drug Court Evaluation (MADCE), see Rossman et al. (2011).



NIJ's Multi-Site Evaluation

- More positive perceptions of the judge were the single strongest factor explaining why drug courts reduced crime and drug use (vs. treatment, threat of sanctions, drug tests, or other factors) (Rossman et al. 2011)



Part Three.
How Can Judges
Maximize Impact?



Frequency of Status Hearings

- **Frequency:** Consider frequent judicial status hearings (e.g., no less than biweekly at outset of participation)
- **Caveat: High-Risk Focus:**
 - Consider regular and frequent status hearings for “high-risk” participants
 - Consider fewer status hearings for “low-risk” participants or even limiting status hearings only to cases of noncompliance



Length of Status Hearings

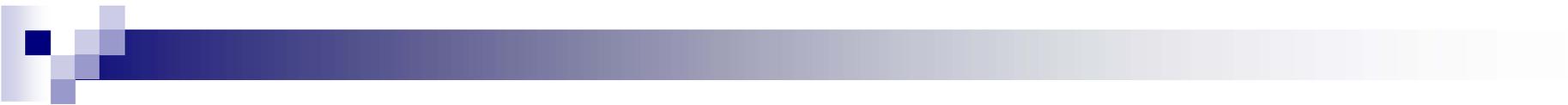
- **Possible Target Length:** Consider at least three minutes per hearing: Linked to greater recidivism reductions in *NPC Best Practices Study* (Carey et al. 2010)
- **Compliant Cases:** Consider calling the case and affording meaningful interaction time even when compliant—especially if participant is high-risk



Judicial Demeanor

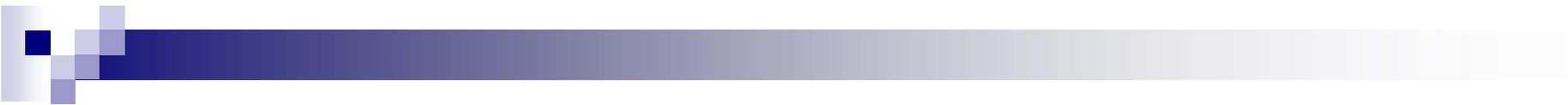
- **Positive Demeanor:** Consider the possible impact of judicial demeanor: Drug courts whose judges were rated as follows produced better outcomes than other drug courts (NIJ's Multi-Site Adult Drug Court: Rossman et al. 2011):

- *Respectful*
- *Fair*
- *Attentive*
- *Enthusiastic*
- *Consistent*
- *Caring*
- *Knowledgeable*



Procedural Justice Dimensions

- **Practice Review:** Consider practice, given the key procedural justice dimensions:
 - Voice
 - Respect
 - Neutrality
 - Understanding
 - Helpfulness



More on Voice

- **During Judicial Status Hearings:** Drug courts inherently promote voice in judicial status hearings.
 - Consider giving participants a chance to state their case before making key decisions. *Note:* people view decisions as more fair when they had a voice, even when their input had no effect (Lind et al. 1990)
 - Consider referencing participant's expressed arguments, needs or concerns when making a decision, even when they are not sufficient to affect it (see Tyler 2012)
- **After Participation Ends:** Consider forums or exit surveys allowing both those who graduate and fail to voice their experiences and feedback



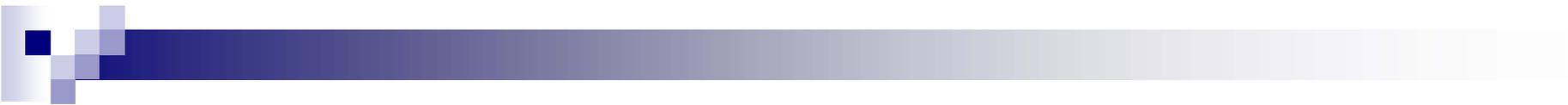
More on Respect

■ Surrounding Context:

- Other Players: Consider training court officers, clerks, or law enforcement on “customer service” approach (Tyler 2012)
- Courthouse Architecture: Consider whether security set-up, lighting, elevators, cleanliness, signage, courtroom audibility, etc. could increase perceived lack of respect

■ Judicial Status Hearings:

- Greetings and Closing: Consider greeting each participant by name; and wishing each well at the end (e.g., “Good luck to you,” “I wish you well,” etc.)
- Non-Verbal Cues: Consider eye contact; avoid sarcasm, exasperation, sighing, or focusing on coffee (Burke and Leben 2007)



More on Neutrality

- **Promoting Decision Acceptance:** Consider citing relevant laws, procedures, or program policies when explaining a decision; link decisions to rules, not the judge's personal opinion (see Tyler 2012)



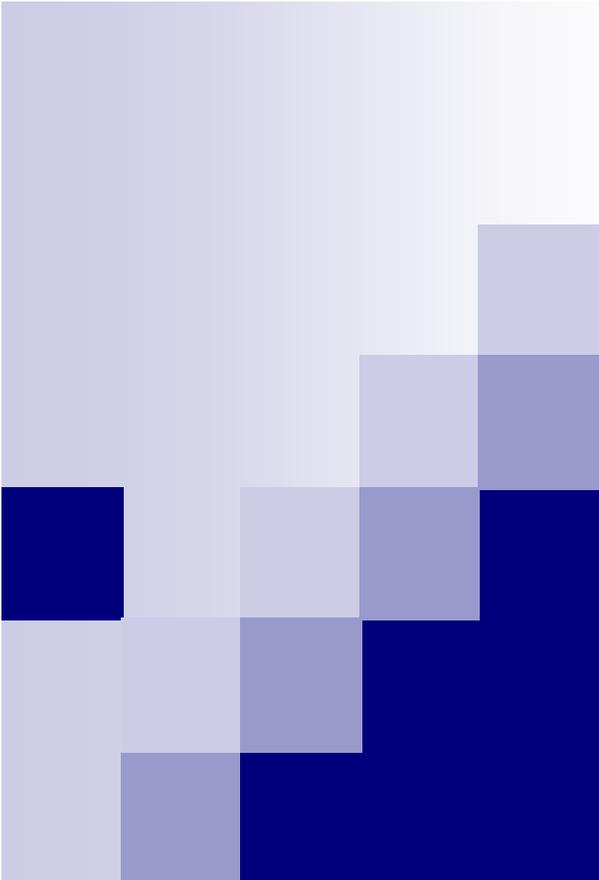
More on Understanding

- **Written Materials:** Consider providing plain-language document on court policies, procedures, and expectations
- **Opening Soliloquy:** Consider making opening comments at outset of each session (what will happen in various hearings, why cases will be called in a certain order, intention to provide fair and neutral hearing for all defendants, the need to abide by court rules and policies, etc.)
- **Legal Jargon:** Where jargon is used, consider reviewing its meaning with the participant
- **Reminders:** Consider repeating responsibilities and consequences of noncompliance in multiple hearings (Young and Belenko 2002); ask if participant needs new copy of the handout



Other Ideas

- **Staffing Attendance:** Consider attending (e.g., weekly) staffing meetings: Linked to greater recidivism reductions in *NPC Best Practices Study* (Carey et al. 2010)
- **Videotaping:** Consider videotaping a session; review the tape privately or with colleagues (Burke and Leben 2007)



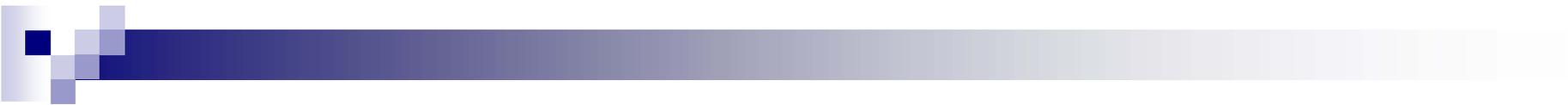
Part Four. What Tools are Available?



Sample Tools

■ Defendant/Participant Interviews:

- Instrument from the Red Hook Procedural Justice Study (Appendix 1 in Frazer, S. 2006. *The Impact of the Community Court Model on Defendant Perceptions of Fairness: A Case Study at the Red Hook Community Justice Center*. New York, NY: Center for Court Innovation.)
- Procedural Justice instruments from *NIJ's Multi-Site Adult Drug Court Evaluation* (Excerpted from Appendix A in Rossman, S. B., Roman, J. K., Zweig, J. M., Lindquist, C. H., Rempel, M., Buck Willison, J., Downey, P. M., Fahrney, K. 2011. *The Multi-Site Adult Drug Court Evaluation: Study Overview and Design: Volume 1*. Washington, D.C.: The Urban Institute)
- Defendant Interview Instrument from the Improving Courtroom Communication Project (Unpublished work product from the *Project on Improving Courtroom Communication*. New York, NY: Center for Court Innovation.)



Measuring Impact of the Judge

The Judge (see Rossman et al. 2011):

- *Is knowledgeable about your case*
- *Knows you by name*
- *Helps you to succeed*
- *Emphasizes the importance of drug and alcohol treatment*
- *Is intimidating or unapproachable*
- *Remembers your situations and needs from hearing to hearing*
- *Gives you a chance to tell your side of the story*
- *Can be trusted to treat you fairly*
- *Treats you with respect*



Measuring Impact of the Judge

The Judge (see Frazer 2006):

- *Listened to you*
- *Listened to you via your attorney*
- *Clearly explained to you everything that was happening with your case today*
- *Got all the information needed to make a good decision*
- *Showed favoritism to one party in your case*
- *Cared most about getting your case over with quickly*
- *Tried to understand your particular needs for services or any other needs you had*
- *Treated you with respect*
- *Carefully considered what you or your lawyer said when making a decision*



Sample Tools (*continued*)

■ Courtroom Observation Instruments:

- Courtroom Observation Protocol from *NIJ's Multi-Site Adult Drug Court Evaluation* (Work product for Rossman, S. B., Roman, J. K., Zweig, J. M., Rempel, M., and Lindquist, C. H., eds. *The Multi-Site Adult Drug Court Evaluation*. Washington, D.C.: The Urban Institute)
- Courtroom Observation Protocol from the Improving Courtroom Communication Project (A draft work product of the *Project on Improving Courtroom Communication*. New York, NY: Center for Court Innovation.)



Session Tools: Sample Items

■ **Session Opening** (rated yes or no):

- The judge provided an explanation for the order in which cases would be called
- The judge made eye contact with the audience upon entering the court.
- The judge introduced him/herself by name.
- The judge acknowledged the experience of defendants while waiting for their cases to be heard (e.g., having to sit quietly, waiting for a potentially long period, etc.)
- The judge provided some overview of what might happen during various court appearances and how decisions would be made
- The judge assured the defendants that all of the evidence would be considered before making any decision



Session Tool: Sample Items

- **Judicial Demeanor:** Concerning the actions and demeanor of the judge towards the defendants, was the judge (rated 1-5):
 - Respectful
 - Fair
 - Attentive
 - Enthusiastic [or replace with “Interested”]
 - Consistent/Predictable
 - Caring
 - Intimidating
 - Knowledgeable
 - Clear



Appearance Tool: Sample Items

■ Judge (yes/no items):

- Greeted defendant by name
- Made regular eye contact (for most of the appearance)
- Talked directly to defendant (as opposed to through attorney)
- Asked non-probing questions (e.g., “yes/no” or others eliciting one-word answers)
- Asked probing questions
- Imparted instructions or advice
- Explained consequences of future compliance (e.g., phase advancement, graduation, etc.)
- Explained consequences of future noncompliance (e.g., jail or other legal consequences)
- Asked defendant if he/she had anything else to say before decision



Sample Tools (*continued*)

■ Practical Tips on Judicial Communication:

- Procedural Fairness: A Key Ingredient in Public Satisfaction (Burke, K., and Leben, S. 2007. A White Paper of the American Judges Association. Published in *Court Review* 44: 4-25).
- Menu of Best Practices in Courtroom Communication (A draft work product of the Project on Improving Courtroom Communication. New York, NY: Center for Court Innovation.)

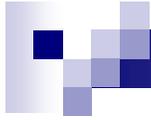
■ Courthouse Self-Assessment Tool:

- Court Administrator Procedural Justice Self-Assessment Instrument (Chapter IV in Porter, R. 2011. *Procedural Fairness in California: Initiatives, Challenges, and Recommendations*. San Francisco: CA: Judicial Council of California.)



Web Sites

- American Judges Association Procedural Fairness Site: <http://proceduralfairness.org/>
- Center for Court Innovation Procedural Justice Page: <http://www.courtinnovation.org/topic/procedural-justice>



What Do You Think?