

Examining defendant perceptions of fairness in the courtroom

by M. Somjen Frazer

Public confidence in the criminal justice system is remarkably low when compared with other institutions. Scholars attribute this to a variety of factors, some of which are largely out of the control of the system itself. These include rising public expectations, declining trust in government in general, and inaccurate information about the workings of the criminal justice system.¹

How can public confidence in justice be improved? One approach is to ensure that criminal defendants feel they are being treated fairly. If those most affected by the workings of the criminal justice system come

out believing that the system treated them fairly, that may help to convey a broader public message.

Citizens generally hold favorable views toward institutions that are perceived as unbiased, while holding negative views of those that are believed to be partisan or discriminatory.² Not only can a focus on fairness improve public confidence, but research has shown that, as confidence in the criminal justice system grows, law-abiding behavior increases.³ This means that a fair process has the potential both to create generalized benefits via improved public confidence and specific benefits through the improved compliance of the defendants who experience the process.

Recognizing this, the Center for Court Innovation sought to examine defendant perceptions of fairness in two types of criminal courts: a traditional "downtown" court located in a large urban metropolis, and an experimental "community court" located in a smaller and geographically distinctive urban neighborhood. The rationale for implementing the study in two sites was to test the potential of the community court model to improve upon existing defendant perceptions.

Community courts are explicitly interested in improving public confidence in the criminal justice system.⁴ They seek to accomplish this by responding to community concerns,

while simultaneously addressing the service and treatment needs of individual defendants.⁵ Community courts include a far greater range of sentencing options than are commonly available in traditional courts. These may include community service, substance abuse treatment, job readiness or G.E.D. classes, and on-site social services. The underlying assumption is that by emphasizing alternatives to incarceration and providing access to needed services, the community court will elicit more of a sense among defendants that the court is responsive to their individual situations.

Since most community courts deal with misdemeanor defendants who would otherwise receive relatively short jail sentences, fines, or sentences involving no real conditions at all, threats of long-term punishment are not a realistic option for securing compliance with court mandates or inducing future law-abiding behavior. As a result, community courts have a strong incentive to promote voluntary compliance with court mandates, secured by enhancing defendant trust in the court's legitimacy. Whether community courts succeed in their efforts remains an empirical question, never before examined. The results of such an evaluation are important not just for community courts, but for conventional criminal courts as well, which might look to adopt successful strategies from experimental community courts.

The survey

Defendants who were seen at either the Red Hook Community Justice Center, a community court in Brook-

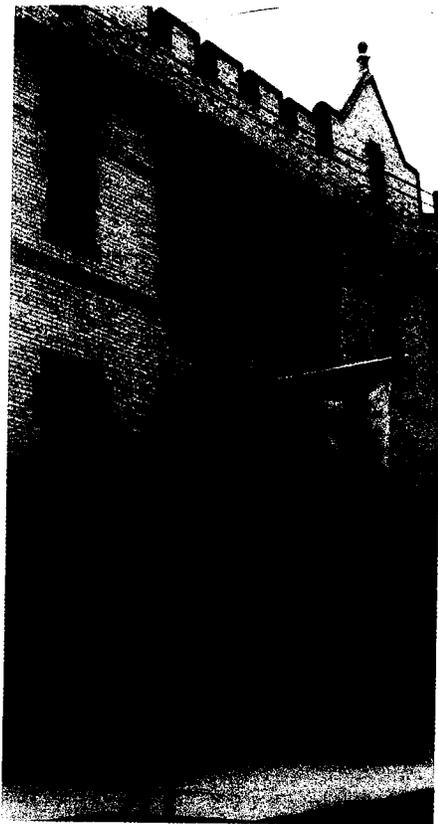
1. David Garland, *THE CULTURE OF CONTROL* (Chicago, IL: University of Chicago Press, 2001); Mike Hough and Alison Park, *How Malleable are Public Attitudes to Crime and Punishment?* in Julian Roberts and Mike Hough eds. *CHANGING ATTITUDES TO PUNISHMENT: PUBLIC OPINION AROUND THE GLOBE*. (Cullompton, England: Willan Publishing, 2000); Larry Sherman, *TRUST AND CONFIDENCE IN CRIMINAL JUSTICE*. (Philadelphia, PA: Fels Center of Government, 2001).

2. Tom Tyler, *WHY PEOPLE OBEY THE LAW* (Yale University Press: New Haven, London, 1990).

3. John Thibault and Laurens Walker, *PROCEDURAL JUSTICE: A PSYCHOLOGICAL PERSPECTIVE* (Hillsdale, NJ: Lawrence Erlbaum, 1975); Tom Tyler, *Citizen Discontent with Legal Procedures: A Social Science Perspective on Civil Procedure Reform*. 45 *AM. J. OF COMP. LAW* (1997); Tom Tyler and Yuen Huo, *TRUST IN THE LAW* (New York, NY: Russell Sage Foundation, 2002).

4. Greg Berman and John Feinblatt, *GOOD COURTS: THE CASE FOR PROBLEM SOLVING JUSTICE* (New York: The New Press, 2005).

5. *Id.* Pam Casey and David Rottman. *PROBLEM-SOLVING COURTS: MODELS AND TRENDS*. Accessed April 25, 2006 from <http://www.ncsconline.org/WC/Education/ProSolGuide.htm>, 2003; Dana Kralstein, *COMMUNITY COURT RESEARCH: A LITERATURE REVIEW*. (New York, NY: Center for Court Innovation, 2005).



The judge in Red Hook often praised defendants in long-term substance abuse treatment if they had repeatedly tested negative; and upon graduation from treatment generally shook the defendant's hand.

lyn, New York, or the traditional court in summer 2005 took part in a survey about their perceptions of the treatment they received. The survey evaluated the effects of court location (Red Hook or the traditional court), defendant background (race, ethnicity, sex, and socioeconomic

status), the outcome of their current court case, how defendants were treated in court, and the stage of their case at the time of the survey (arraignment or subsequent court appearance). The total number of surveys completed was 398, with 202 (51 percent) conducted at Red Hook and 196 (49 percent) conducted at the traditional court.

Structured courtroom observations supplemented the results of the survey and helped to generate richer explanations about why different defendants might have perceived their court experiences as fair or unfair. Observations were made of 142 court appearances, 51 percent in Red Hook and 49 percent in the traditional court.

The results suggested that the community court was significantly better at ensuring that defendants perceived their experiences in court as fair. Defendants also had a more consistent view of the fairness of the court; their racial, ethnic, and socioeconomic backgrounds mattered less, as did the outcome of their case. Eighty-six percent of those surveyed at the community court said that their case was handled fairly. This suggests that the community court model provides an opportunity for courts to overcome any concern defendants may have that they are being treated unfairly as a result of their race, gender, or socioeconomic status.

The study also suggested that perceptions of the judge were most important in determining perceptions of fairness. According to the

structured courtroom observations, the judge in the community court engaged with defendants more often and more substantively. In the community court, the judge spoke directly to the defendant in 45 percent of the observed appearances, while at the traditional court this occurred in only 19 percent of the appearances. Also, the judge praised the defendant in 16 percent of the observed appearances in Red Hook, while at the traditional court this occurred in only 4 percent of the appearances.

For example, the judge in Red Hook often praised defendants in long-term substance abuse treatment if they had repeatedly tested negative; and upon graduation from treatment, he generally shook the hand of the defendant, asked about future plans, and praised the defendant, acknowledging how difficult it is to complete treatment. Further, the judge in Red Hook invariably greeted defendants as the court appearances began, while this was rare in the traditional court.

Finally, the overall quality of communication in the courtroom was a significant predictor of defendants' perceptions of fairness. Without expending significantly greater resources or hiring more staff, both traditional and community courts can take steps to provide clear and effective explanations about what is going on in the courtroom. Efforts by all court actors to maintain a respectful and even-handed demeanor in their interactions in front of defendants can also make a positive difference.

A complete discussion of the study methodology and findings is available in the full research report published by the Center for Court Innovation at: http://www.courtinnovation.org/_uploads/documents/Procedural_Fairness.pdf

For further reading

Documenting Results: Research on Problem-Solving Justice, a collection from the Center for Court Innovation. This book captures a decade's worth of research by the Center for Court Innovation into the effectiveness of problem-solving courts, looking at drug treatment, domestic violence, mental health, and community courts. It also includes overviews of the national research literature on drug and community courts, and an investigation of how problem-solving courts might be integrated more broadly throughout state court systems. For more information, and to order, visit www.courtinnovation.org. or call (212) 397-3050.

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