University of Nebraska - Lincoln
DigitalCommons@University of Nebraska - Lincoln

Court Review: The Journal of the American Judges Association | American Judges Association

1-1-2007

Court Review: Volume 44, Issue 1/2 – Procedural Fairness in the California Courts

Douglas Denton
California Administrative Office of the Courts, San Francisco

Follow this and additional works at: http://digitalcommons.unl.edu/ajacourtreview

Part of the Jurisprudence Commons

Denton, Douglas, "Court Review: Volume 44, Issue 1/2 – Procedural Fairness in the California Courts" (2007). *Court Review: The Journal of the American Judges Association.* Paper 224.
http://digitalcommons.unl.edu/ajacourtreview/224

This Article is brought to you for free and open access by the American Judges Association at DigitalCommons@University of Nebraska - Lincoln. It has been accepted for inclusion in Court Review: The Journal of the American Judges Association by an authorized administrator of DigitalCommons@University of Nebraska - Lincoln.

Procedural Fairness in the California Courts

Douglas Denton

I just want to be treated the same, like you treat anybody else that has money. . . . You got a tie, I don't. I'm still a man, a human being.

— 2006 focus group participant

Ensure that all court users are treated with dignity, respect, and concern for their rights and cultural backgrounds, without bias or appearance of bias, and are given an opportunity to be heard.

— Operational Plan for California's Judicial Branch, 2008–2011

In 2005, California's judicial branch embarked on a two-part assessment to determine current levels of trust-and-confidence in the state courts and to obtain information concerning expectations and performance of the state courts. The findings were revealing—they highlighted good news for the courts and identified considerable challenges. The trust-and-confidence study not only informed the subsequent strategic and operational planning processes, it also spurred a large-scale initiative focused on one particularly compelling aspect of the public-trust-and-confidence assessment: the significant and important role that perceptions of procedural fairness play in determining court users' trust and confidence in the California courts.

"Procedural Fairness in the California Courts" is a statewide initiative aimed at ensuring fair process for and quality treatment of court users, resulting in higher trust and confidence in California's courts. It focuses on strategies to ensure the public perceives the highest standards of fairness and quality treatment in every interaction with the court.

Procedural fairness, as defined here, incorporates four elements:

Respect—People react positively when they feel they are treated with politeness, dignity, and respect and that their rights are respected. In addition, helping people understand how things work and what they must do is strongly associated with respect and court user satisfaction.

Voice—People want the opportunity to tell their side of the story, to explain their situation and views to an authority who listens carefully.

Neutrality—People are more likely to accept court decisions when those in authority act with fairness and neutrality (i.e., court users have been treated equally, and legal principles and assistance from court personnel were consistent). Court users also respond more positively to court decisions when the importance of facts are emphasized and the reasons for a decision have been clearly explained.

Trust—People observe behavior or look for actions to indicate that they can trust the character and sincerity of those in authority and that those in authority are aware of and sincerely concerned with their needs (e.g., they look for conduct that is benevolent and caring).

The California initiative was officially launched in September 2007, incorporating input and feedback from court users, court administrators, and judicial officers. Previous judicial efforts focused on achieving procedural fairness have been directed in other states within an entire court district (most notably, Minnesota's Fourth Judicial District, the largest state trial court in Minnesota, serving Hennepin County), but California's initiative is a statewide, multiyear effort through which the judicial branch will:

- Identify procedural fairness best practices and model programs;
- Study and evaluate efforts that have the potential to achieve procedural fairness for court users;
- Develop procedural fairness guidelines, tools, and resources for judicial officers and judicial branch personnel;
- Recommend educational programs and objectives to help judicial officers and court personnel achieve procedural fairness; and
- Make periodic recommendations to the Judicial Council regarding a variety of strategies and means to help the courts achieve procedural fairness.

The goal is to create a model court program to help achieve procedural fairness that also highlights the innovative and creative projects that currently exist in the California courts. The initiative also provides an opportunity and a forum to highlight areas where procedural fairness has been noted as an area of concern, for example, the handling of juvenile delinquency matters.

During visits to the courts (described below), judicial branch leaders in California remarked that procedural fairness impacts everything that they do in the courthouse. The innovative application of procedural fairness concepts has become an important tool in California to enhance public trust and confidence, improve court user satisfaction, and increase court efficiency and effectiveness. Before delving into current activity in California regarding procedural fairness, reviewing the findings from the two-part public-trust-and-confidence assessment will provide some context.

TRUST AND CONFIDENCE IN THE CALIFORNIA COURTS: METHODOLOGY, FINDINGS, AND THE IMPACT ON PERCEPTIONS OF PROCEDURAL FAIRNESS

The trust-and-confidence assessment began with a 2005 statewide survey in which procedural fairness—having a sense that court decisions are made through processes that are fair—

emerged as the strongest predictor by far of public approval and confidence in the California courts.[1] For members of the public, procedural fairness concerns outweighed winning or losing a case. This was a significant finding for the California judicial branch that continues to dramatically affect policy direction and program development for the state's courts.

The 2005 survey reached more than 2,400 members of a diverse public—including a broad range of minority and non-English-speaking residents—and more than 500 practicing attorneys. Survey respondents were questioned on a broad range of perceptions and experiences, including their:

- Knowledge about the courts and the sources of that knowledge;
- Perceived and real-life experiences with barriers to court access;
- Experiences as jurors, litigants, or consumers of court information;
- Expectations for what the courts should be doing; and
- Sense of the accessibility, fairness, and efficiency of the courts.

The survey process found that procedural fairness is a key determinant of public trust and confidence and revealed important common perceptions among court users: a lack of understanding regarding court processes, an unease about going to court, and a lack of certainty about what to do (or even what occurred) while navigating the court process, particularly if someone is self-represented. Thus, the findings had the potential to allow the branch in California to leverage or initiate procedural fairness efforts where attention is needed most (e.g., family and juvenile, traffic, and small-claims cases).

Following the survey, a second in-depth, qualitative study was conducted to ascertain the views of California court users. Focus groups were conducted with a demographic cross-section of people who had direct court experience, either through jury service or as witnesses, plaintiffs, or defendants in a high-volume court venue such as family, juvenile, traffic, or small claims. Focus group discussions centered on the entire court experience—from getting initial information to appearing before a judge to the conclusion of a matter. A trained professional moderator guided discussions to elicit opinions from more than 160 Californians in Fresno, Los Angeles, Oakland, Riverside, Sacramento, San Diego, and San Francisco. A total of 15 focus groups were conducted, 8 with a demographic cross-section of court users and 7 with various minority groups to mirror the survey participants and reflect the diverse nature of the state (3 focus groups directly engaged Latino court users; 2 were conducted with African-American court users; and 2 were held with Chinese-American court users, 1 conducted in Mandarin and 1 in Cantonese).

Court users repeatedly stated that courtroom experiences leave an indelible memory.

To complement the court user focus groups, seven separate focus groups were conducted with judicial officers and court administrators who were randomly selected from across the state. In addition to engaging in a similar moderated discussion about the challenges facing the California court system, these focus group participants also viewed and commented on videotaped excerpts from the court user groups.

A key finding from the survey and the focus groups was that a high degree of trust and confidence exists toward the California state courts.[2] Court users, court administrators, and judicial officers all expressed this opinion, especially concerning their high regard for the integrity of the judges they encountered in their court experience. As will be discussed later, perceptions regarding the fairness of court outcomes varied by ethnic group. However, most court users expressed a substantial level of trust and confidence in the courts of California.

Regarding seeking and receiving information about the courts, self-rated familiarity with the California courts was low for the public, unchanged since 1992. Court users in focus groups were concerned about the shortage of information available in multiple languages, the usability and clarity of available information, and why legal advice could not be provided by court staff (findings showed that balancing permissible information without providing legal advice is a challenge for court administrators).

Court users repeatedly stated that courtroom experiences leave an indelible memory. People could recall exact details of court experiences from years ago. Many of those experiences were frustrating or stressful, including the long delays and crowded dockets of high-volume courts, like traffic court, or circumstances that brought people into family court. On the other hand, jury service—often the only courtroom experience someone may ever have—generated the most positive feedback. Many respondents commented the experience of jury service was contrasted (positively) with their expectation before serving; jury service was educational and strengthened their confidence in the justice system.

A powerful finding in the research was that the single greatest barrier to taking a case to court was finding a qualified, affordable attorney. In California this barrier has caused a significant rise in the number of self-represented litigants,

Footnotes

1. The Judicial Council's 2005–2006 public-trust-and-confidence assessment led to the publication of two reports: David B. Rottman, Trust and Confidence in the California Courts: A Survey of the Public and Attorneys (2005), *available at* http://www.courtinfo.ca.gov/reference/documents/4_37pubtrust1.pdf, and Public Agenda & Doble Research Associates, Trust and Confidence in the California Courts: Public Court Users and Judicial Branch Members Talk about the California Courts (2006), *available at* http://www.courtinfo.ca.gov/reference/documents/Calif_Courts_Book_rev6.pdf. These and other reports are available on the California Courts Website at http://www.courtinfo.ca.gov/reference/4_37pubtrust.htm.
2. The 2005 survey found that 67 percent of the public had a positive attitude about the courts, compared to less than 50 percent in 1992.

The plan affirms the importance of listening to the public, effective information sharing, and outreach and education in improving public understanding of the courts.

making issues of procedural fairness even more pressing to ensure quality treatment as well as trust and confidence in the court system.

Court users had positive comments about the concept of self-help centers inside the courthouse or mobile units outside the courthouse at key community sites. However, there was only nominal experience by court users of self-help centers and minimal awareness of family law facilitators, alternative dispute resolution concepts like mediation and arbitration, low-cost legal services, or other potential ways to reduce access barriers.

California's diverse population creates a complex set of challenges for the judicial branch in meeting the needs of court users. Every year more than 100 languages are spoken in California's courts, sometimes interpreted by the young children of non-English-speaking parties. Thus, cultural competency and language emerged as large concerns for the focus group participants, who felt that there are not enough interpreters and also perceived issues with the quality of interpretation. Court users who were fluent in more than one language stated they could tell that translations were not always accurate, and this affected their confidence in the court outcome.

To tease out the key finding from the trust-and-confidence survey regarding the importance of procedural fairness, focus group moderators discussed the four essential elements of procedural fairness (respect, voice, neutrality, and trust) with court users. Mirroring the survey, most respondents said the courts do an outstanding job regarding three of the four elements: respect, trust, and neutrality. However, regarding the fourth element—voice or participation, the sense that court authorities listen carefully to the people involved in a court case—people were less likely to be satisfied that the courts are doing a good job. A common sentiment heard in the focus groups over and over again was a strong desire to "tell my story directly to the judge." There was a fair amount of frustration expressed over feeling constrained by court procedures, language, and practices. In addition, Latinos and African-Americans expressed more concern than Caucasians and Asians about people receiving fair results in the courtroom. These perceptions included differing views of fair legal outcomes and equal treatment by court personnel throughout the courthouse.

The focus groups confirmed the survey finding that confidence among court users depends more on the perception of fairness in court procedures and quality of treatment than on the actual legal outcome of an individual's case. Those court users who had positive views of the courts after losing their case seemed to understand why a ruling went against them and felt they were treated fairly. Judicial branch members were likely to discount this finding somewhat and stress that the outcome of a case was an important contributor to the perceptions of fairness (a common sentiment heard from judicial members in focus groups was that half the population will go home unhappy because they lost).

JUSTICE IN FOCUS CREATES A FRAMEWORK FOR PROCEDURAL FAIRNESS

The 2005–2006 public-trust-and-confidence assessment was the major public stakeholder vehicle used to integrate Californians' views into a new strategic plan for the state's courts. *Justice in Focus: the Strategic Plan for California's Judicial Branch, 2006–2012* builds on past successes to meet the challenges of delivering quality justice.[3] Informed by a wide, representative array of judges and branch stakeholders, including members of the public, community leaders, and other justice system partners, the plan renews and amplifies a branchwide commitment to ensuring access and quality services for all Californians, including court procedures that are fair and understandable to court users. The plan affirms the importance of listening to the public, effective information sharing, and outreach and education in improving public understanding of the courts.

Most procedural fairness initiative activity will be designed to help the courts respond to policy directions in *Justice in Focus* that directly relate to procedural fairness. These excerpts show some examples:

- "California's courts will treat everyone in a fair and just manner."
- "Members of the judicial branch community will strive to understand and be responsive to the needs of court users from diverse cultural backgrounds."
- "Work to prevent bias, and the appearance of bias, in all parts of the judicial branch."
- "Work to achieve procedural fairness in all types of cases."
- "Ensure that statewide policies, rules of court, standards of judicial administration, and court forms promote the fair, timely, effective, and efficient processing of cases and make court procedures easier to understand."
- "Provide services that meet the needs of all court users and that promote cultural sensitivity and a better understanding of court orders, procedures, and processes."
- "Provide necessary resources to all courts—particularly high-volume courts such as traffic, small claims, juvenile dependency, and family courts—and support the branchwide implementation of effective practices to enhance procedural fairness…"

With the adoption of a strategic plan containing a strong focus on elements of procedural fairness, the time was right to

3. Judicial Council of California, Justice in Focus: The Strategic Plan for California's Judicial Branch, 2006–2012 (2006), *available at* http://www.courtinfo.ca.gov/reference/documents/strategic_plan_2006-2012.pdf.

CONFERENCE OF STATE COURT ADMINSTRATORS

RESOLUTION 6

In Support of AJA White Paper on Procedural Fairness

WHEREAS, the perception of unfair or unequal treatment is the single most important source of popular dissatisfaction with the American legal system; and

WHEREAS, 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; and

WHEREAS, judges should pay attention to creating fair outcomes, they should also tailor their actions, language, and responses to the public's expectations of procedural fairness; and

WHEREAS, procedural fairness lessens the difference in how minority populations perceive and react to the courts; and

WHEREAS, the America Judges Association (AJA) drafted a white paper, *Procedural Fairness: A Key Ingredient to Public Satisfaction,* to examine research on courts within the United States and make recommendations for the judiciary; and

WHEREAS, the AJA white paper identified and advocated for more changes to improve the daily work of the courts and its judges.

NOW, THEREFORE, BE IT RESOLVED that the Conference of State Court Administrators endorses the AJA white paper and encourages state court leaders, trial court judges, court administrations, and judicial educators to consider implementation of the recommendations outlined in the white paper.

Adopted at the Conference of State Court Administrators (COSCA) 2008 Annual Meeting on July 30, 2008. COSCA's membership consists of the top court administrator in each of the 50 states of the United States, the District of Columbia, Puerto Rico, American Somoa, Guam, the Northern Mariana Islands, and the Virgin Islands.

speak directly with the courts to gauge their views on the concept. In spring 2007, staff from the Administrative Office of the Courts (AOC) and Dr. David B. Rottman, principal researcher at the National Center for State Courts and author of the 2005 *Trust and Confidence in the California Courts* survey findings report, visited various courts, small and large, in urban and rural areas around the state. The goals of these visits were to:

- Learn about existing court programs and solicit ideas and suggestions from court leadership regarding strategies and priorities for California to enhance public trust and confidence by emphasizing procedural fairness;
- Briefly discuss enhancing public trust and confidence through a procedural fairness focus in the California courts and compare the experiences of other state courts;
- Prompt court leaders to express what the concept of procedural fairness means to them, its benefits, and any reservations they may have; and
- Identify potential topic areas and focuses for branch efforts.

Visits to the courts revealed a wide array of innovative programs already in place to help court users understand proceedings and navigate the court process. These programs show how courts in California have intuitively and creatively begun to address concerns of procedural fairness even before the launch of the initiative. This article concludes with illustrations of two of these programs—one that assists court users at the beginning of the court process, and another that helps court users at the end of the process.

In our visits, we found robust activity within the courts to enhance public trust and confidence and to reach out to local communities to improve service delivery. Court leaders do not share a common approach or opinion regarding what efforts might help the courts realize the branch's procedural fairness goals. Some courts suggested that educational efforts be targeted directly toward new judges or commissioners who often are often given family, small-claims, or traffic assignments where they will handle a high volume of matters or cases. Other courts suggested that resource allocations affect the success of procedural fairness efforts. For example, having a sufficient number of judges allows judges time to focus on procedural fairness practices, for example, to fully explain a decision to parties or to ensure that litigants have more of a voice in court proceedings.

Visits to a small sample of courts confirmed that California is a large and diverse state, and the complexity is enhanced by a variety of court cultures, constituent needs, judicial staffing, internal communications, and available resources. California has 58 trial courts, one in each county; the California courts serve nearly 34 million people. During 2005–2006, 9.2 million cases were filed in these courts. Rather than trying to come up with a one-size-fits-all approach to procedural fairness, we determined that in order for procedural fairness efforts to have the most impact, they would best be focused on:

- Information and awareness for judicial officers;
- Branch awareness to understand the value and benefits of procedural fairness for the courts (e.g., order compliance, enhanced trust and confidence by the public);
- Highlighting the need for improved court user satisfaction in underresourced courts (e.g., family court); and
- Ensuring that improvement is measurable and demonstrating accountability to the public.

"[E]very time you make a decision as a judge, you make one permanent enemy and one temporary friend."

The procedural fairness initiative is particularly timely with the adoption in April 2008 of the *Operational Plan for California's Judicial Branch, 2008–2011*. The operational plan represents a concerted effort by the council and many other judicial branch stakeholders to establish clear objectives and outcomes for accomplishing the long-term goals and policies of the branch. For example:

- Practices, procedures, and service programs to improve timeliness, quality of service, customer satisfaction, and procedural fairness in all courts—particularly high-volume courts.
- Curriculum and associated training programs and other professional development opportunities addressing cultural competency, ethics, procedural fairness, public trust and confidence, and public service for judges and court staff.

As noted below, realization of the strategic plan goals and operational plan objectives will necessitate a concerted effort by the branch to create tools for the courts and strong educational programs.

ANNOUNCING AND IMPLEMENTING THE INITIATIVE

Taking into account feedback from the court visits and input from the Judicial Council and Administrative Director of the Courts William C. Vickrey, it was determined that a long-term, multifaceted branch initiative was necessary to help achieve procedural fairness.

Presentations at the California Bench Bar Biannual Conference. The California Bench Bar Biannual Conference in September 2007 was an ideal forum to present the effort to an audience of more than 850 judicial branch leaders, judicial officers, and court professionals. Cohosted by the Judicial Council, the California Judges Association, and the State Bar of California, the conference explored procedural fairness in the courts and offered collaborative courses planned by the bench and the bar. The opening plenary session afforded an opportunity for Chief Justice Ronald M. George to announce the launch of the procedural fairness initiative and to encourage judicial members to reassess a commonly held view in the courts:

> I often have repeated good advice I was given as a novice judge 35 years ago by an experienced colleague: every time you make a decision as a judge, you make one permanent enemy and one temporary friend. That precept may need to be amended—instead of settling for making one enemy, perhaps we should focus on creating one

The resource guide... will contain effective techniques, tools for judges and court staff, best practices, and model court programs....

individual unhappy with the outcome, but two who felt that they were given a fair shake by the system.[4]

The conference also marked the release of a publication for members of the branch that describes the goals of the initiative and defines procedural fairness within the context of the California court system:

> Procedural fairness refers to court users' perceptions regarding the fairness and the transparency of the processes by which their disputes are considered and resolved, as distinguished from the outcome of their cases. Perceptions of procedural fairness are also significantly affected by the quality of treatment they receive during every interaction with the court. The perceived fairness of court outcomes is also important but is consistently secondary to how court users perceive their cases to have been handled and the quality of treatment they received. Court users' perceptions of procedural fairness are most significantly influenced by four key elements: respect, voice, neutrality, and trust.[5]

The subject of procedural fairness set the tone for the conference through an opening plenary session that featured a lively Fred Friendly Seminars© Socratic dialogue on procedural fairness and its impact on public trust and confidence in the California courts. In addition to video vignettes that depicted the complexities of achieving elements of procedural fairness in a court setting, the Fred Friendly Seminars dialogue also employed fictional judicial characters to represent different voices and approaches that exist within the branch. Arthur R. Miller, a professor at the New York University School of Law, moderated and led a diverse panel through a hypothetical scenario in which three fictional trial judges in a California court reflected differing views regarding procedural fairness.

Both the plenary and a follow-up, targeted course on procedural fairness designed for court leadership by Professor Tom R. Tyler (New York University) focused on how judicial officers and attorneys can foster public understanding and trust in the courts and also explored how the values associated with procedural fairness support judicial branch independence and impartiality.

Resource Guide for the Courts on Procedural Fairness. Following the Bench Bar Conference, initiative lead staff determined that a resource guide on procedural fairness would best serve the courts in accomplishing branch goals. Programs and policies that explicitly reference procedural fairness concepts are relatively new for many courts, and a comprehensive toolkit would provide both a better understanding of procedural fairness and applicable best practices for the courts.

Through a competitive bidding process, the Center for Court Innovation (New York City) was chosen to work with the AOC on the development of the resource guide. Founded as a public/private partnership between the New York State Unified Court System and the Fund for the City of New York, the Center for Court Innovation is a nonprofit think tank that helps courts and criminal justice agencies aid victims, reduce crime, and improve public trust in justice. In New York, the center functions as the court system's independent research and development arm, creating demonstration projects that test new ideas. The center has collaborated on a number of other projects with the California judicial branch, and we look forward to working with their researchers in this endeavor.

The resource guide, which is currently in the initial stages of development, will contain effective techniques, tools for judges and court staff, best practices, and model court programs—contents that are readily adaptable to court, education, and interactive Web environments. Ultimately, the guide will highlight a variety of strategies and programs that support the branch policy to achieve procedural fairness in all types of

ELEMENT	COMMON CHALLENGE	RECOMMENDATION
Respect	Court users may experience a lack of respect because of cultural differences	Educational programs that reflect specific cultural differences or that enhance court knowledge about cultural miscommunications
Voice	Court users may be disappointed about the length of time they are able to speak to a judge	Tools for court staff to help manage expectations and to educate the public about what to expect in the courtroom
Neutrality	Court users may be confused regarding different outcomes that may emerge from family court	Guides for court staff to explain what occurs in family court and what options exist to help individuals resolve their matter
Trust	Court users may have a hard time developing trust if they try to avoid the legal system altogether	Resources to help make court less intimidating and to explain the impartial role of the courts and judges

4. Chief Justice Ronald M. George, Plenary Address to the Bench Bar Conference (Sept. 26, 2007).
5. JUDICIAL COUNCIL OF CALIFORNIA, PROCEDURAL FAIRNESS IN THE CALIFORNIA COURTS 2 (2007), *available at* http://www.courtinfo.ca.gov/programs/profair/documents/profair_brochure_092507.pdf.

cases. On its completion in 2009, the guide will be distributed to every court in the state, will be available on the Web and in print, and will further serve as a resource to develop educational courses and to identify best practices for trial and appellate courts.

Following the model used for the public-trust-and-confidence assessment, which included surveys, interviews, and focus groups, development of the resource guide on procedural fairness will be an iterative process that solicits input from court leadership, branch members, and the public (e.g., court users). An informal working group on procedural fairness has been established at the AOC with a variety of representatives, and this group will work closely with the courts, consultants, and an editorial board composed of national experts and leaders from the California courts.

Educating Stakeholders About Procedural Fairness. The initiative includes an important educational component, and a variety of activities have taken place to expand outreach and education on procedural fairness. The educational sessions, originally designed by Professor Tyler and presented at the Bench Bar Conference, have been repurposed for stakeholders. These educational sessions present an opportunity to dispel common misconceptions regarding procedural fairness (e.g., procedural fairness does not suggest that people are happy if they lose; however, using fair procedures makes it more likely that a losing party will be willing to accept an adverse decision) and benefits (e.g., increased order compliance, acceptance of the court as a legitimate authority, and improved confidence in the process by litigants).

In particular, focusing on the elements of procedural fairness—respect, voice, neutrality, and trust—has been an important tool in educational settings for members of the branch. The elements of procedural fairness are interdependent and interrelated. However, it has been helpful to have workshop participants break into groups and discuss each element at length, identify common challenges that exist for realizing the element, and suggest solutions for meeting challenges. The table on the preceding page gives some examples.

The workshops offer judges, commissioners, mediators, and court staff a unique opportunity to identify common court user misperceptions, highlight areas of confusion and breakdowns in communication between court staff and court users, and develop tools and strategies to meet public expectations and achieve procedural fairness. Course attendees may not have an initial deep understanding of procedural fairness; however, most quickly and readily identify with procedural fairness in the court setting once the elements are explained in depth. The discussions have allowed the concept of procedural fairness to become more tangible to court staff and help them identify what may be needed to improve court interactions and the ultimate experience of court users.

Presentations to various advisory committees of the Judicial Council—composed of judicial officers, court staff, and justice system partners—have been helpful to forge further collaboration. A number of advisory committees (e.g., Access and Fairness Advisory Committee, Collaborative Justice Courts Advisory Committee) see a natural alignment between their goals for improved access and fairness in the courts, or problem-solving courts where litigants would have more interaction with a judge, with the goals of the procedural fairness initiative. The committees have expressed interest in developing a formalized educational module for new judges and commissioners on the importance of procedural fairness. This will be especially valuable for bench officers who work in high-volume case venues such as family and juvenile, small claims, and traffic. Assistant Presiding Judge Charles W. McCoy, Jr., Superior Court of Los Angeles County, has been particularly active in leading efforts to familiarize the court's new bench officers regarding the importance and benefits of procedural fairness.

[T]he concept of procedural fairness [has] become more tangible to court staff and help[ed] them... to improve court interactions and the ultimate experience of court users.

Court administrative staff also supported development of an interactive program on procedural fairness at the request of the bench of the Superior Court of Santa Clara County. Judge Kevin Burke (Hennepin County, Minnesota, Fourth Judicial District) and Dr. R. Dale Lefever (Emeritus Faculty, University of Michigan, Department of Family Medicine) worked closely with Presiding Judge Catherine A. Gallagher and Assistant Presiding Judge Jamie A. Jacobs-May (Superior Court of Santa Clara County) and presented the course in fall 2007. Judge Burke and Dr. Lefever drew on their expertise in procedural fairness and nonverbal communication to help the attending judges review their demeanor and style of interaction from the bench. They did this by using videotape and feedback. A number of Santa Clara judicial officers volunteered to be videotaped while they performed normal duties on the bench. It was made clear to the participants that the workshop was not performance related but was designed simply as a developmental program to help the Santa Clara bench increase public trust and confidence. One-on-one review and discussion was followed by a group evening session where a large number of the court's bench officers discussed the video and how the public might interpret and receive a variety of approaches from the bench. Additional bench officers expressed interest after attending the group session, and they also volunteered to later be videotaped and participate in one-on-one review and discussion sessions with the consultants. In program evaluations, 84 percent of the participating officers recommended that it be repeated in their court at a future date. The AOC is considering repeating the bench officer program in another volunteer court.

In addition, a number of courts within the state have requested funding for one-day programs for judges and court staff to help increase internal understanding and discussion of procedural fairness and improve public trust and confidence among their court users. To ensure cost efficiency, consistency, and effective delivery of these programs, the AOC will work with the courts and educational consultants so that such programs can be repurposed and replicated in other courts.

Measuring Procedural Fairness. Increased use of the National Center for State Courts (NCSC) *CourTools*© account-

[T]he AOC will be better able to identify the effects of best practices or process changes that are driving the results.

ability instruments is currently being linked with improving public trust and confidence. Although not formally included in the procedural fairness initiative at this time, these tools are helping measure the achievement of procedural fairness and are demonstrating branch accountability. Measure 1, Access and Fairness, uses a survey to measure individual satisfaction with the ability to make use of the court's dispute resolution services (access) and how the legal process dealt with their issue, interest, or case (fairness). Survey content for court users in Measure 1 reflects elements of procedural fairness and relates to the goals of the initiative. For example:

- The way my case was handled was fair.
- The judge listened to my side of the story before he or she made a decision.
- The judge had the information necessary to make good decisions about my case.
- I was treated the same as everyone else.
- As I leave the court, I know what to do next about my case.

Measure 1 has been tested in four courts around the state, and the number of participating courts is expected to grow. Current plans are under way for several California courts to pilot the Measure 1 survey to gauge court user satisfaction with their court experience and solicit suggestions for service improvements. The AOC is working closely with the NCSC to reduce the resources needed to implement the surveys. By bringing the survey instrument and the collection process to scale across multiple jurisdictions using the same data-collection tool, the AOC will be better able to identify the effects of best practices or process changes that are driving the results.

After three years of conducting the Measure 1 survey, the Superior Court of Santa Mateo County is considering making public the results on its Web page to increase public trust and confidence, demonstrate accountability to the public, and make the survey process and results transparent. As the initiative develops, we will be looking to this and other methods to evaluate the success of procedural fairness efforts taking place in the California courts.

Current Court Programs Highlighting Procedural Fairness. In addition to increasing the use of accountability instruments to help meet public expectations regarding the reporting of court performance, other innovations are already taking place within the California courts. Both of the court programs highlighted below received the 2006–2007 Ralph N. Kleps Award for Improvement in the Administration of the Courts, established in 1991 in honor of the first Administrative Director of the Courts in California.[6] The Kleps Awards recognize individual court innovations that improve the administration of justice. The award-winning programs address important public needs and help demonstrate procedural fairness in action.

Recruiting Students to Help Court Users. The JusticeCorps program is an innovative approach to addressing the needs of a key court user group highlighted in the trust and confidence survey: self-represented litigants. JusticeCorps recruits and trains 275 diverse university students annually to augment overburdened court and legal-aid staff who assist self-represented litigants in court-based self-help programs in select locations throughout California.

In response to the flood of self-represented litigants accessing the self-help programs of the Superior Court of Los Angeles County, the court, in partnership with the AOC, conceived JusticeCorps, which trains and provides an educational stipend for university students who commit to a full academic year of service in court-based self-help centers. These highly motivated and well-trained students provide in-depth and individualized services to self-represented litigants, often in their native languages.

For the pilot project in 2004, the court initially partnered with four universities—the University of California at Los Angeles and California State Universities at Northridge, Dominguez Hills, and Pomona—four nonprofit legal-aid agencies, and the Los Angeles County Small Claims Advisor. With the help of AOC staff, the court obtained funding from AmeriCorps for JusticeCorps.

Each year, the Los Angeles program places 150 students in eight court-based self-help centers throughout Los Angeles County. Students agree to serve at least 300 hours in a year, during which they:

- Triage long lines at court-based self-help centers to determine each litigant's need and degree of urgency and help litigants complete the proper forms;
- Make referrals to other court services;
- Teach people to use self-help computer resources; and
- Provide services to litigants after hearings.

Parties are given clear information and options and then connected quickly to the right resources. Litigants are assisted in completing appropriate and accurate pleadings, written orders, and judgments under attorney supervision and, in the process, provided with a better understanding of the court system. Many of these litigants have low literacy skills, which hampers their ability to fill out forms, participate in self-help workshops, or use computerized resources.

In short, the volunteers enhance the quality and the quan-

6. Information about innovative programs and initiatives that help the California courts continue to improve access to justice, including the JusticeCorps and ACTION programs described here, is drawn from JUDICIAL COUNCIL OF CALIFORNIA, INNOVATIONS IN THE CALIFORNIA COURTS: STRENGTHENING THE JUDICIAL BRANCH (2007), *available at* http://www.courtinfo.ca.gov/programs/innovations.

tity of self-help services to those who most need it.

The students also benefit. The experience of helping litigants is rewarding, and the students often feel that they are making an important difference for the litigants they serve. After the students fulfill their service commitment, they receive a $1,000 award to be used for tuition or student loans. They also participate in JusticeCorps Shadow Day, which partners them with mentor judges and attorneys for a view of other aspects of the judicial system and the value of public service.

To evaluate the effectiveness of JusticeCorps, program staff members track the number of self-represented litigants assisted by JusticeCorps members and measure the accuracy of documents prepared and referrals made. The program has, to date, far exceeded its target measures.

The JusticeCorps program expanded to the Bay Area in 2006—with participation from the Superior Courts of Alameda, Contra Costa, San Francisco, San Mateo, and Santa Clara Counties. In 2007, the Superior Court of San Diego county launched its JusticeCorps program. Currently, 150 students serve self-represented litigants in Los Angeles, 100 students work with the Bay Area program, and the court in San Diego County is supported by 22 students.

Impacts of the program have been significant:

- Self-help programs supplemented by JusticeCorps members increased by 11 percent the number of self-represented litigants assisted in the program's first year.
- Evaluations showed that litigants got appropriate referrals 98 percent of the time when JusticeCorps members referred them to other legal resources.
- Legal forms prepared by self-represented litigants with JusticeCorps assistance showed a 94 percent accuracy rate.
- Focus groups of litigants reported a high level of satisfaction with the JusticeCorps program and the services they received.
- On average, each class of JusticeCorps volunteers has been collectively fluent in more than 20 languages.

In the current program year, AOC staff will be looking to more thoroughly track the more than 400 alumni from the JusticeCorps program (to date) across California to determine how many went on to law school and careers in law-related fields. From what staff know anecdotally, many of the alumni do apply and go on to law school or to careers in the courts, such as clerk-training programs. Many of the students come from ethnically diverse backgrounds. Given that the trust and confidence survey showed that equal treatment and the ability to be heard are important concerns among minorities, the JusticeCorps program's ability to infuse the court system with more minority representation may significantly increase diversity within the branch.

Helping Offenders Navigate the Legal System. The After Criminal Traffic Infraction One-Stop Network (ACTION) Center was designed by the Superior Court of Fresno County to enhance the delivery of court services and increase public access to the courts by having everything for these cases available in one location. Fresno County is one of the most diverse in the state, with Latinos making up 47 percent of the population. The county is also home to the second-largest Hmong community in the United States. In all, nearly half of the county population speaks a language other than English at home.

[T]he court found that a lack of understanding could lead to a lack of offender compliance, which undermined public confidence.

From 2000 through 2005, the population in Fresno County grew by more than 7 percent, almost twice as quickly as the overall state rate. Over that same period, the court saw a 55 percent increase in criminal case filings for that fiscal year. Thus, the court calendars are packed—especially in high-volume traffic and misdemeanor courts—and courtroom action is swift. The process was leaving too many offenders overwhelmed, especially those whose sentences involved more than one program or remediation.

The court found that a lack of understanding could lead to a lack of offender compliance, which undermined public confidence. And an offender's noncompliance generally resulted in additional court appearances.

In July 2000, the court collaborated with the Probation Department and the Auditor-Controller's Office to develop an innovative program that would:

- Increase an offender's accountability to the court;
- Make it easier for an offender to comply with court orders and get connected to court-mandated programs; and
- Restore and promote the public's trust and confidence in the judicial system.

Located in Fresno's downtown courthouse, the ACTION Center enables offenders to:

- Ask questions about court orders in the disposition of their cases;
- Obtain information necessary to fulfill their sentence;
- Pay fees and fines or set up a schedule for restitution; and
- Get referrals (and often initial appointments) to court-ordered services, such as work furlough, anger management, batterer intervention, traffic school, and probation instructions.

Many court users in the Fresno community have low incomes, limited literacy, and no Web access. But at the center, each court user gets one-on-one assistance until the assigned staff worker is certain that the court user understands the case disposition and has the tools to help ensure compliance.

Two judicial assistants and one Probation Department employee staff the center. The court and Probation Department cover operating costs from their budgets and also contribute supplies and equipment. Most important, they have cross-trained their staffs in each other's procedures and have given each other access to their respective information systems, a collaboration unique in the state. To guarantee fair administration of justice to all residents, the ACTION Center staff provides assistance in English, Spanish, and Hmong.

Impacts of the ACTION program:

- Offenders find it easier to follow court orders; 90 percent reported that the ACTION Center information increased their ability to comply with their case disposition.
- Compared with 2003, the number of services provided by the center in 2005 increased by 72 percent; the amount of revenue collected increased by 87 percent.
- In 2006, the staff serviced more than 25,000 court users and collected more than $1.5 million in fees and fines.
- Freed from having to manage service delivery, the court can now process cases more efficiently: in fiscal year 2005–2006, the court disposed of 40 percent more cases than in the year before the center opened.

CONCLUSION

California is the largest court system in the nation and one of the most innovative. The two programs highlighted above are just samples of ongoing endeavors in the state designed to meet court user needs and address procedural fairness concerns.

As we move forward with the procedural fairness initiative in California, we will not only continue to build tools for judicial officers and court staff to better understand and implement the elements of procedural fairness, but will also highlight and leverage the good work that is currently taking place within the branch. There is a possibility for collaboration with other states that also are looking for the best way to implement procedural fairness concepts to benefit the public and the courts.

"I just want to be treated the same, like you treat anybody else that has money. . . . You got a tie, I don't. I'm still a man, a human being." The court user in a focus group who said this was responding to a question presented at the conclusion of each court user focus group: "Before we adjourn, is there anything else you'd like to say about how the California courts might be improved?" His answer—a clear and simple request to be treated as an equal within the courts no matter his income or appearance—resonates with procedural fairness concerns and reflects the goals of the initiative. Indeed, the courts of California are listening to the public. The branch is working to ensure that everyone who enters our courts is treated with dignity and respect and that all members of the public are given a meaningful opportunity to be heard.

Douglas G. Denton (A.B. Economics, University of California at Berkeley) is a senior court services analyst at the California Administrative Office of the Courts, San Francisco (douglas.denton@jud.ca.gov). *He would like to acknowledge the following people for their invaluable assistance: the members of the Judicial Council of California, including Chief Justice Ronald M. George, Assistant Presiding Judge Jamie A. Jacobs-May, Assistant Presiding Judge Charles W. McCoy, Jr., and Mr. William C. Vickrey, the Administrative Director of the Courts in California; Mr. Ronald G. Overholt, Chief Deputy Director; Mr. Kenneth L. Kann, Director; Ms. Dianne Bolotte, Assistant Director; Professor Tom R. Tyler; Dr. David B. Rottman and the National Center for State Courts; Dr. Brenda J. Wagenknecht-Ivey; Judge Kevin Burke; Judge Steve Leben; the Center for Court Innovation; the dedicated members of the California judicial branch; and staff at the AOC, particularly Mr. John A. Larson and the Promising and Effective Programs team.*