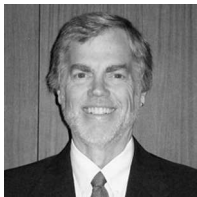




Conversations About Procedural Justice

Foreword by Emily LaGratta and Tom Tyler

JEFFREY KREMERS



Judge Jeffrey Kremers served as chief judge of the Milwaukee County Circuit Court in Wisconsin from 2008 to 2016, following 16 years as a circuit court judge. Judge Kremers has served as presiding judge of the felony, misdemeanor, and civil divisions, as well as associate dean of the Wisconsin Judicial College and a judicial educator on a variety of topics, including criminal procedure and domestic violence cases. He is a graduate of the University of Wisconsin Law School.

What does procedural justice mean to you?

I would say the most important thing for courts is the need to connect with the people who use the system. Whether it's defendants, victims, witnesses, or the general public who pay for our courts, we need to make sure that what we are doing is understood by them, perceived to be fair and neutral, and that everyone is treated with respect. If you employ the principles of procedural fairness, you are much more likely to accomplish this. If people feel like they are going to be heard in court—not only the ability to speak, but also the expectation that the person they're speaking to is going to understand them and consider what they have to say fairly—then you've added legitimacy to the system. At its core, the legal system is based on the belief that it's legitimate. If you don't have that, then people will not abide by the rules.

How have you worked to implement procedural justice?

As chief judge, I don't have a courtroom. What procedural fairness enabled me to do was say, "Let's see what our system is doing." We brought training, evaluations, and assessments to Milwaukee. I endorsed it. If the system endorses it, it carries a lot more weight than what an individual judge does. If you get everybody thinking about it, people start to say, "That makes a lot of sense."

What kinds of practices have you encouraged as part of these efforts?

We encourage our judges to talk to people in court and tell them what is going to happen that day. You want to make sure the courtroom staff—the bailiffs, court clerks, and court reporters—all understand that they are the face of the court. They need to be respectful to lawyers, litigants, witnesses, victims, and the public at large. When they're in the courtroom, they're on the entire time. There's no downtime as long as the doors are open to the public. You want to make sure that signage is appropriate and not overly negative. It should be gender-neutral, and depending on the community, available in other languages than English.

I also think you need to have a feedback process, so you can continually assess how you're doing. You can't just assume it's working if you don't check every once in a while. How are people reacting to what's going on? Do they understand? Ask people who use the courts: do they think they're being treated fairly? If not, why not? Do they think they're being heard? If not, why not? Are they being treated with respect? If they don't feel they are, in what ways are we falling short? Given the turnover you have with judges and court staff, training for these things is not a one-time deal. New judges come. People get old, they retire. They take other jobs. That's true of deputies, court clerks, and everybody else. You have to have a training program in place that takes that into consideration.

How does procedural justice impact the delivery of justice itself?

It depends on the case. If I'm sentencing someone who is a serial rapist, and I'm going to send him to prison for functionally a life sentence, we're not going to know whether how I talked to him made a difference in terms of his complying with my sentence. Whether I call him a scumbag or whether I treat him as a human being who did incredibly bad things, he's still going to prison for the rest of his life. But what about the other people in the courtroom during that sentencing, who may be there for a totally different case? They observe a judge talking in two different ways to a defendant. What is the impact on them if they see a judge who is being compassionate but firm, versus someone who is being rude?

We should treat people with respect. We should give them a voice. You don't know what the impact of that will be going forward. They may go to prison for a long time. They may never get out. They also may interact with someone in the prison who does get out. If they say, "I was treated fairly. I don't know why I did the terrible things I did, but the system treated me fairly," that is a far different thing from someone who goes to prison bitter and angry. At the end of the day, we're in the human interaction business. People deserve to be treated with respect. At its core, that is what procedural fairness is all about. I don't care

what title you put on it or what you wrap it up in. If it has a positive impact, then great.

What feedback have you received from those who have interacted with you in court?

Anecdotally, in my career of 40 years—first as a prosecutor of sexual assault cases, then as an attorney in private practice, and now as a judge—I've gotten so many letters from victims, witnesses, and defendants who say, "I appreciate the way you talked to me. I appreciate what you did." I go into stores and someone will come up to me and say, "I don't know if you remember me. I'm so-and-so, and you sent me to prison. I just want to say thank you. I was wrong, what I did was wrong. I want you to know what I'm doing now." I believe that it's because of the way I talked to them that they were willing to come up to me. I don't think they would have said that to me if I had treated them in a less respectful fashion.

Can you give a concrete example of how you deliver procedural justice from the bench?

When I had a criminal calendar, I was known for giving fairly tough sentences. At the same time, I often heard from defense attorneys that their clients appreciated the fact that I was listening to them. One of the things I've always done during sentencing is ask defendants questions. Then, I work into my sentencing comments something that the defendant told me; something with respect to why their punishment is what it is, related to comments they made. I've always done that, even before

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I heard the term procedural fairness. I make strong eye contact with defendants in front of me. I've watched other judges staring at the ceiling, back when they didn't have computers on the bench. I think that's very disrespectful. You can watch the reactions of defendants. You can tell that they're thinking, "This guy doesn't care. He's not looking at me. He's not listening to me."

I watched a judge take a guilty plea once. If you read a transcript of that guilty plea, it was perfect. But it was one of the worst guilty pleas I'd ever seen. Why? Because he spent the entire time looking at his computer. He never once looked at the defendant. When the defendant left the courtroom with his lawyer, I overheard him curse the judge: "That judge never once looked at me." I know the defendant experienced what I was seeing. That really resonated for me, in terms of this whole concept of procedural fairness.

Are there environmental changes within a courthouse that you think will enhance perceptions of fairness?

Signage is the most obvious and concrete thing you can change in any courthouse. We installed new signage as a result of training in procedural justice. That signage is still there today.

Different judges come in, adapt it, or modify it, but with the same principles in mind. We have moved away from using negative signs. For example, instead of 'No food in the courtroom,' it now says something like, 'Please keep food and beverages in the hallway.' Signage is

important. But if you don't have good signage, you can still overcome bad signage with good practices. Conversely, you can undo excellent signage with bad practices.

What are some of the challenges you faced when improving your signs?

There are many challenges associated with improving signage. For one, getting facilities management to make it a priority. They say, "What do you want me to do? Work on new signs, or fix the air conditioning in the building?" They don't perceive it as important. I think we did a good job but still have a long way to go. There is also the issue of expense.

How have you applied procedural justice to litigants with limited English proficiency?

Spanish is the second most common language by far in Milwaukee County. We have a sign in Spanish that says, "If you speak Spanish and need the assistance of an interpreter, please let us know." We have a number of forms in the courtrooms that are in Spanish, as well as English. We have a person whose job it is to provide interpreter services in the courts, for any kind of a case: criminal, civil, or family. She has a number of different interpreters on call, whether it's Arabic, Russian, Spanish, Punjabi, or sign language. We always have access to the Language Line if it's a language we don't have an interpreter for. All of our bailiffs and clerks are trained—if they get the sense that someone doesn't understand what is going on, they will try and figure out what language the person needs help with.

What is most important to emphasize when training judges on procedural justice?

Judges want their orders to be followed. That means they have to be understood. That means judges have to be able to explain their orders in a way that makes sense to the listener. That requires all of the concepts of procedural fairness: voice, neutrality, respect, and understanding. If judges don't incorporate these concepts, then I would argue they can't really expect their orders to be understood or followed.

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Also, judges are responsible for how the court system is run. They should care about how someone coming into the criminal justice system is treated from the first interaction that person has with a police officer. If the person comes into the courtroom angry, bitter, or distrustful, it makes it significantly more difficult for the judge to have a positive interaction with that person. It doesn't matter whether it's a victim, a witness, or the defendant. If they come in angry or distrustful, you're already far down a bad road. You have a responsibility as a leader in the court system to make sure your system, from the very first contact to the very last contact, is as fair and respectful as it can be.

How does procedural justice apply to victims?

Procedural justice is just as critical for victims as it is for defendants. We need their stories. The criminal justice system doesn't work if we don't have victims willing to come to court and tell us what happened to them. If they don't feel the system is legitimate and fair, they won't participate. The same is true for witnesses, jurors, and the public at large. They pay for the system with their tax dollars. If the system is not perceived to be fair, the courts lose legitimacy and support.

What about people with disabilities? Are there specific strategies to accommodate their needs and ensure that they are heard?

The key is accessibility. You can't assume you're going to recognize every disability because lots

of people walk around with disabilities that we don't recognize or see. You need to make sure that your courthouses, as far as possible, are open and accessible, in every sense of the words. That means from the front door of the courthouse to the jury rooms and the restrooms. Many of our courthouses were built way before the Americans with Disabilities Act was passed, and they're hard to retrofit. You need to do the best you can to make other accommodations. If you don't have a witness stand that is accessible to someone in a wheelchair, then you take the witness stand to them. You take the microphone down to them. There are lots of things you can do physically to accomplish that. You just have to be tuned in. You need to make sure that you're constantly assessing and reassessing accessibility.

What advice would you give to courts interested in implementing procedural justice?

I'd say the first step is to bring everybody that is part of your system to the table. Get everybody to agree on why this is important. Then, move forward. Try something. Don't let perfect be the enemy of good. You're not going to get it all right. You can't fix everything at the same time. Figure out some things to improve what you're doing. Start with those, and build. Start small and keep expanding, but get everybody to the table.