

41st Annual InterCourt Conference



Session 3E:
Procedural Fairness:
Perception is Reality

March 13, 2025
3:15 p.m.— 4:45 p.m.

Hilton Columbus at
Easton Town Center
Columbus, OH

FACULTY BIOGRAPHY

KATE HUFFMAN served as a General Division Judge on the Montgomery County Common Pleas Court beginning in 2002. In 2022, she was elected to the Second District Court of Appeals and began service on that court on February 9, 2023. Judge Huffman received her B.A. in political science from Wright State University and her J.D. from the University of Dayton School of Law, and an M.A. in Judicial Studies from the University of Nevada. She also obtained a Certificate in Judicial Development General Jurisdiction Trial Skills and a Certificate in Judicial Development Dispute Resolution Skills from the National Judicial College. Prior to judicial service, Judge Huffman was a partner in the law firm of Huffman, Landis & Weaks.


In 2021 Judge Huffman was appointed as the Ohio Judicial Outreach Liaison, focusing on providing training to judges and other stakeholders on impaired driving issues. In January, 2023, Judge Huffman assumed the position as the American Bar Association Judicial Fellow, serving as a teacher, writer, consultant, and liaison on impaired driving to those in the criminal justice community around the country.

Judge Huffman is a member the Innovative Specialized Docket Committee and the Criminal Law and Procedure Committees of the Ohio Judicial Conference. She currently serves as Vice-Chair of the Board of Trustees of the Ohio Judicial College. Judge Huffman completed two terms on the Commission for the Rules of Practice and Procedure of the Ohio Supreme Court, and served as Chair of that Commission from 2021-2022. She recently chaired the Ohio Supreme Court Task Force to Examine Ohio's Bail System. Judge Huffman teaches as an adjunct faculty member at the University of Dayton School of Law and on the faculty of the National Judicial College.

Procedural Fairness

Hon. Mary Katherine Huffman
Second District Court of Appeals





Perception is Reality: Understanding Procedural Fairness

Judge Kate Huffman
Second District Court of Appeals

Learning Objectives

- Understand the research associated with procedural fairness and its impact on justice-involvement and compliance with court outcomes.
- State the principals of procedural fairness applied to supervision of juveniles.
- Determine the effective strategies to implement and practice procedural fairness with the goal of reducing recidivism and promoting recovery.



What are some of the myths about the legal system that you have heard from clients or their caregivers?

Where do your clients learn about the court system?

- Social media
- Traditional media
- Television/movies
- Family members
- Friends/classmates/neighbors



The courtroom is where...



Perception is Reality

Challenges for Juveniles and Their Caregivers

- Difficulties understanding the process, what to expect, and what is expected of them
- Feelings of intimidation, isolation and vulnerability
- Perception of a lack of fairness/imbalance of power
- Loss of sense of control
- Perception that the court disregards the juvenile's personal concerns



Who wants to be called “unfair?”



Components of the Criminal Justice System

Law Enforcement



Courts System



Corrections System



What unique issues are you dealing with when supervising juveniles?



What is the goal of supervision?



The results of practicing procedural fairness:

- Individuals who perceived they were treated fairly during a proceeding are more likely to comply with a resulting order
- Affects the perception of the general public on the court process and outcomes



Procedural Fairness Perspectives

Judges and lawyers - the fairness of the *outcome* of the proceedings

Attorneys perceive that half the participants will leave the courtroom unhappy - a win/lose analysis

Justice-involved individuals/caregivers view fairness from a *process* perspective

For justice-involved individuals...



Fair process = Fair outcome

Influencing Procedural Fairness

Judge

Court staff

Pretrial and probation

Prosecutor

Law enforcement

Defense counsel

The Pillars of Procedural Fairness





Procedural
fairness requires
effective
communication



Defining Communication

Any behavior to which a person assigns meaning



What causes individuals to interpret communication differently?

Personal/life experiences/age

Cultural/ethnic/racial/religious identity

Gender

Education

Beliefs

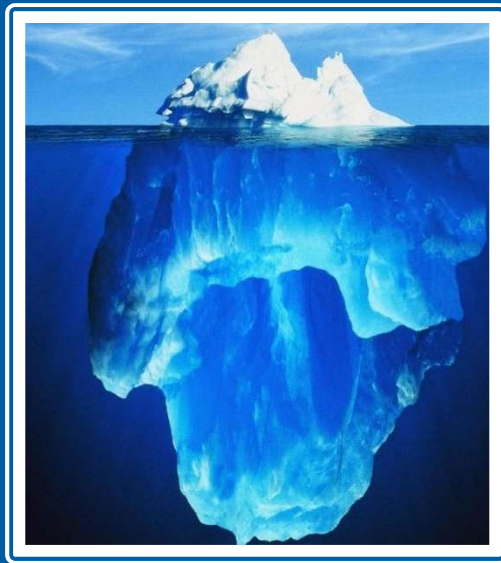
Perception or Reality?

How does this fit with what I already
know or believe?

We leap subconsciously to the “most
likely answer” and seek support for
what we already believe

We assume others see the world as we
do





**YOU KNOW MY NAME, NOT MY
STORY. YOU'VE HEARD WHAT I'VE
DONE, NOT WHAT I'VE BEEN
THROUGH.**

Barriers to Communication

Noise - Anything that gets in the way of effective communication

Visual, emotional, physical

Psychological and environmental factors

Individual differences and assumptions

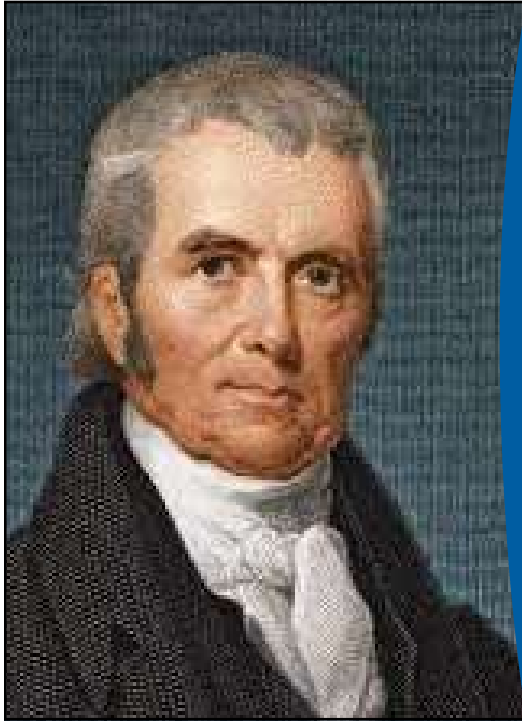
Socio-cultural differences



- Between 60-93% of the meaning of a message comes through non-verbal channels
- Especially conveys emotions, attitudes, and relationships
- Difficult to interpret unless the person is well known to the recipient

Actions
speak
louder
than words





Listening

“To listen well is as powerful a means of communication and influence as to talk well.”

John Marshall, Chief Justice of the United States Supreme Court, 1801-1836

Learn to Listen



Listening is the communication skill we use the most, but practice the least effectively.



Most people listen at **only 25% efficiency.**

Listening Styles

- People – concerned with others' feelings; respond to emotion
- Action – you expect organization and concise presentation of information
- Content – you prefer complex and challenging information; without emotional involvement
- Time-style – prefer brief and hurried interaction; let other know how much time they have

Keys to Listening

L = Look interested - get interested

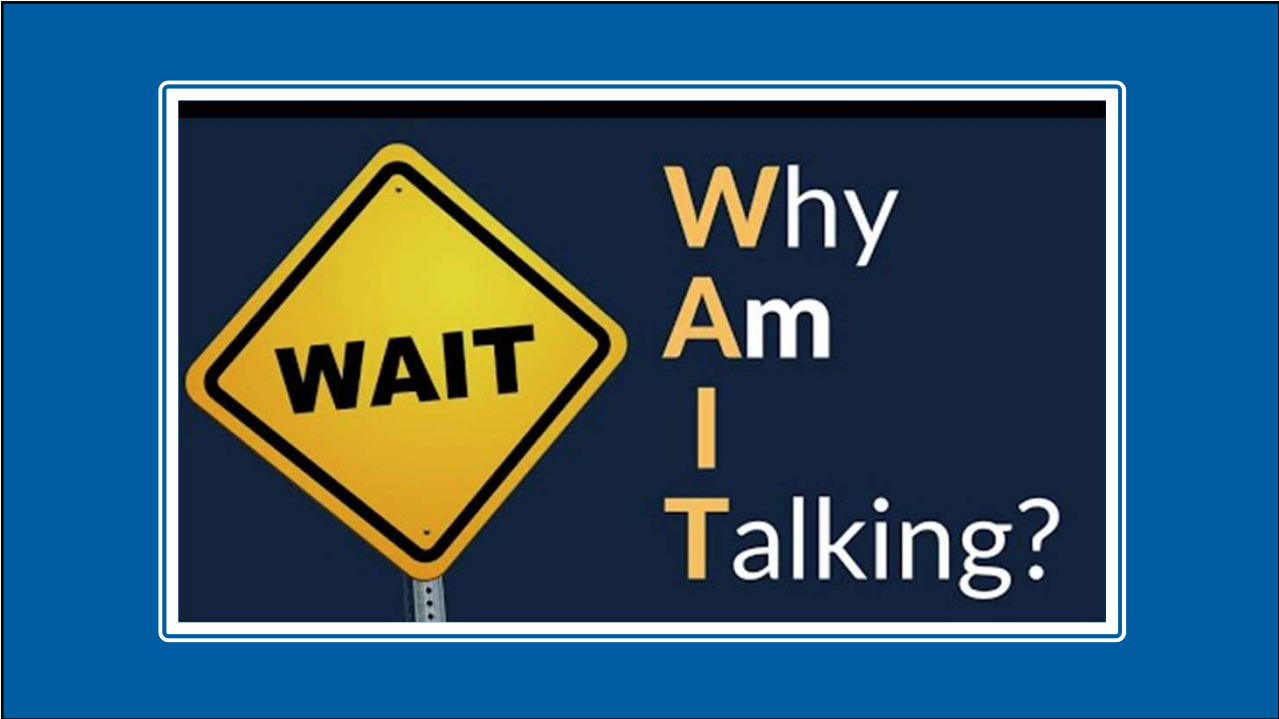
I = Involve yourself in responding

S = Stay on target

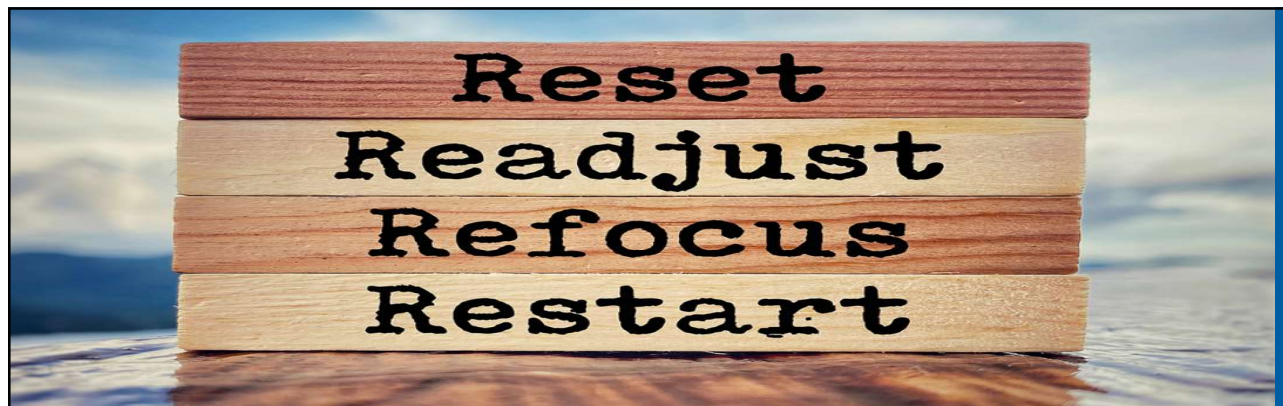
T = Test your understanding

E = Evaluate the message

N= Neutralize your feelings

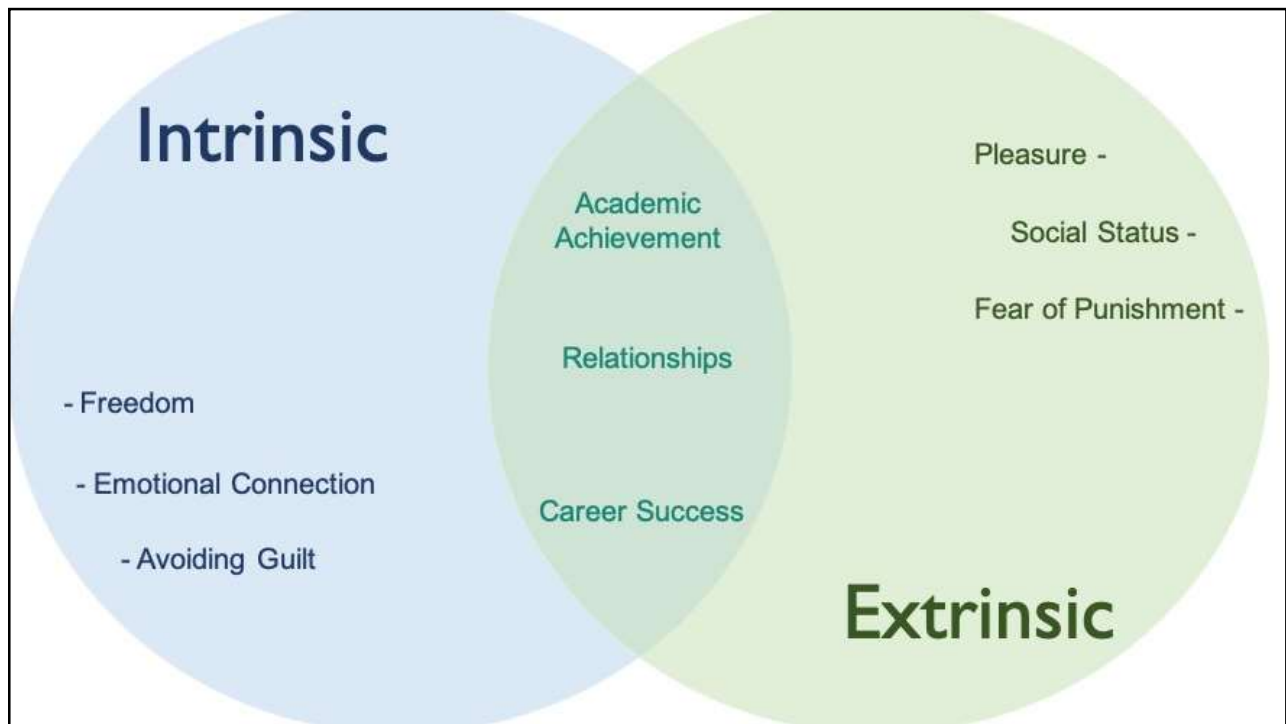


Why did you do that?



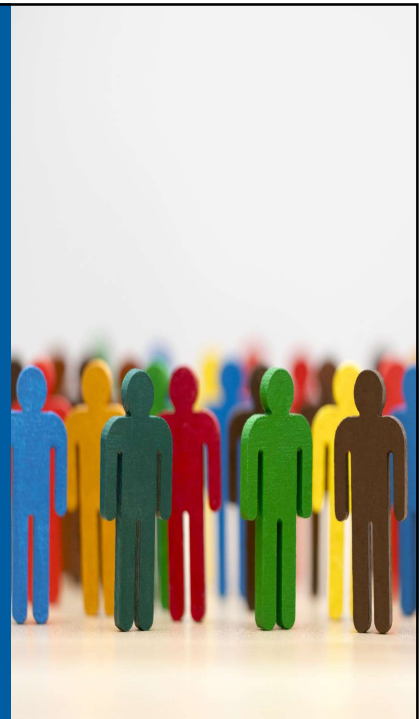
Motivational Interviewing

- ✓ An evidence-based practice
- ✓ Interactive communication style
- ✓ A collaborative approach to change behavior



Key Components of Motivational Interviewing

- ✓ Focus on a collaborative relationship
- ✓ Avoid confrontation
- ✓ Ask open-ended questions
- ✓ Seek additional information and examples from client
- ✓ Review and re-examine defendant's strengths and goals



Key Components of Motivational Interviewing

- ✓ Utilize affirmations
- ✓ Express empathy
- ✓ Engage in reflective listening
- ✓ Summarize the defendant's statements
- ✓ Develop discrepancies between defendant's actions and goals
- ✓ Avoid the temptation to provide solutions
- ✓ Encourage the defendant to remain hopeful and pursue goals

Instead of telling, ask!



How did this affect you?

What can you do different the next time?

What are some things in your life that are getting in the way of your efforts to change?

What are the things that might motivate you to make a change in your life?

What are the benefits for you if you change/don't use?

What are some of the community supports you can access?

What would _____ say if they were here now?

Practicing Procedural Fairness

- Introduce yourself
- Greet all individuals neutrally
- Address any time concerns
- Explain extraneous factors
- Explain the court process and how decisions are made

- Use plain language
- Make eye contact
- Ask open-ended questions
- Stay on task
- Personalize scripted language



An Intimidating Environment

The judge sits behind a desk (or "bench"), and participants sit at a table some distance from the bench.	Feeling separate; isolated; unworthy; afraid.	In some treatment courts, the judge comes out from behind the bench and sits at a table in front.
Participants are required to address the court from their place at the defendant's table.	Fear of authority; inability to communicate clearly, especially if an abuser is in the courtroom.	When practical, ask the participant to come close; speak to them beside or right in front of the bench.
Multiple signs instruct participants about what they are not allowed to do.	Feeling intimidated; lack of respect; untrustworthy; treated like a child.	Eliminate all but the most necessary of signs; word those that remain to indicate respect for everyone who reads them.
A court officer jingles handcuffs while standing behind a participant.	Anxiety; inability to pay attention to what the judge is saying; fear.	Eliminate this type of nonverbal intimidation, especially if you have no intention of remanding the individual. Tell the court officers not to stand too close. Respect an individual's personal space.

Avoid Stigmatizing Language

"Your drug screen is dirty."	"I'm dirty. There is something wrong with me."	"Your drug screen shows the presence of drugs."
"Did you take your pills today?"	"I'm a failure. I'm a bad person. No one cares how the drugs make me feel."	"Are the medications your doctor prescribed working well for you?"
"You didn't follow the contract, you're going to jail; we're done with you. There is nothing more we can do."	"I'm hopeless. Why should I care how I behave in jail? They expect trouble anyway."	"Maybe what we've been doing isn't the best way for us to support you. I'm going to ask you not to give up on recovery. We're not going to give up on you."
"I'm sending you for a mental health evaluation."	"I must be crazy. There is something wrong with me that can't be fixed."	"I'd like to refer you to a doctor who can help us better understand how to support you."

Changing the Narrative

Addict

Dirty

Clean

Abuse

Former addict

Delinquent

Person with substance use disorder

Positive

Negative

Misuse

Person in recovery

Client



Respect for Time

“The first principle of courtesy is consideration of others.”

In Re Mullin, Texas Special Court of Review, 2015

Case volume is a management challenge, not a reason for deemphasizing procedural fairness



Changing the Culture of the Court:

But we have always done it this way!



Procedural Fairness Tips

- Be prepared to devote sufficient time to the meeting
- Frame the subject matter of the appointment
- Explain the process
- Opportunity to be heard
- Articulate and explain the decision clearly

Practicing Procedural Fairness

What practices can you incorporate into your interaction with juveniles and their caregivers to improve their perception of fairness and contribute to outcomes?

Recap

- This may be the most important/only contact with the court system the individual ever has
- Trust is not a given, it is gained in each interaction through adherence to procedural fairness principles
- Decisions are more readily accepted if the individual believes the process was fair



Questions?

Judge Kate Huffman
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Self-Assessment

Listening Styles Questionnaire

Chapter Resource

Please refer to section [Section 10.3 Listening](#) of *Conflict Management*.

Instructions

Read the following questions and select the answer that corresponds with how you tend to listen to public speeches. Do not be concerned if some of the items appear similar. Please use the scale below to rate the degree to which each statement applies to you:

Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
1	2	3	4	5

- _____ 1. I am very attuned to public speaker's emotions while listening to them.
- _____ 2. I keep my attention on a public speaker's feelings why they speak.
- _____ 3. I listen for areas of similarity and difference between me and a public speaker.
- _____ 4. I generally don't pay attention to a speaker's emotions.
- _____ 5. When listening to a speaker's problems, I find myself very attentive.
- _____ 6. I prefer to listen to people's arguments while they are speaking.
- _____ 7. I tend to tune out technical information when a speaker is speaking.
- _____ 8. I wait until all of the arguments and evidence is presented before judging a speaker's message.
- _____ 9. I always fact check a speaker before forming an opinion about their message.
- _____ 10. When it comes to public speaking, I want a speaker to keep their opinions to themselves and just give me the facts.
- _____ 11. A speaker needs to get to the point and tell me why I should care.
- _____ 12. Unorganized speakers drive me crazy.
- _____ 13. Speakers need to stand up, say what they need to say, and sit down.
- _____ 14. If a speaker wants me to do something, they should just say it directly.
- _____ 15. When a speaker starts to ramble on, I really start to get irritated.
- _____ 16. I have a problem listening to someone give a speech when I have other things to do, places to be, or people to see.
- _____ 17. When I don't have time to listen to a speech, I have no problem telling someone.
- _____ 18. When someone is giving a speech, I'm constantly looking at my watch or clocks in the room.
- _____ 19. I avoid speeches when I don't have the time to listen to them.
- _____ 20. I have no problem listening to a speech even when I'm in a hurry.

Scoring

People-Oriented Listener

A: Add scores for items 1, 2, 3, 5 and place total on the line. _____

B: Place score for item 4 on the line. _____

C: Take the total from A and add 6 to the score. Place the new number on the line. _____

Final Score: Now subtract B from C. Place your final score on the line. _____

Content-Oriented Listener

A: Add scores for items 6, 8, 9, 10 and place total on the line. _____

B: Place score for item 7 on the line. _____

C: Take the total from A and add 6 to the score. Place the new number on the line. _____

Final Score: Now subtract B from C. Place your final score on the line. _____

Action-Oriented Listener

Final Score: Add items 11, 12, 13, 14, 15 _____

Time-Oriented Listener

A: Add scores for items 16, 17, 19 and place total on the line. _____

B: Add scores for items 18 & 20 and place total on the line. _____

C: Take the total from A and add 12 to the score. Place the new number on the line. _____

Final Score: Now subtract B from C. Place your final score on the line. _____

Interpreting Your Score

For each of the four subscales, scores should be between 5 and 25. If your score is above 18, you are considered to have high levels of that specific listening style. If your score is below 12, you're considered to have low levels of that specific listening style.

Based on: Watson, K. W., Barker, L. L., & Weaver, J. B., III. (1992, March). Development and validation of the Listener Preference Profile. Paper presented at the International Listening Association in Seattle, WA.

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