

COURT WATCHING TRAINING

From “Crook County: Racism and Injustice in America’s
Largest Criminal Court”

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INTRODUCTION

The ordinary administration of criminal and civil justice . . . contributes, more than any other circumstance, to impressing upon the minds of the people affection, esteem, and reverence towards the government.

—Alexander Hamilton, *The Federalist*, No. 17 (1787)

Discussion: what important symbols are embodied in our court system? How do we measure the “success” of our courts? What makes a court system legitimate?



SATISFYING THE APPEARANCE OF JUSTICE

- **The Criminal Courts: Open and Accessible Institutions**
 - The Sixth Amendment guarantees a public criminal trial; yet, often courthouse facilities like the one described in “Crook County” appear inaccessible to the participants.
 - American criminal courts should be seen as accessible, authoritative, rational and unbiased.
 - In the words of the Supreme Court: “Justice must satisfy the appearance of justice.”

Offutt v. United States, 348 U.S. 11, 14 (1954).
 - Instead, in jurisdiction around the nation, courts appear threatening, chaotic and hostile through the eyes of the public it serves.



CONSUMER APPROACH TO JUSTICE

- Court watching is rooted in a “consumer perspective” of justice
 - “Consumer perspective” of justice, which appraised the criminal justice system from the vantage point of the system’s consumers.
 - Prioritizes measuring the system and its legitimacy through the eyes of its consumers, be they defendants, victims, witnesses, or families.
 - This approach asks: How is justice read and experienced by outside observers? (See “Crook County,” page 196)



COURT WATCHING OBJECTIVES AND STRATEGIES



**CROOK
COUNTY**

OBJECTIVES OF COURT WATCHING

1) Court watching as evaluation

- Through court watching, we can evaluate the level of professionalism in the courtroom with a focus on management, temperament, and the overall conduct of the court.
- We can appraise the nature and quality of justice in each courtroom.

2) Court watching as accountability

- Court watching offers the possibility of a deterrence-based program that incorporates the public as part of the accountability for our criminal courts and the criminal justice system, broadly.
- Would professionals act in particular ways if they new observers were evaluating their work?



STRATEGIES OF COURT WATCHING



Court Watchers will:

- Evaluate the level of professionalism in the courtroom
 - Focus on management, temperament, and the overall conduct of the court.
- Evaluate the nature and quality of justice in each courtroom including:
 - Public trust and confidence
 - Accessibility
 - Effective Participation
 - Responsiveness and Respect



STRATEGIES OF COURT WATCHING



By establishing a court watching initiative, the public can:

- Evaluate whether professionals adhere to the National Center for State Courts (NCSC) Trial Court Performance Standards.
- The standards that prioritize access to justice and the overall, appearance of justice.



STRATEGIES OF COURT WATCHING

Discussion:

In “Crook County,” Van Cleve discusses the importance of anonymous court watching in the public galleries? How was this achieved? What were the ways that court watchers hid their social identities like education and social class?

Reflect upon your social identity (race, class, education, gender, for instance). What challenges do you foresee to remaining anonymous and unidentified as a court watcher?



SUMMARY OF OBSERVATIONS IN “CROOK COUNTY”

Findings related to access to justice from “Crook County:”

- Court environment and culture that was more hostile than hospitable.
- Court professionals and staff that often acted brusque and sometimes abusive to public visitors, including victims and witnesses.
- Judges, dubbed “yellers” by their colleagues, bark orders to defendants and professionals alike.
- Perception by defendants and family that the cases were not taken seriously
- Failure by some judges to make the proceedings understandable and audible to observers.
- Practice punctuated by racial segregation such that the target of this lack of professionalism was predominantly people of color.



**METHODICAL
FOUNDATION TO
COURT WATCHING**



METHODOLOGICAL CONSIDERATIONS

“I oversaw 130 “court watchers” who were sent into all twenty-five courtrooms in the courthouse at 26th and California over the course of two years (2008–2009). The court watchers collected and recorded qualitative observations of courtroom practices from the vantage point of the public galleries and other spaces in the courthouse” (“Crook County,” page 197).

Discussion: While this large-scale, qualitative effort appears to be a robust way to evaluate courts, what are potential measurement problems or errors that you foresee?



QUESTIONS AND CONCERNS

- How do you focus court watchers on a common metric of evaluation?
 - Away from legal decision-making that requires thorough examination of case files.
 - How do we know “justice” when we “see” it? Is it the same between people of different class, race, and gender backgrounds?
- How do you define professional standards for courtroom actors?
 - Who has the authority to establish them?
- How do you measure a “violation” of standards when you see it?
- How do you create inter-rater reliability between different court observers?



SAFEGUARDS

Create a common metric of standards for both professionals (insiders) and researchers/court watchers (outsiders)

- Standard measurable and agreed upon within the legal community.
- National Center for State Courts (NCSC) Trial Court Performance Standards are one such standard.
- Focus on the “consumer experience” of justice.

Develop Research Instruments

- Build court watching forms from NCSC standards.
- Common lens through which to evaluate, order and describe events the court watchers observe.
- Structure and semi-Structured- form so court watchers can rate and “thickly” describe the rationale for their rating.



SAFEGUARDS

Train Court Watchers

- Ensure consistency of observations and evaluations.
- Educate court watchers on the norms and professional standards of how criminal courts function on a daily basis.
- Offer organizational context for courtroom norms like the prevalence of plea bargaining, and provide a detailed orientation as how to use court watching instruments

Procedure

- Dynamic and responsive to changes over time.
- Multilevel modeling- hours tallied in every courtroom; more court watchers sent to court if an “event” occurred.



**BEFORE YOU GO:
MYTH BUSTING OUR
CRIMINAL COURTS**



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KNOW BEFORE YOU GO

Criminal courts: myth vs. reality

- Caseload and composition
- Adversarial vs. cooperative justice
- Trial vs. plea bargaining
- Courtroom work groups



CASELOAD AND COMPOSITION

- **In many jurisdictions: the sheer volume of felony cases has overwhelmed the judges, the prosecutors, and the public defenders.**
 - This is the local experience of mass incarceration.
- **In Chicago:**
 - The 36 criminal division judges hear more than 28,000 cases per year.
 - Each judge has on average 275 pending cases at any one time.
 - The jail houses nearly 10,000 inmates awaiting trial some for over two years.
 - Despite a rising caseload, budgets have remained constant or decreased each year.
 - Half of the cases are non-violent and drug-related charges.



ADVERSARIAL VS. COOPERATIVE JUSTICE

- **Adversarial Model of Criminal Justice (Law on the Books)**
 - Idealized notion of procedural justice.
 - Prioritizes the presumption of innocence, assumes the protection of defendants' rights and anticipates an adversarial battle for truth in each case.
- **Cooperative Model of Criminal Justice (Law in Action)**
 - Proverbial “assembly line” where compromise and cooperation allows for efficiency.
 - Bureaucracy, workgroup cohesion and conflict minimization supersede seeking truth in justice.
- **Prosecution and defense develop norms of compromise and cooperation.**
 - “Like two wrestlers who must face-off in a different city each night... Overtime, they become friends, and their biggest concern is to be “sure not to hurt each other too much.” (in MacDonald 1962:10).



LAW IN ACTION: COURTROOM WORKGROUP

- **Courtroom work is group activity - actors are engaged in constant interaction to efficiently dispose of cases (and people).**
 - This organizational structure supports cooperative model of justice.
 - Adversarial bouts are minimized and any necessary conflict between the defense and the prosecution is usually countered with informal chat and jokes to reinforce the cordiality that exists beyond their formal roles.



TRIALS VERSUS PLEA BARGAINS

- **A cooperative model encourages negotiated justice.**
 - 90 % of case disposition is reached by a negotiated plea or “plea bargain.”
 - “Plea bargaining is the explicit or implicit exchange of a reduction in charge for a plea of guilty” (See Feeley, “Perspectives on Plea Bargaining”).
- **Organizational support for negotiated justice.**
 - “Courtroom Workgroup” refers to all the central players that have an ability to effect case disposition: prosecutors, the defense counsel (public defenders or private attorneys), the judge, the bailiff and in deviant situations, the defendants.
- **Horizontal representation system in Cook County.**
 - Prosecutors and Public Defenders are permanent fixtures



HOW THIS WILL AFFECT YOUR OBSERVATIONS

- **Change your expectations of the courts**
 - You will see a lot of drug cases...a lot of them and they are important.
 - High stakes to any felony conviction: loss of freedom, job, children, and permanent criminal “mark.”
 - You will see plea bargains...a lot of them and they are important.
 - Justice Anthony M. Kennedy: “Criminal justice today is for the most part a system of pleas, not a system of trials.” Plea bargaining “is not some adjunct to the criminal justice system; it is the criminal justice system.”

Missouri v. Frye, No. 10-444 and Lafler v. Cooper, No. 10-209
(See “Crook County,” page 179)



HOW THIS WILL AFFECT YOUR OBSERVATIONS

- **Change your expectations of the courts**

- The business of the court is mostly “court call,” the every day exchanges, continuations, exchanging of evidence that make the court system move. (See “Crook County,” page 200).
- You will see collegial norms and familiarity between courtroom actors.

Discussion: how do these norms impact the appearance of justice?

Discuss what level of collegiality satisfies the appearance of justice?

Using “Crook County” as an example, when does collegiality cross the line and appear inappropriate?



STANDARDS OF EVALUATION



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OVERVIEW OF THE CODE OF CONDUCT

National Center for State Court's (NCSC) Trial Court Performance Standards and Measurement

- In “Crook County,” Van Cleve adapts the NCSC standards to develop a “code of conduct” for the courts, one that was approved through the chief judge in Chicago.
 - Important for practitioners to agree on a common standard of professional decorum for the courts.
- These standards promote “access to justice” as the focal point for evaluating courts.
 - These four standards are the foundation of evaluating the courts.



STANDARDS OF EVALUATION

Standard 1: Trust and Confidence in Public Proceedings

- *The trial court conducts its proceedings and other public business openly.*
- The court must ensure that its proceedings are accessible and audible to all participants, including litigants, attorneys, court personnel, as well as members of the public including victims, families, jurors and the general public

Discussion: How was this standard breached in “Crook County”? Provide some substantive examples. What practices could improve “trust and confidence”?



STANDARDS OF EVALUATION

Standard 2: Safety, Accessibility and Convenience

- *Trial court facilities are safe, accessible and convenient to use for all members of the public, as well as courtroom participants.*
- Court personnel should not engage in any intimidation or impropriety to visitors including victims, families, jurors and the general public regardless of their social background.

Discussion: How was this standard breached in “Crook County”? Provide some substantive examples. What practices could improve “accessibility”?



STANDARDS OF EVALUATION

Standard 3: Effective Participation

- *The trial court gives all who appear before it the opportunity to participate effectively, without undue hardship or inconvenience.*
- The court must accommodate all participants in its proceedings—especially those who have language difficulties, mental impairments, or physical handicaps. This includes interpreters for the deaf, arrangements for the impaired, and translators for non-English speakers. Also, defendants should be able to ask their attorneys questions during proceedings without being reprimanded.

Discussion: How was this standard breached in “Crook County”? Provide some substantive examples. What practices could improve “participation”?



STANDARDS OF EVALUATION

Standard 4: Courtesy, Responsiveness and Respect

- *Judges and other trial court personnel are courteous and responsive to the public, and accord respect to all with whom they come in contact.*
- The criminal court should be accommodating and less intimidating. No court employee should by words or conduct demonstrate bias or prejudice based a person's social background to other employees of the court, as well as members of the public. Furthermore, victims and defendant's families should be treated with appropriate tact and basic sensitivity, and their questions should not be criminalized or ignored.

Discussion: How was this standard breeched in "Crook County"? Provide some substantive examples. What practices could improve "responsiveness/respect"?



ETHNOGRAPHIC VANTAGE POINT

Ethnographic Vantage Point in Court Watching:

- Ethnography is a thick descriptive account of social life and culture of a social system, organization or institution.
 - Comprised of observations of what people actually do in practice.
 - This may be in contrast to how participants view their own behavior.
- “Etic” perspective is an ethnographic approach that documents how non-members or “outsiders” interpret or perceive the behaviors and phenomena associated with a given culture or institution.

Discussion: How might an ethnographic perspective be a powerful tool in court watching? Discuss the strengths and weaknesses of an “etic” perspective in court watching.



ETHNOGRAPHIC VANTAGE POINT: CASE STUDY

Imagine you are in the court system and as you walk through security you observe the following scenario:

- **Scenario:** Sheriff yells orders to a man who does not speak English. The man's lack of compliance and confusion is read as a potential security threat by officers. Officers radio for back-up as crowd watches.
 - **Insider View:** Sheriff is keeping order.
 - **Outsider View:** Language barrier create a situation where a man is inadvertently non compliant to rules.
 - **Solution:** Provide translators at the security entrances or create signage in multiple languages.



IMPORTANCE OF ANONYMOUS COURT WATCHING

Anonymous court watching improves accuracy

- Professionals altered their behavior or “performed” for court watchers. Often, They resumed unprofessional behavior once court watchers left (See “Crook County,” page 44).
- Court watchers should be aware how their class, race, gender, and other social markers of status “reveal” them in the courts.
- Court watchers should “dress down” in their attire and not present as a journalist, law clerk or other professional.
- If they are “exposed” or discovered, they should reflect on how their social identity impacted the interaction.
 - Always comply with all court protocols and rules. If court watchers were ever asked to leave court or stop taking notes, the complied and then documented how/why such requests occurred and how this impacted “access to justice.”

Discussion: Discuss the challenges that many defendants/victims may face in accessing a suit and professional attire for court? How may this impact “access to justice”?



NEXT STEPS

- Be aware of all courthouse rules in your jurisdiction and follow them.
 - Many courts ban cellphones, ipads, outside food/drinks and backpacks. Check all rules in advance of your trip.
 - Travel light with court watching forms, a pen, and perhaps, some money for a snack.
- Read all court watching forms before you go so you are familiar with the format.
- Be sure to note the name of the judge as a reference point rather than just the courtroom number.
 - Often, judges may change courtrooms or “float” between courtrooms. Use the name of the judges as the “unit of analysis.”
- Review the “court watching logistics” and court watching document for the step-by-step details to get started:

www.sup.org/crookcountyresources/



SHARE YOUR FINDINGS

How is justice served in your jurisdiction?

- **Report Back:** Using the hashtag #CrookCounty, tweet your findings and observations to the author (@nvancleve) and keep the dialogue on court reform and accountability going.
- **Advocacy and Impact:** Perhaps, create a court watching report/memo for the Chief Judge in your area.
 - Use data and evidence from your court watching effort as evidence for your evaluation and create recommendations for change.



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“Crook County Learning Extras” are based on the book:
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For more court watching materials, forms and discussion guides, visit:

www.sup.org/crookcountyresources/

