

Critical Review:

Performing Authority: Communicating Judicial Decisions in Lower Criminal
Courts, by Sharyn Roach Anleu and Kathy Mack

Problem Set #2, MACS 30200

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A. Research Question

The research question of this paper is: in lower criminal courts, whether judicial decisions are communicated in distinct ways regarding the types of decisions—delivering a sentence or not—and the presence of defendant's legal representation. Through observing communications in Australian lower criminal courts, Anleu and Mack investigated the judicial officers' performance of authority: whether the performance of authority is completely impersonal or contains personal engagement, and in what situations this difference occurs.

B. Data

In a natural setting, this paper examined judicial communication through observing everyday work of magistrates, the judicial officers of the lower criminal courts in Australia. The data was collected and stored by each matter (crime case) in general criminal lists. During the collection, 27 magistrates were selected, matching the natural distribution of the gender, age, and years of the Australian magistracy. Of 1,287 matters, the magistrates' behaviors were observed in detail, in 30 different court sessions across 20 different locations in Australia. The observations were mostly done by the two authors themselves. In a template developed from preliminary observations, the authors documented information of the defendant, his/her offenses, legal representation, the magistrate's behaviors, and judicial decisions. In addition, supplemental information was obtained from court records, including defendants' demographic data and offense categories.

C. Theory

Traditionally, judicial communication is expected to be impersonal and formally based in law. However, the expectation can hardly be met due to factors in addition to the judicial matters themselves, such as time pressures and visible human emotions present in the courtroom. Those factors influence the ways of judicial decisions are communicated, adding magistrates' personal engagement into judicial decision communications. The engagement can be observed in some commonly understood social interactions, argued by Anleu and Mack, such as whether the magistrates look at and/or speak directly to the defendants and the order by which the magistrates communicate a judicial decision and the reasons corresponding to it. According to the authors, these personal engagements are helpful in the decision's procedural justice, which smooths defendant's feelings and improves acceptance of the decisions.

To interpret the data, in this paper, an informal model was offered. The authors provided qualitative descriptions of the relationships between focal variables, the judicial decision types, present of defendant representatives, and the ways of magistrates communicating judicial decisions. The relationships were not formally hypothesized in this paper; however, the authors did provide relationships they expect, some in earlier sections and some with their presentation of the results.

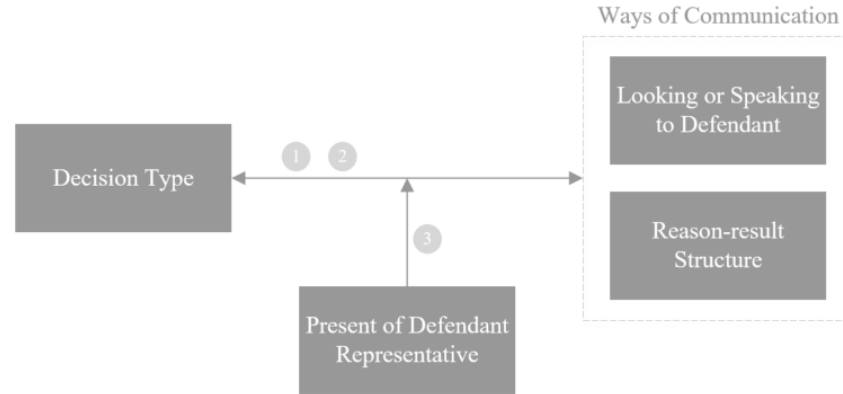
There were three primary relationships the authors especially examined in this paper. First, they proposed that the judicial decision types entail different levels of personal engagement during magistrates communicating those decisions. When communicating sentencing decisions, magistrates tend to apply more personal interactions, such as looking at and/or speaking directly to the defendants, then when communicating other decisions, such as delivering adjournment or setting a matter for another procedure. Following Durkheim and the thought of Structural Functionalism, the course procedures is itself a symbol of collective consciousness. A sentence can have serious weight on the defendants and their significant others. This weight arouses emotions and different affirmation and articulation of social norms, which lead to the different symbolization in the court. To better communicate this serious result, the magistrates are prone to employ ways of communication in addition to the formal and lawful courtroom procedures, such as looking at and/or speaking directly to the defendants. These personal interactions are a manifestation of “face-work”, which conveys immediate emotions and entails self-conscious consideration. This consideration makes the defendants less marginalized in the legal settings, ensures the defendant’s worthiness of direct communication as a human and, therefore, enhances the decision’s procedural justice.

Second, the authors hypothesized that the judicial decision types entail different communication structures when magistrates delivering those decisions. When communicating sentencing decisions, magistrates are more likely to adopt a summary-then-decision style, rather than a decision-then-summary style or a decision-only style, then when communicating other decisions. The summary-then-decision style of communication is argued to increase the legitimacy of the decisions. The reason is threefold. 1) Summary and reasoning of the case indicate that the decision is legal and logical, 2) they signify magistrates’ consideration in the defendant’s personal details, and 3) they calibrate the defendant’s expectation of the judicial outcomes. This gradually built-up legitimacy is required by the institutional expectation in the legal systems and forms the perception of procedural justice, which, in turn, leads to the defendants’ feelings of fairness. On the other hand, magistrates tend to give decisions other than sentences without reasons and summary because of the brevity and uncontroversial nature of those non-sentencing matters.

Lastly, the presence of defendants’ legal representative was argued to moderate the first and second relationships stated above. In the first relationship, presence of the representatives is expected to decrease personal engagement with defendants in the communication, as legal norms require magistrates communicate defendants only via their legal representatives. On the other hand, in the second relationship, presence of the representatives is likely to increase the tendency that the magistrates communicate decisions with reasons and summary before them, because of the representatives’ needs of legal reasoning and their signals of the seriousness of the matters—the more serious the case, the more probable the representatives present. Alternatively, a counter argument was also presented by the authors. They argued that magistrates could offer less summary and reasoning when defense representative is present, because the magistrates can rely on the representatives to provide legal explanations, instead of providing by themselves.

A framework summarizing these three relationships is as follows:

Figure 1. Framework of the Theories
How Magistrates Communicate Judicial Decisions



D. Computational Type

This paper adopted a combined strategy of description and identification. It first provided some descriptive statistics about the matters, such as the percentage of matters involving in a sentencing decision, and then, identified the relationships between the decision types, present of defendant representatives, and the traits of magistrates' communication in judicial decisions.

E. Computational Method and Result

Some descriptive information about the data was provided. 26% of all the observed judicial decisions were sentencing decisions. 74% of the sentence decisions imposed fine, which was the most common penalty employed in the observed matters. Only 11% of the sentences imposed custody and half of them were later suspended. These figures demonstrated that, in the lower crime courts, the matters involved mostly only minor crimes. Defendants attended only 68% of all observed matters. Those cases where defendants attended constituted the primary sample of this paper, as many of the variables could not be observed when defendants are absent. For example, magistrates will not be able to "look at" the defendants or "directly speak to" them if the defendants are not present in the courts.

Regarding the relationships proposed in the theories, the authors applied Pearson's chi-squared test to examine the independence of behavior distributions between judicial decision types. Their results are summarized in the following tables.

Table 1. Percentage of Looking at Defendants when Communicate

	Decision Type	Looking at Defendant		Sample Size	Chi-squared Test P-value
		Yes	No		
All Matters	Sentence	79%	21%	261	$\leq 0.001^{***}$
	Others	47%	53%	552	
Representative Present	Sentence	80%	20%	168	$\leq 0.001^{***}$
	Others	38%	62%	N/A	
Representative Absent	Sentence	78%	22%	94	0.119
	Others	69%	31%	N/A	

i. *** indicates p-value is ≤ 0.001 .

ii. N/A indicates the number is not provided in the paper.

Table 2. Percentage of Speaking Directly to Defendants when Communicate

	Decision Type	Speaking to Defendant		Sample Size	Chi-squared Test P-value
		Yes	No		
All Matters	Sentence	87%	13%	261	$\leq 0.001^{***}$
	Others	51%	49%	552	
Representative Present	Sentence	88%	12%	168	$\leq 0.001^{***}$
	Others	42%	58%	N/A	
Representative Absent	Sentence	86%	14%	94	$\leq 0.05^*$
	Others	73%	27%	N/A	

i. *** indicates p-value is ≤ 0.001 ; * indicates p-value is ≤ 0.05 but > 0.01 .

ii. N/A indicates the number is not provided in the paper.

Table 1 and 2 present a similar pattern of magistrates looking at and directly speaking to the defendants, the magistrates' personal engagements when communicating the judicial results. In general, magistrates tend to engage more when delivering sentencing decisions than others. As shown in the first row of the Tables, the relation is statistically significant ($\chi^2 = 74.415$, $df = 1$, $p \leq 0.001$ and $\chi^2 = 98.849$, $df = 1$, $p \leq 0.001$, respectively) and confirms the corresponding claim in the theory. This tendency of engagement persists when representatives are present ($\chi^2 = 83.567$, $df = 1$, $p \leq 0.001$ and $\chi^2 = 100.862$, $df = 1$, $p \leq 0.001$), but does not hold when representatives are absent ($\chi^2 = 2.431$, $df = 1$, $p = 0.119$ and $\chi^2 = 6.223$, $df = 1$, $p \leq 0.05$). When representatives are present, the result goes against the authors' claim as they expect magistrates would engage less with the defendants, when the magistrates are able to choose to communicate with the representatives instead.

Table 3. Percentage of Communication Structures

	Decision Type	Communication Structure			Sample Size	Chi-squared Test P-value
		Result - Reason	Result only	Reason - Result		
All Matters	Sentence	6%	28%	67%	247	$\leq 0.001^{***}$
	Others	7%	78%	15%	502	
Representative Present	Sentence	6%	20%	74%	160	$\leq 0.001^{***}$
	Others	7%	78%	15%	355	
Representative Absent	Sentence	5%	41%	54%	87	$\leq 0.001^{***}$
	Others	8%	77%	15%	147	

i. *** indicates p-value is ≤ 0.001 .

The first row of Table 3 shows the different behavioral patterns between the sentencing matters and others ($\chi^2 = 208.022$, $df = 2$, $p \leq 0.001$). In sentencing matters, magistrates are inclined to provide reasons and summary before judicial decisions, while, in other cases, to provide only results. The observation confirms the authors' proposition. Furthermore, no matter the representatives are present or not, the magistrates are more likely to implement a reason-then-result pattern in the sentencing cases than in others ($\chi^2 = 177.264$, $df = 2$, $p \leq 0.001$ and $\chi^2 = 40.102$, $df = 2$, $p \leq 0.001$). However, when representatives are present, the magistrates are more probable to employ the reason-then-result strategy than when representatives are absent, compatible to the authors' argument.

The differences in the communications reflect different levels of needs in judicial legitimacy when magistrates performing their authority. The primary finding and conclusion of this research is that, compared to decisions conveying other results, decisions delivering sentences necessitate higher levels of legitimacy, which enlists more judicial officers' personal engagement and formal case summary and reasoning during communicating the decisions.

F. Suggestion

I suggest three revisions to be considered. First, the objectivity of the data needs to be improved. For one, the data was collected and documented mostly by the authors themselves. The authors may want to introduce additional independent observers in the observational processes to improve the data's objectivity. The independent observers can be other scholars in the field or simply videotaping of the court processes, which enables others to review and mine the information beyond the original data collection template the authors provided. Not only the data collection process but also the definition of many of the variables employed in the research included much subjectivity. For example, when magistrates delivering their decisions, what counts as "looking at the defendant"? Does that require eye-contact? Would one look suffice? Or it must be 50%, 70%, or 100% of the time the magistrate conveying the decisions? Furthermore, what counts as "communicating decisions"? The judicial communication itself is arbitrary and difficult to be defined. If these variables can be more clearly delineated and their definitions provided in the paper (or technical appendix), the subsequent analyses and conclusions would be stronger and more solid.

Second, the data cleaning process can be more transparent. Without a clear explanation, sample size fluctuated wildly across analyses of this paper. When examining the relationship between judicial decision types and whether magistrates looking or speaking to the defendant, the sample size was 813 (see Figure 1 in the original paper). When presenting the effect of defendant representatives' presence, the sample size became 262 (see Figure 2 in the paper). Finally, when dealing with the communication structure, the sample size was 749 (see Table 1 and 2 in the paper). This fluctuation of sample size was not mentioned and explained in the entire essay. What was the criterion to remove those samples? The data cleaning process should also be provided for review. While the differences between the samples size were huge, the comparisons between the analyses became practically infeasible. Also, remember the observed matters were 1,287. More than one-third of the samples was removed probably because of the absence of the defendants. This large amount of removed observations can cause problems as well. For example, defendants tend to be absent from the court if the crime is less severe. As the crime is petty, when delivering the sentences, the legitimacy can be less required. With lower needs of legitimacy, magistrates would employ less personal engaging during the communication. When considering those cases, the conclusions drawn in this paper can be changed. The effect of sieving out those matters cannot be easily evaluated. However, it is worthy of making sure that the cases removed were not systematically different from the others.

Third, several potential confounding factors should be also considered when doing the analyses. For example, rather than the socio-legal factors discussed in this paper, whether magistrates speak directly to the defendants could be, indeed, decided by the nature of the decisions—defendants are naturally the subjects of the sentences, while the legal matters are more likely to be the subjects of the other decisions. In other words, the magistrates sentence a defendant but adjourn a case, and, naturally, speak to defendants when the decision statements are about the defendants and do not speak to the defendants when the statements are not about the defendants but about the legal cases. Another possible confounding variable is the heterogeneity of magistrates. Magistrates can possess different personal traits and, therefore, perform differently when delivering judicial decisions. The phenomena shown in this paper can be attributed to the different traits of the magistrates, rather than the factors discussed by the authors. For example, senior

magistrates could tend to give the defendants more eye-contact when communicating decisions. While serious cases, which are more probable to be assigned to those senior magistrates, are more likely to have sentencing decisions, and are prone to be delivered when the magistrates looking at the defendants. To tackle these confounding issues, I would suggest the authors also apply other classification models, such as multinomial logistic regressions, beside the chi-squared tests. Using more sophisticated models, the authors are able to examine the underscored relationships while include and control the effects of those confounding factors at the same time.