

“Telling my story my own way”:

**Improving the experiences
of victims, witnesses,
and the accused in the
criminal courts in Scotland**

By **Dr Andreea Miruna Mihut** | University of Edinburgh

This policy brief was supported by the
SCCJR Policy Brief Scheme

 **SCCJR** The Scottish Centre
for Crime &
Justice Research





I. Key Messages

Trauma-informed reforms in within the Scottish Courts and Tribunals Service have recognised an important truth: how people experience the court process matters. However, negative experiences in court such as re-traumatization are not only the result of individual vulnerability or poor practice; they are also built into the everyday interactional structure of adversarial proceedings.

- When people feel unable to explain events in their own words, express nuance, or maintain agency over their own experiences, court processes risk reproducing the very harms they seek to address.
- Existing reforms, including problem-solving courts, special measures, and victim impact statements, remain limited to key groups of people.
- Meaningful reform across the board requires attention not only to procedures, but to the everyday use of language, questioning, and storytelling in court.
- Reactions often understood as “resistance” in court may instead reflect attempts to regain agency and be heard.
- More open and narrative-focused questioning does not necessarily undermine evidentiary quality, fairness, or fact-finding, and in may improve clarity, cooperation, and participation.

Improving court experiences for victims, witnesses, and the accused therefore requires:

1. Broadening understandings of vulnerability in court.
 2. Recognising “telling one’s story one’s own way” as a trauma-informed practice.
 3. Embedding forms of narrative participation that preserve both agency and evidentiary quality.
- 

11. Re-Traumatisation: In Court... By Court?

The current evidence is overwhelming to say that victims, witnesses, and the accused, across the board, have overall negative experiences going through the courts system. The evidence for this is particularly well-documented in research, where interviews with real people about their lived experiences suggest that – *regardless of crime*, social status, or role in legal proceedings – victims, witnesses, and the accused experience feelings of anxiety, anger, confusion, helplessness, and re-traumatisation.

Over the last few years, policies have acknowledged this problem and sought reforms to address root causes, with a focus on being trauma-informed. For the accused, Scotland has introduced problem-solving courts, such as drug courts and domestic abuse courts, which focus on addressing complex root causes and preventing the revolving door issue. For witnesses, Scotland has understood that particular social categories are more vulnerable than others and introduced protected characteristics and special measures. And for victims, Scotland has introduced Victim Impact Statements, so their voices may be heard better.

Nevertheless, people continue to feel unheard during court proceedings. In the words of victims and witnesses (Fielding, 2013):

- **“I went into the whole thing blind.”**
- **“You feel it isn’t your place to talk. You are being asked questions.”**
- **“I had trouble making myself heard.”**
- **“I wasn’t given the opportunity to express the full picture.”**
- **“Can I just finish my point?”**

People don’t understand what is being asked of them. People feel their experiences were turned into reductive categories. People feel controlled, silenced and disempowered.

What they are really trying to say: “I could not tell my story my own way.”

III. Research into Storytelling in Court: Methods

This research project was designed to look closely at courtroom interaction between people who attend court on one hand and legal professionals such as lawyers and judges on the other hand. Rather than focussing on legal ideals or doctrines, it explored how interaction unfolds in real time to result in people not being able to tell their story their own way.

The study analysed interaction in three separate contemporary trials: a historic trial in the United States (Adnan Syed), a contemporary high-profile trial in the same jurisdiction (Derek Chauvin), and

a contemporary everyday trial in New Zealand from 2021. The project findings identified how authority was negotiated in interaction in court, how people resisted the forces they perceived as limiting what they said, and what types of stories are told in response to different kinds of prompts.

This enables us now to better understand the needs and habits of victims, witnesses, and the accused in the court process and reveals concrete ways in which we can improve experiences across the board.

IV. “Telling my story my own way”: Evidence

A fact so well-known in the research that it is historic fact is that, if people felt they could tell their story their own way, they experienced higher levels of satisfaction – even if the outcome was not in their favour at all (Conley and O’Barr, 1985). This suggests that how people conceptualize justice has less to do with outcome and punishment and more with how the process unfolds: interaction that makes people feel like they are being heard, respected, and acknowledged is better received. But it is not enough to know this and introduce “more” opportunities to be heard; it is about embedding it in the existing process.

Enabling people to better “tell their story their own way” may be understood in three key steps:

1. Why is it important?
2. What does it look like when it doesn’t happen?
3. What does it look like when it does happen?

(1) “Storytelling” as trauma-informed practice

Allowing and enabling people to tell their story their own way is, at its core, a trauma-informed approach: we must acknowledge the expressive function of language, beyond its instrumental role in fact-finding and judgement-passing.

Research argues that crime constitutes a trauma for everyone involved – victims, witnesses, and the accused alike – because it creates a ‘narrative rupture in [an individual’s] life story’ (Pemberton et al., 2019, p.411). Vulnerability in court, therefore, should be understood more broadly. In this context, storytelling becomes key for both victim recovery and offender rehabilitation. Research suggests that victims and witnesses need opportunities to explain events in their own way, express personal meaning and harm, and engage in dialogue about what happened

(Walters, 2015). Similar findings apply to rehabilitation for the accused, where overly simplistic or demonising legal narratives may undermine meaningful change (Hall and Rossmanith, 2016).

However, the criminal justice process is designed to produce singular legal narratives through highly controlled forms of interaction. This can limit people’s sense of agency and prevent them from expressing the complexity of their experiences in their own words. From a trauma-informed perspective, this risks re-traumatisation.

“The Court: - you’re adding all the stuff that you want us to know [that you think is important], but that’s not your job. Your job is just to answer the question that is asked.”

(Trial of Adnan Syed)

(2) “Resistance” as the effect of not feeling heard

The very set-up of courtroom interaction in traditionally adversarial systems disempowers victims, witnesses, and the accused. The question/ answer format encodes certain power differentials in interaction: the questioner sets the agenda of the conversation; closed questions requiring yes/ no answers deny people explanation, elaboration, and nuance; and the form of the question sets out preferences for certain types of answers, which, if rejected, makes the answerer come across as non-compliant.

In response to these restrictions, people often display what appears as “resistance”: expressions of frustration and anger, voices rising, eye-rolling, refusals to answer the questions and attempts to change the subject, interruptions and objections, admonishments by judges. In response, we see people’s legitimacy plummeting in the eyes of the audience.

“Judge: You will not argue with the court, you will not argue with counsel. They have the right to ask questions. Your job is to answer them.

Witness: I was finishing my answer.

Judge: I will determine when your answer is done.”

(Trial of Derek Chauvin)

We need to understand this not as people not complying in a deliberate way, but as them trying to regain control over their own story.

Importantly, these strained reactions confuse and obscure the real goal of questioning; the facts get lost in this frustrated state of interaction. In other words, limitation and resistance are not just bad for those attending court; they are also bad for legal professionals seeking truth and justice.

(3) Embedding spaces for storytelling in court processes

Currently, legal professionals are reasonably concerned with control in court. There might be resistance to ideas of reform that involve giving up some control and letting people “tell their story their own way.” However, the evidence in this research from the trial in New Zealand – a common law system that functions on a similar adversarial logic as Scotland – suggests that, even with the measures proposed, fact-finding is still effective and evidentiary quality remains uncompromised.

In this court case, there was evidence of more ‘relational storytelling’ (Conley et al., 2019). A witness, invited to describe an event in an open-ended way, started the story with exposition – neighbour, good friend,

perpetrator. This segment was not relevant to the facts of the case and simply weren’t repeated, but they performed an important expressive function for the witness.

“Prosecutor: Right. Tell us about that please.

Witness: Well, um, [B] and [S] disappeared, I was there with [N], I remember staying there with him for a little while having a chat. I remember telling him he had a nice smile. And then I don’t know what’s happened after.

Prosecutor: So, you have no memory.

Witness: No.

Prosecutor: And then what do you next remember?”

(Trial in New Zealand)

There was evidence of more non-linear questioning. A witness, asked to describe how the perpetrator referred to a group of people, gave indirect answers and went off on apparent tangents. This was not treated as non-compliance and met with more control. The legal professional took a step back and asked open-ended questions that allowed the clarification that the term was not legally sound in the first place.

“Prosecutor: That help you remember now?

Witness: Well it doesn't help me to remember that I said that.

Prosecutor: **What do you mean?**

Witness: **Well number 20 at the bottom, the wording might have changed.**

Prosecutor: **Right. Well, what's the right wording then?”**

(Trial in New Zealand)

Overall, the evidence pointed towards the presence of more expression, thoughtfulness, nuance, curiosity, compliance, thoroughness, intimacy, and clarity. Though more flexibility was required by legal professionals in order to navigate the natural limitations of individual storytelling, the facts were still found, the quality of the evidence was still sound, and the judgment was still fair.



V. Conclusions and Policy Recommendations

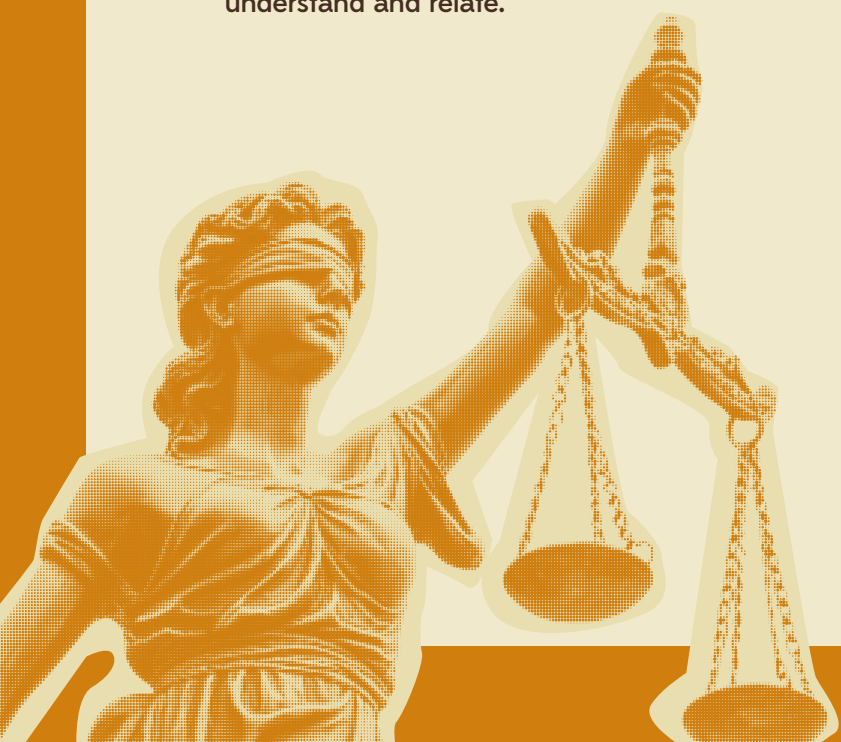
Supporting greater narrative participation is not incompatible with adversarial justice or evidentiary standards. Small but meaningful adjustments to courtroom interaction, questioning practices, and participant preparation can improve experiences for victims, witnesses, and the accused while maintaining fairness and effective fact-finding.

Two broad recommendations emerge from the research.

One: awareness-building and training for victims, witnesses, and the accused.

Court familiarisation processes currently focus on practical matters such as court layout, legal roles, and procedure. However, there is also a need for language awareness and preparation for the communicative realities of courtroom interaction. Educating participants and encouraging them to frame their testimony in a corresponding way can help manage their expectations in court.

- Courts privilege first-hand knowledge. Therefore, participants can frame their answers by rooting experiences in their own senses: what they saw, heard, or felt.
- Courts privilege narratives constructed around coherence, sequence, and cause-and-effect. While emotions and social relations may be important to participants, participants can be encouraged not to forefront these.
- While people may want to explain the uniqueness of an event and its impact, it would be advantageous if they could express this by appealing to familiar stories, so that a jury can understand and relate.



"The Court: I'm just saying that if you start off a sentence with "it must have," it means you're guessing unless it is. You're being directed to answer the question from what you know, what you saw with your own eyes, what you heard with your ears, not what someone else said that you didn't see or what you guessed, do you understand?"
(Trial of Adnan Syed)

Two: adjustments by legal professionals.

Insights already used for recognised vulnerable witnesses, such as children or victims of sexual offences, may be valuable more broadly. Practical adjustments could include:

- Avoiding tagged or leading questions (“he didn’t do that, did he?”). This is well-acknowledged as dangerous for child witnesses and should be applied more broadly.
- Using more open-ended questions that invite narrative responses where appropriate. These give people more control over their stories.
- Allowing elaboration and nuance where appropriate. This allows better expression and may also improve evidentiary quality.
- Avoiding complex multi-part yes/no questions that may pressure people into accepting multiple premises at once. While this may be strategically valuable, it may not reflect accurate testimony.
- Rephrasing the question rather than repeating it in the same form when a participant seems to not understand the question.

“Judge: It is the counsel’s prerogative to ask leading questions and for you to answer those and not volunteer additional information. Are we clear on this?”

(Trial of Adnan Syed)

V

“Prosecutor: And did something happen on the occasion that you went to visit them?

Witness: Yes, yes.

Prosecutor: Tell us about that, please.”

(Trial in New Zealand)

A trauma-informed court system must move beyond simply recognising vulnerability and toward embedding practices that restore voice, agency, and dignity throughout the legal process itself.



