

Procedural Justice:



Making Client Engagement an Evidence-Based Practice

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Family Court Enhancement Project

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- OVW-funded initiative to improve outcomes for victims and children in custody cases involving DV
- Procedural Fairness has critical implications in DV cases
- Team approach
- Multnomah County = one of four national sites
- Draw upon breadth/depth of talent to enhance litigant experience with court system

What do your clients want?



Today's Agenda

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1. Define & provide research basis for procedural justice and list four principles
2. Introduce sample resources and tools from other sectors
3. Discuss practical applications (and their obstacles)

A Simple Definition

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- **Procedural justice** (AKA procedural fairness) concerns the perceived fairness of court procedures and interpersonal treatment while a case is processed.
- **Distributive justice** concerns the outcome of a case.

Four Key Principles

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People will be more likely to accept decisions if they:

- Understand the process;
- Believe they were treated with dignity and respect;
- Had a chance to be heard (voice);
- Believe decision-making process is neutral and unbiased (neutrality).

Winning Isn't Everything

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1. **Outcome Favorability:** People like to win!
2. **Outcome Fairness:** People can accept losing if it was the outcome they feel they deserved.
3. **Procedural Justice:** People really do value the fairness of the process that led to the outcome.

Legitimacy of Decisions

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- **Willingness to Accept Court Decisions**

(L.A. & Oakland Sample with Recent Court Experience, Tyler and Huo 2002)

➤ Perceived fairness of court procedures	.68***
➤ Perceived fairness of court outcome	.20**
➤ Favorability of the outcome	-.11*
<hr/>	
➤ Black/African-American	-.03
➤ Male sex	.02
➤ H.S. degree/GED or greater	-.12

(Results for other factors not shown.) *** $p < .001$, ** $p < .01$, * $p < .05$

Research on Procedural Justice

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- **Immediate Effects:** PJ is more influential than distributive justice (win or lose) in determining compliance or intent to comply. (Tyler & Huo 2002; Tyler and Jackson, 2012)
- **Enduring Effects:** PJ can increase compliance with court orders, reduce crime, and reduce recidivism. (e.g., Paternoster et al. 1997; Tyler and Huo 2002; Gottfredson et al. 2009)

Research on Procedural Justice (cont.)

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- **Procedural Justice players:** All courtroom actors influence perceptions of fairness. (Abuwala and Farole 2008; Picard-Fritsche et al., 2011; Curtis et al. 2011; Frazer 2006; Rossman et al. 2011)
- **Procedural Justice and Legitimacy:** PJ is consistently strong in perceptions of police and court system legitimacy. (Tyler and Fagan, 2008; Meares, Tyler and Gardner, 2012; Meares, Papachristos and Fagan, 2012)

Judge v. Other Court Actors

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- **Predicting Overall Perceptions of the Court Experience** (Red Hook Community Court Study, Frazer 2006)

Impact of Defendant Perceptions of the:

➤ Judge	.506
➤ Defense attorney	.297
➤ Court officers	.145
➤ Prosecutor	.138

Note: Statistics are R^2 statistics for similar regression models, whose main difference is the court actor who is included in the model.

Procedural Justice, Legitimacy, and Race

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- **Perceived Court Performance**

(Statewide Resident Sample in New York, Farole 2007)

“excellent” or “good”

- | | |
|--------------------------|-----|
| ● White | 59% |
| ● Hispanic | 47% |
| ● Black/African-American | 31% |

Research Summary

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- Procedural justice is more important than outcome in determining decision acceptance.
- Procedural justice is strongly related to on-going compliance with the law and legal authorities.
- All core players influence perceptions of fairness.
- Racial minorities report lower perceptions of legitimacy and procedural justice than whites.

Sample Resources & Tools

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Procedural Justice: Examples

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- **Voice:**

- *You felt you had the opportunity to express your views in the court.*
- *People in the court spoke up on your behalf.*

- **Respect:**

- *You felt that you were treated with dignity and respect.*
- *You did not feel pushed around in the court case by people with more power than you.*

Procedural Justice: Examples (cont.)

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- **Understanding:**

- *You understood what was going on in the court.*
- *You understood your rights.*

- **Neutrality:**

- *All sides had a fair chance to bring out the facts in court.*
- *You were not disadvantaged in court because of age, income, sex, race, or some other reason.*

Example



Example

WELCOME TO THE ARIZONA COURTS

WE WILL BE HAPPY TO HELP YOU IF WE CAN. AS WE MUST BE FAIR TO EVERYONE, WE ARE ALLOWED TO HELP YOU ONLY IN CERTAIN WAYS.

This is a list of some things court personnel can and cannot do for you:

- We can explain and answer general questions about how the court works.
- We can give you general information about court rules, procedures, and practices.
- We can provide you with the number for lawyer referral services, legal aid programs, and other services where you can get legal information.
- We can provide court schedules and information on how to get a case scheduled.
- We can give you information from your case file that is not restricted.
- We can provide you with court forms and instructions that are available.
- We can usually answer questions about court deadlines.

- We cannot tell you whether or not you should bring your case to court.
- We cannot tell you what words to use in your court papers or whether they are correct.
- We cannot tell you what to say in court.
- We cannot give you an opinion about what will happen if you bring your case to court.
- We cannot conduct legal research for you.
- We cannot talk to the judge for you or let you talk to the judge outside of court.
- We cannot alter court documents.

OUR ABILITY TO ASSIST YOU WILL DEPEND ON THE TIME AND RESOURCES

**WE WILL BE HAPPY
EVERYONE, WE ARE**

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PLEDGE OF FAIRNESS

The fundamental mission of the Alaska Court System is to provide a fair and impartial forum for the resolution of disputes according to the rule of law. Fairness includes the opportunity to be heard, the chance to have the court process explained, and the right to be treated with respect. The judges and staff of the Alaska Court System therefore make the following pledge to each litigant, defendant, victim, witness, juror, and person involved in a court proceeding:

We will LISTEN to you

We will respond to your QUESTIONS about court procedure

We will treat you with RESPECT

공정한 재판을 위한 서약

알래스카 법원의 기본임무는 법치주의에 의거하여 분쟁의 해결을 위해 공명정대한 재판을 제공하는 것입니다. 공정하다 함은 말할 수 있는 기회, 법정절차에 대해 설명을 들을 기회, 그리고 정중한 대우를 받을 권리를 포함합니다. 그러므로 알래스카 법원의

AKGUIN PICUILRIA ALLAKAKNGAUNRITLLERKAMEK

Alaskam qanercetarvilm calvian ciunugta piavciluni ayukduki cali quyugcivigmek cali calvigmek tuani yum ayukucia wall' kitucia allakaukeykenaku caliaknaluku maligtakuluki alerkutet. Ukugrut, niicimallerkak, nallunaigiluteng aperturluku qanercetagvilm callara, cali piyunarkucik aulkllerka yuk qircikluku. Cukcistai cali calistai Alaska Court System-ak wanirpak pikirtuq makunun: yuk qanercetagvigkun akiligcetariiyagamek

Обещание справедливого отношения

В соответствии с правилом закона, основной задачей Судебной Системы штата Аляски является обеспечение справедливого и беспристрастного отношения во время разрешения споров. Справедливое отношение включает в себя возможность быть услышанным, возможность получения разъяснения судебного процесса и право уважительного отношения.

Discussion of Practical Applications

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Summary:

- Fair treatment matters.
- Key elements include:
 - Understanding
 - Respect
 - Voice
 - Neutrality

Challenges

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What are some challenges to procedural fairness for attorneys?

- Chatting with opposing counsel
- Sidebars
- Interpreters
- Explanations for client
- Anything else?

Meeting the Challenge

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How can procedural fairness principles be applied in these situations?

- Chatting with opposing counsel
- Sidebars
- Interpreters
- Explanations for client
- Others?

Takeaways

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- Procedural fairness is part of good client relations and your role as an officer of the court.
- Not just one way to implement procedural fairness – adapt the principles to fit your practice.
- Some common situations discussed today - think about your practice to spot others where procedural fairness might help. Plan how to address it.
- Call us for technical assistance! We're here to help.

Resources

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- **Center for Court Innovation**

www.courtinnovation.org/proceduraljustice

- **Professor Tom Tyler, Yale Law School**

www.law.yale.edu/faculty/TTyler.htm

- **Procedural Fairness for Judges and Courts**

www.proceduraljustice.org

- **National Center for State Courts *CourTools***

www.ncsconline.org/d_research/CourTools/ctTemplates.htm

- **National Council of Juvenile & Family Court Judges**

www.ncjfcj.org

Thank you!