

Process Matters: Procedural Justice and Its Impact on How Systems Respond to Domestic Violence

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July 12, 2018



OVW Disclaimer

The presentation of this webinar was supported by Grant No. 2015-TA-AX-K027 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this webinar are those of the presenters and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

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Today's Topic: Procedural Justice

After today's session, you will be better able to

- Describe the research basis for procedural justice
- Contextualize within intersecting system responses
- Discuss challenges and identify strategies to deliver procedural justice consistently to improve compliance and victim safety

as well as actual un

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❖ **Case Study**

Among juvenile respondents surveyed after first appearance and sentencing:

- What % did not know they were represented by counsel? 3 out of 10
- What % of release and sentence conditions did they remember? 1 out of 3

- ❖ **So what do litigants want?**
- ❖ **How do they measure success throughout the system?**



Another Answer:

“Procedural justice”

Definition: The perception that you are treated with respect and your concerns are taken seriously

promotes compliance



Victim safety

The Dichotomy

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

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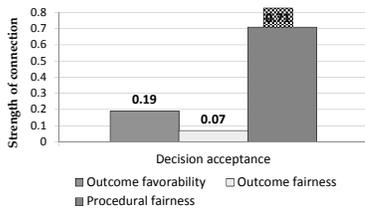
Winning Isn't Everything



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

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Fair Treatment Matters More than Outcome



In other words, you can make a bad outcome better through fair treatment.

Tom Tyler, Yale Law School

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Key Elements & Impact on Compliance

People will be more likely to accept and comply with decisions when they:

1. Believe they were treated with dignity and respect
2. Understand the process
3. Had a chance to be heard (voice)
4. Believe the decision-making process is neutral and unbiased (neutrality)
5. Helpfulness!



Research Summary

- Procedural justice is more influential than outcome in determining decision acceptance.
- Procedural justice is strongly related to on-going compliance with the law and the willingness of victims to view the court as a resource.
- These findings hold for all demographics, including across racial minority groups.
- All core players influence perceptions of fairness.

Group Discussion

What are some examples you have seen from your work that incorporate the elements of procedural justice?

- **Respect**
- **Understanding**
- **Voice**
- **Neutrality of decision-making**
- **Helpfulness**



National Themes

Respect

- Introduce yourself and staff
- Explain delays
- Waiting areas/environment
- Helpful information about parking/transportation
- Acknowledge difficult prior experiences with the process that led to perceptions of unfairness

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National Themes

Understanding

- “What questions do you have?”
- “Let’s review what you’ll need to do next.”
- Handouts written at or below 6th grade reading level; consider English Language Proficiency
- Explanation of rules and orders

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National Themes

Voice

- “You’re the expert on your situation, my job is to help explain the process, what can I do to help with that?”
- “What else would you like me to know about your situation?”
- Comment cards/user surveys

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National Themes

Neutrality

- Explain decision-making process (transparency)
- If differing policies, explain
- Explain order in which people are heard

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National Themes

Helpfulness

- All of the above
 - Materials in multiple languages
 - Explaining processes
 - Different modes of communication
- Providing referrals

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Examples of Procedural Justice in Action



**What Gets in the Way of Procedural Justice?
Public Perceptions: Communities of Color**

- We have a wide racial divide in perceptions of fairness nationally
- People of color report lower perceptions of legitimacy and procedural justice than whites
- African-Americans come to court with lower expectations and, afterwards, perceive less fair treatment than others

(Tyler and Huo 2002; Rottman et al. 2005)



**What Gets in the Way of Procedural Justice?
Systemic and Personal Biases**

- What does procedural fairness have to do with actual fairness?
- Ways to explain policies that appear unfair, but are designed to address inequities
- Harder to address perceptions of the process when the process is actually biased or unfair
 - Ways to mitigate
 - Procedural justice gives us opportunity to address underlying inequities

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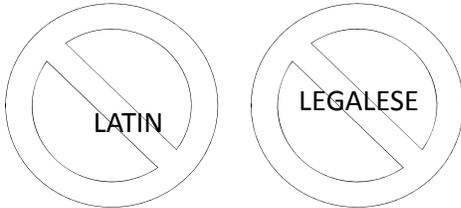
What Gets in the Way of Procedural Justice? History of Trauma



- Navigating multiple systems can be anxiety provoking
- litigants may have experienced high rates of trauma as a result of domestic violence, poverty and oppression
- Symptoms of trauma can be triggered by a confusing or overwhelming process
- Victims and offenders may not be willing to engage, access services or comply with court orders without additional support

What Gets in the Way of Procedural Justice?

Example #4: Education and Expertise



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**That's a lot of challenges!
(So why aim for procedural justice?)**

- Increased compliance and victim safety
- Decreased emotional distress and re-traumatization by the system
- Families accessing services and support
- Mutual respect and trust between practitioners and clients
- Increased trust in the system
- Helps to identify actual unfairness and bias

****All can improve case outcomes****

Group Discussion

Group brainstorming:

1. What do you think is confusing to litigants about the systems they are accessing?
2. What are some ways litigants can challenge practitioners/systems?
3. What are some strategies you can think of to overcome these challenges and increase compliance/engagement and public trust



Closing Thoughts

- Procedural justice promotes public confidence in and respect for the system
- Walk in the shoes of the public
- Mutually beneficial:
 - Improves job satisfaction
 - Increases engagement and compliance
 - Can't always increase resources, but helps maximize what you have

Thank you!

Additional Resources

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
