



TEXAS CENTER  
FOR THE JUDICIARY

### 2018 Child Welfare Judicial Conference

The Power of Perception & the Positive Impact of Humanizing Justice  
Dylan Moench, Children's Commission  
November 13, 2018

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### Legitimacy

Legitimacy reflects three related issues:

- Trust and confidence in the justice system;
- Willingness to defer to legal authority; and
- Belief that the actions of legal authorities are morally correct and appropriate.



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### Legitimacy, cont.

What shapes legitimacy when people deal with the legal system?

- The primary issue shaping people's views about legitimacy when dealing with the legal system is whether authorities are exercising their authority in fair ways, a.k.a. **procedural justice**.



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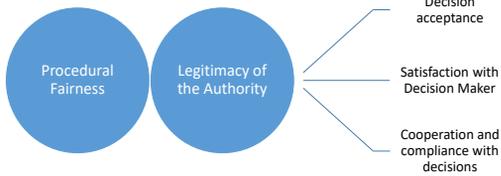
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### Studies suggest that judgments about court practices shape public behavior



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### Procedural Justice

Procedural Justice developed from research which shows that the fairness of *how cases are handled* has an important influence upon people's evaluations of their experience in the court/criminal justice system.



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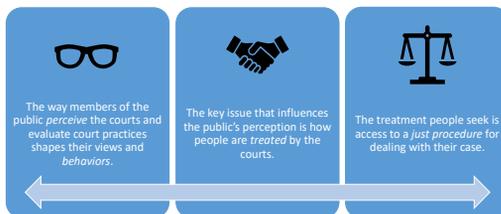
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### Perception, Behavior, Treatment, and Procedure



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### California Study

- Outcome Favorability**
  - (The decision favored me.)
- Outcome Fairness**
  - (I received the outcome I deserved.)
- Procedural Fairness**
  - The decisions were made in fair ways.
  - I was treated in fair ways.




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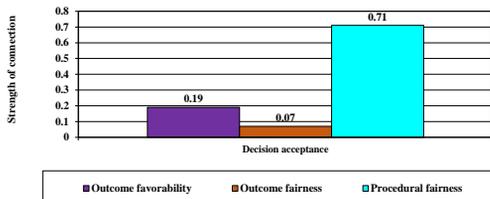
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### Strength of connection to acceptance of the Court's decision




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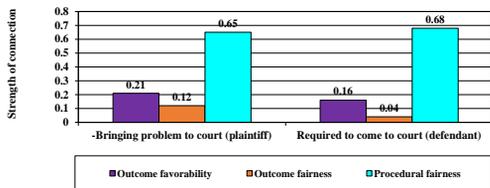
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### Willingness to accept decisions based upon reason for being in court




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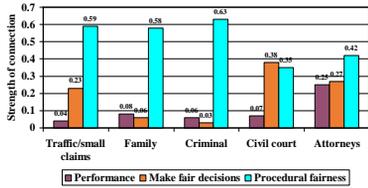
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### Trust and confidence in the California justice system by type of prior personal experience




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### Enduring Acceptance and Compliance

Longitudinal study of restorative justice conferences showed that the rate of re-offense for breaking the same law was 1/5 as high between those who viewed the decision with high legitimacy compared to those who viewed the decision with low legitimacy



The study also found those affects endured even 4 years later




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### Fairness

The findings of what people consider to be a fair procedure are true across ethnic and minority groups.

- Minority groups report experiencing less fairness, but what they consider a fair experience to be is the same across minority groups, and they have the same correlation between experiencing fairness and accepting and complying with the decision as non-minority groups.




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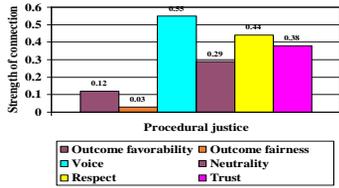
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### What makes a procedure fair?



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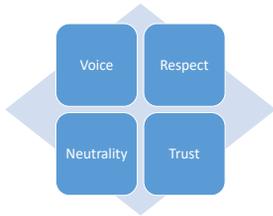
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### Fairness



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### Voice



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### Voice

People want to have an opportunity to tell their side of the story *in their own words*

People want the chance to state their case *before* the court makes its decisions

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### Voice

#### Action Steps

- Provide an opportunity for parents and youth to address the court directly.
- Consider allowing parents and youth to speak first at hearings, before the professionals report on the family's progress.
- Use open-ended questions and listen to answers.
- Utilize forums in which people can voice their side of the story. Ex: mediation, FGC, etc.
- Seek regular feedback from families about the court processes.

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## Neutrality

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## Neutrality

People view courts as neutral when they:

- Perceive the court's decisions are based on facts and rules, not personal opinions.
- Perceive that courts apply rules consistently across people and over cases.

Judges might check their assumption that they appear to be neutral; a judge provides procedural fairness when his or her neutrality is actually demonstrated to the litigants.



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## Neutrality

Action Steps

- Clearly state the court's rules in a respectful and transparent manner.
- Explain how and why decisions are made (e.g., why can't a child return home?).
- Avoid the appearance of favoritism.
- Create courtrooms where the parties, judge, and professionals are seated in a circle.
- Write information, such as the requirements of a treatment plan, on visible dry erase boards in addition to stating them out loud.



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## Respect



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## Respect

People need to feel respected, *regardless* of whether they have a strong legal case.

- Show that you take litigants’ concerns seriously.
- Show respect for them as people and as citizens who have the right to address the court about their issues.




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## Respect for litigants

### Action Steps

- Use “Mr. or Ms. \_\_\_\_\_” **NOT** “Mother”, “Father” or “Respondent.”
- Try to start court hearings on time. Provide an estimate of wait times.
- Apologize for lengthy delays.
- Ask about the parents’ availability when scheduling a hearing.




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## Respect for their rights

### Respect for litigants’ rights

- Give people information about what their rights are.
- Emphasize that they have the right to bring their problems to court, and that when they do so, those problems will be dealt with fairly.
- Tell them how to complain to higher authorities.
- ❖ Having the right to complain is much more significant to litigants than following through to actually making complaints.




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# Trust



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## Trust

The central factor influencing public evaluations of judges is an assessment of the character of the Decision Maker as sincere and caring.

- Are you listening to and *considering* people's views?
- Are you trying to do what is right for *everyone* involved?
- Are you acting in the interests of the parties, not out of personal assumptions?



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## What can you do to be viewed as trustworthy?

### Action Steps

- Create a welcoming courthouse/courtroom environment (e.g., family-friendly waiting room).
- Situate the judge's bench at eye level.
- Introduce yourself by name.
- Ask parents how they are doing.
- Personalize interactions (ex: make eye contact).
- Acknowledge unfairness.



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### What can you do to be viewed as trustworthy?

#### Give evidence that you are listening to people.

- Acknowledge people's needs and concerns, even when you cannot base your decision on them.
- Express awareness of and empathy for their situation.
- Take adequate time to consider arguments when making decisions. Treat the matter seriously.

#### Explain your decision.

- Demonstrate that you considered people's arguments by referring to them (by name if possible).




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### Minnesota court study




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### System level approach to Procedural Justice

Every experience with the courts – litigant, juror, etc. should build legitimacy.

This should occur at all stages: court help-desk; bailiff; judge.




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## Implementing change



Interpersonal treatment is critically important, but changes in objective procedures to heighten perceived fairness can be straightforward.



These policy changes are inexpensive.



Low cost changes that are high impact.



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## Questions

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