

Procedural Fairness:



A Practical Workshop

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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

Today's Objectives

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Following today's workshop, you will be better able to:

1. Identify and describe the principles of procedural justice.
2. Apply the principles in typical daily courtroom situations.

Procedural Fairness

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- The **very essence** of justice and the justice system
- Due process at its core
- Victim's willingness to view the court as a resource, and the respondent's willingness to comply with orders we issue

The Dichotomy

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- **Procedural justice** (*aka* procedural fairness) -- perceived fairness of court procedures and interpersonal treatment while a case is processed
- **Distributive justice** -- outcome of a case.
- **Knowledge of law and good decisions** – vs. – **knowledge of humanity and application of law.**

Research Summary

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- Procedural justice is more influential 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.

Key Principles

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People will be more likely to accept decisions if they:

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

Key Principles - Examples

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- **Understanding:**

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

- **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.*

Key Principles – Examples (cont.)

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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.*

- **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.*

Why does this matter?

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- **Safety**
- **Trauma**
- **Self-represented litigants**

Scenario 3 – Polling Question #1

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- Were interruptions handled appropriately?

Scenario 3 – Polling Question #2

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- Should the judge address petitioner's non-verbal body language?

Scenario 3 – Polling Question #3

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- Should the judge address respondent's muttering?

Scenario 3 – Polling Question #4

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- Was the judge's comment on child support appropriate?

Scenario 3 – Polling Question #5

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- Should the judge ask for her address?

Scenario 3 – Polling Question #6

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- Was the judge's comment on her medications appropriate?

Scenario 4 – Polling Question #1

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- Are you concerned about the apparent violation of the protection order (“he says”)?

Scenario 4 – Polling Question #2

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- Are you concerned about respondent's access to firearms?

Scenario 4 – Polling Question #3

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- Are you concerned about whether petitioner has spoken to an advocate or made a safety plan?

Scenario 6 – Polling Questions #1

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- Should the judge let petitioner continue in this manner?

Scenario 6 – Polling Questions #2

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- Does this exchange show respect?

Scenario 6 – Polling Questions #3

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- Does this exchange show neutrality?

Scenario 6 – Polling Questions #4

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- Should the judge have allowed this line of questioning to continue?

Scenario 6 – Polling Questions #5

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- Did the judge handle this situation well?

Scenario 6 – Polling Questions #6

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- Should the judge allow the recess?

Scenario 6 – Polling Questions #7

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- Should the judge do anything else here?

Closing Thoughts

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- Procedural Fairness promotes public confidence in and respect for the justice system – ensures everyone has their “day in court”
- Walk in the shoes of the litigants
 - *(Think – foreign country, foreign language)*
- Mutually Beneficial:
 - Helps public / safety
 - Helps judicial officers – more information / better orders
 - Can't increase resources, but helps maximize what you have

Takeaways

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- Procedural fairness is important because it:
 - ✦ Increases information available to the judge;
 - ✦ Increases compliance; and
 - ✦ Reduces repeat hearings.
- Focus – and stay in the moment.
- A little kindness and grace go a long way – they don't cost money and don't take more time, but can make a world of difference.
- Don't forget to be kind to yourself. (Don't forget your own oxygen mask.)

Takeaways (cont.)

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- Be self-reflective: Know your own biases and triggers, and be on guard. Don't fall into stereotypes, including stereotypes based on a litigant's role in the case.
- Lots of ways to implement procedural fairness in your courtroom – adapt for your own style.
- A few situations presented today, but not limited to those. Another common issue? Plan a way to handle it – try writing your own script!
 - *Feel free to call us for 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!