

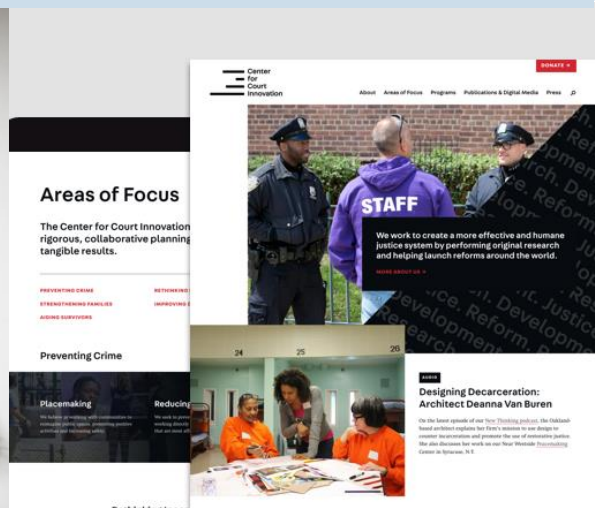
ILLINOIS ASSOCIATION
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COURTS

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Drug Courts and Procedural Justice

Center for Court Innovation

OUR MISSION is to make the justice system fair, effective, and humane. We create **operating programs** to test new ideas and solve problems, perform **original research** to determine what works (and what doesn't), and provide **expert assistance** to justice reformers around the world.



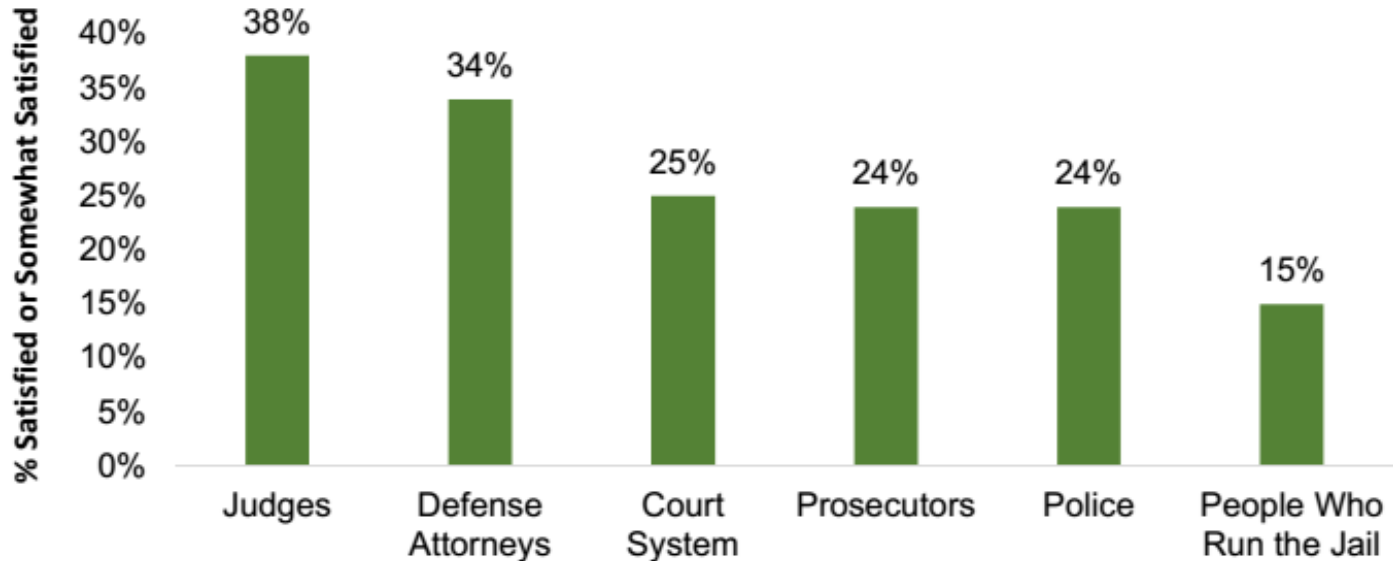
What is procedural justice?

The perception that the process is fair and legitimate, as opposed to distributive justice, whether or not the outcome is fair.

PROCEDURAL JUSTICE

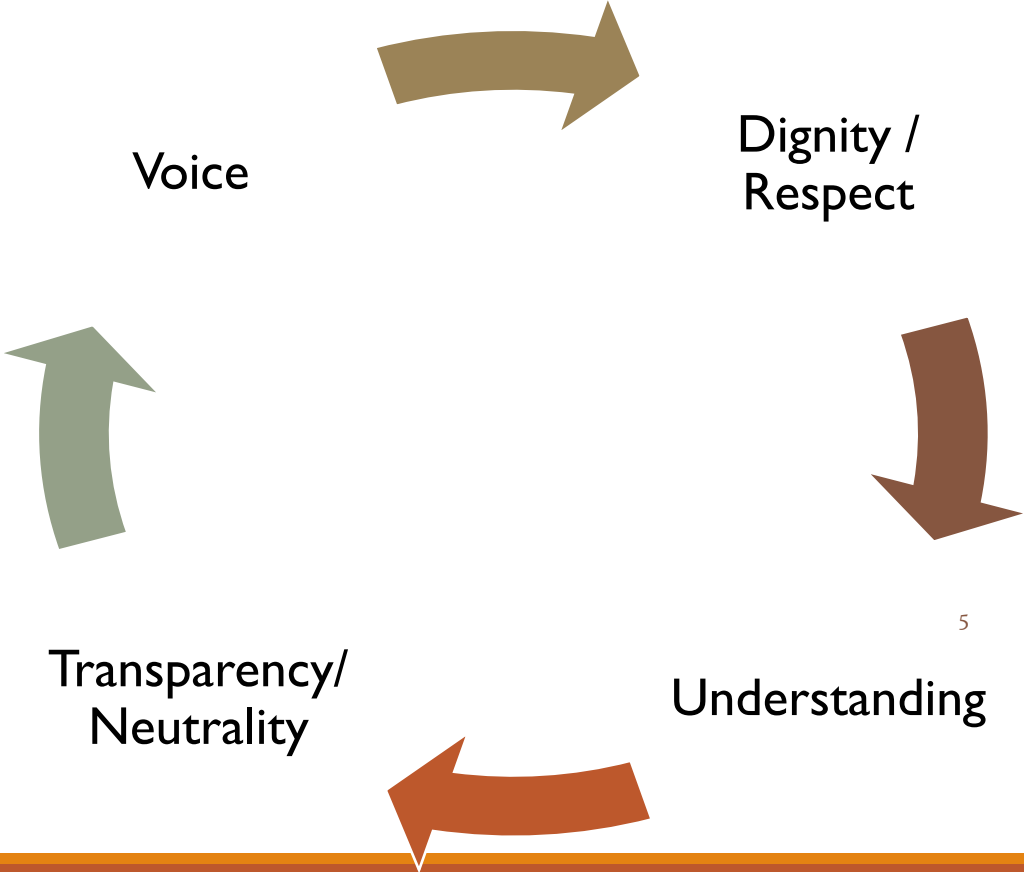
Perception of Criminal Justice Actors

Figure 2.2. Satisfaction with Criminal Justice Agents and Agencies*



* Includes those who are satisfied or somewhat satisfied.

PROCEDURAL JUSTICE



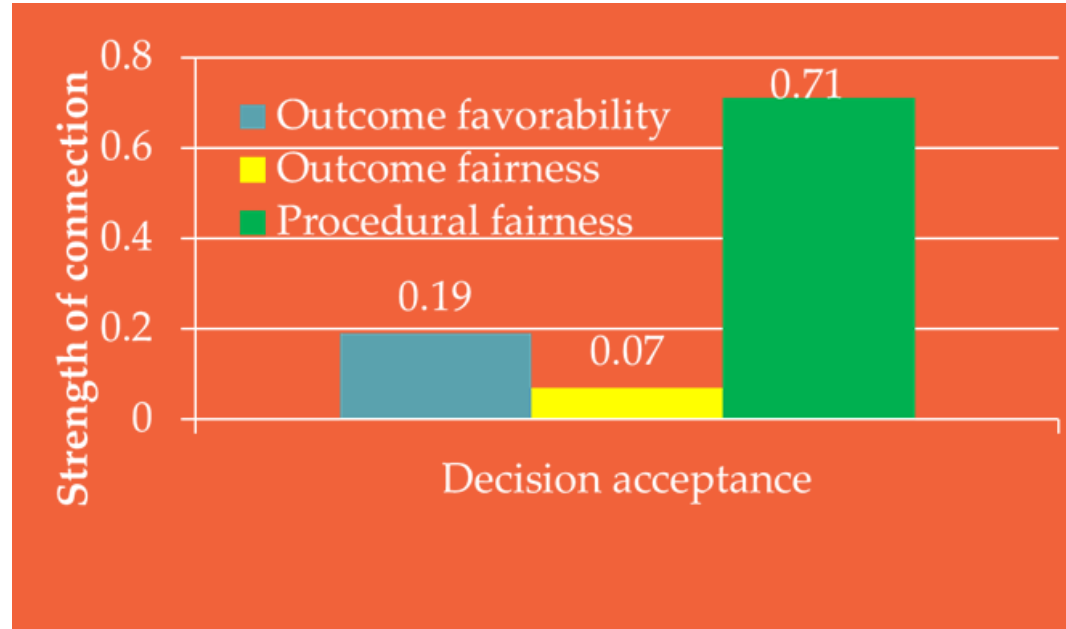
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PROCEDURAL JUSTICE

Perceived
Procedural fairness



Decision Acceptance



Tom Tyler, Yale Law School

PROCEDURAL JUSTICE

Perceived
Procedural fairness



Decision Acceptance

- Fewer violations, revocations and returns
- Smaller dockets
- Cost and resource savings
- General compliance with the law will reduce recidivism

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Procedural Justice Built into the Drug Court Model

Respect:

- Client-centered
- Recovery oriented

Voice and Understanding:

- Judicial interactions and length of supervision
- Case management
- Defense representation

Neutral decisioning making:

- Target population
- Equity and inclusion
- Incentives and Sanctions





PROCEDURAL JUSTICE: VOICE



Judge Alex Calabrese, Red Hook Community Justice Center (Brooklyn, NY)

PROCEDURAL JUSTICE: RESPECT

Implementing respect by:

- Introducing yourself and your role on the team
- Greeting individuals by their name/how they identify
- Acknowledge burdens and frustrations like transportation, having to rearrange work schedules, childcare arrangements
- Arrangement of the courtroom, specifically law enforcement

How does the team respect an individual's time through:

- Explanation of calendar call
- Treatment schedule balanced with other responsibilities

How does the team address SUD and treatment mandates without stigma?

PROCEDURAL JUSTICE: UNDERSTANDING

- Explain purpose of meeting or court hearing
- Explain rights they may have
- Let them know when they will have an opportunity to speak or ask questions
- Ask them to repeat any instructions you're providing to confirm understanding
- Provide written resources for them to review before or after meeting or court appearance has ended

*Use language at or below 6th grade reading level

PROCEDURAL JUSTICE: NEUTRAL DECISION-MAKING

- Am I being consistent?
 - Charge
 - Criminal history
 - Age
 - Instructions
- Can the public tell that I'm making an unbiased decision?
 - Are the policies/steps to decision making shared with the public?
- Did I explain how I came to the decision?
 - What factors did I consider?
 - Who did I speak with (or was unable to speak with)?
 - Was there review or approval of my decision?

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PROCEDURAL JUSTICE: TRANSPARENCY

WELCOME

- Thank defendants for being on time
- Reasons for case order
- Why and how defendants should contact their attorney. Instructions to check in if being represented by Legal Aid.

JUDGE'S ROLE

- Ensure a fair process
- Consider all of the evidence
- Help you understand the process (so will your lawyer)

RULES

- Importance of every case
- Need for quiet
- No cell phones. Reasons for restrictions.
Note: court staff may use phones

PLEAS

- Importance of discussing these decisions with your attorney
- Immigration consequences
- DNA sample
- Surcharges and fines

WAITING

- Waiting is frustrating
- Reasons for case order
- Exceptions (defendants held in jail, prosecutor ready for trial)
- Number of cases on day's calendar

MISC.

- Communicating with court officers/ approaching the rail
- Lunch break

“The Stigma of Addiction and Effects on Community Perceptions of Procedural Justice in Drug Treatment Courts”

Colleen M. Berryessa and William L. D. Krenzer

Hypothesis: Procedural justice in a drug court setting is complicated by the public’s view on SUD, since the stigma of SUD may moderate people’s views on the need for or importance of procedural justice

- Studies with three different groups given different information about drug court participant “Joe”
 - Control: only told that Joe’s sentence involved substance use treatment, nothing about diagnosis
 - Psychiatric label condition: further information was provided to participants that Joe had been diagnosed with addictive disorder and its characteristics
 - Psychiatric + biological label condition: information was provided information about how addictive disorder is a biologically influenced disorder including neurological and genetic characteristics, in addition to psychiatric information on Joe’s diagnosis of addictive disorder

Results & Implications

Across all four studies and all four elements of procedural justice, participants consistently gave high ratings on how important it was to them for Joe, the defendant, experience procedural justice in drug treatment court.

Higher stigmatization associated with addiction does **not** lead to the perception that less procedural justice is required for participants. In fact, Where there are higher stigmatization levels for “personal responsibility,” it is even more important for drug court to practice procedural justice principles.

The presence of all four elements of procedural justice may dictate whether or not members of the community believe that the decisions being made in drug treatment courts are acceptable and legitimate (Sunshine & Tyler, 2003)

Procedural Justice in Practice

Participant doesn't understand/disagrees with clinical diagnosis and intensity of treatment

- **Response:** Team reviews the clinical assessment and shows the process of how clinical diagnoses are made and how this informs the treatment plan
- What procedural justice principle was practiced here?
 - Voice
 - Respect
 - Understanding
 - Neutral decision-making

Procedural Justice in Practice

Participant vocalizes having had disrespectful interactions with past treatment providers and is hesitatnt to initiate treatment

- **Response:** Team shows participant's concerns are taken seriously and sets up an introductory call to facilitate a warm hand-off and connects participant with a peer advocate
- What procedural justice principle was practiced here?
 - Voice
 - Respect
 - Understanding
 - Neutral decision-making

Procedural Justice in Practice

Participant accuses the team of being treated differently than others in the program and receiving harsher sanctions than other participants

- **Response:** Team reviews how their response to the participant's engagement in the program fits within the incentive/sanction structure that is applied to all participants
- What procedural justice principle was practiced here?
 - Voice
 - Respect
 - Understanding
 - Neutral decision-making

Scenario

VOICE

Participant tests positive on two drug tests, once for cocaine and once for Buephernorphine, which the participant is prescribed. The judge has participant explain the circumstances that led to these two positive tests and listens intently.

UNDERSTANDING

The team respectfully listens to participant and explains in clear language why this behavior requires a sanction. The judge explains how additional community service sanction response fits in the incentive/sanction chart discussed in the initial drug court contract that applies to all participations. The judge further explains that the participant will be expected to be free of all substances, including buephernorphine moving forward since the program is absence based.

NEUTRAL DECISION-
MAKING

COCLUSION: Participant is mandated to serve 10 extra community service hours and is ordered to stop taking their MOUD medication.

Was procedural justice practiced and was it enough?

PROCEDURAL JUSTICE: LIMITATIONS

Due Process and Constitutional violations

Does not lead to evidence-based best practices

Does not protect against bias (implicit or explicit)

Does not change many of the physical barriers of coming to court



Questions?

Thank you!

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