

# Procedural justice: Why it matters

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# Goals for this session.

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- Discuss the meaning of procedural justice in the context of community courts.
- Discuss the policies, practices and procedures that might facilitate the handling of court cases.

# The goals of the judicial system.

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- First and foremost is to provide people with justice.
- Second is to handle people's problems in ways that lead them to...
  - Accept and abide by decisions.
  - Retain and even enhance their trust and confidence in judges, the courts, the criminal justice system and the law.

# Adjudication.

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- Traditional adjudication has problems achieving these latter goals.
  - For the general public.
    - High volume courts: traffic; family; small claims.
  - For the “criminal” population.
    - Contact with the courts is frequently criminogenic.

# Many alternatives have developed.

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- ADR, e.g. mediation, arbitration.
- Community courts;
- Drug courts;
- Problem solving courts;
- Restorative justice conferences.

# Looking at the public.

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- What can research on how the public evaluates the courts and courtroom experiences tell us that is helpful?
- What do people want?

# Procedural justice as an idea.

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- Procedural justice develops from research showing that *how cases are handled* has an important influence upon people's evaluations of their experience in the court/criminal justice system.
  - Influences short/long-term acceptance of decisions.

# Key research finding.

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- How people and their problems are managed has *more* influence than case outcome upon key issues.
  - Whether they accept and continue to abide by decisions.
  - How people evaluate judges, the court system, the criminal justice system and the law.
  - People's general everyday compliance with the law.

# Defined in terms of four issues.

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- Quality of decision making.
    - Voice.
    - Neutrality.
  - Quality of treatment
    - Respect for people and their rights.
    - Trustworthiness.
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# Why should you be interested?

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- Procedural justice works:
  - It encourages decision acceptance.
  - It leads to positive views about the legal system.
- Supports the goals of community courts:
  - Supports building alternatives to adjudication.
  - Promotes community involvement.

# An example showing that it works.

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- Study of the *decision acceptance* involving courts in Oakland and Los Angeles.
  - Both those who seek help and those being regulated.
  - White; Hispanic; African-American respondents

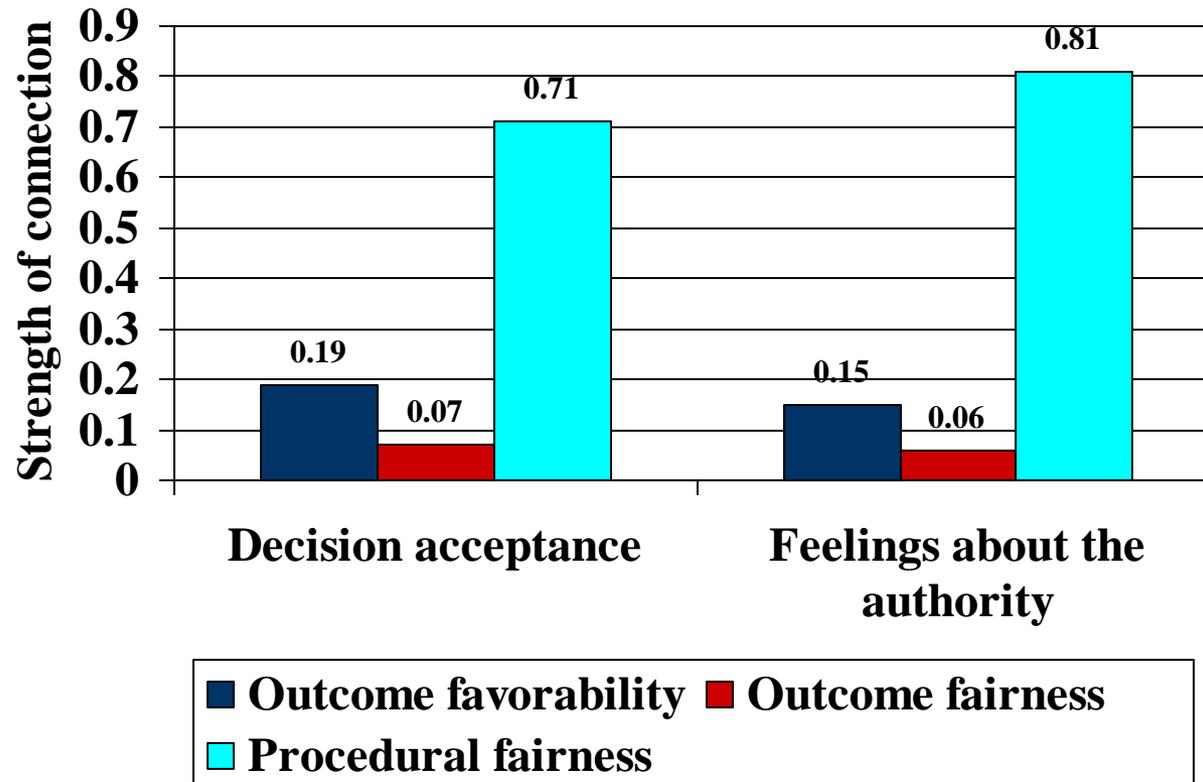
# Factors that could matter.

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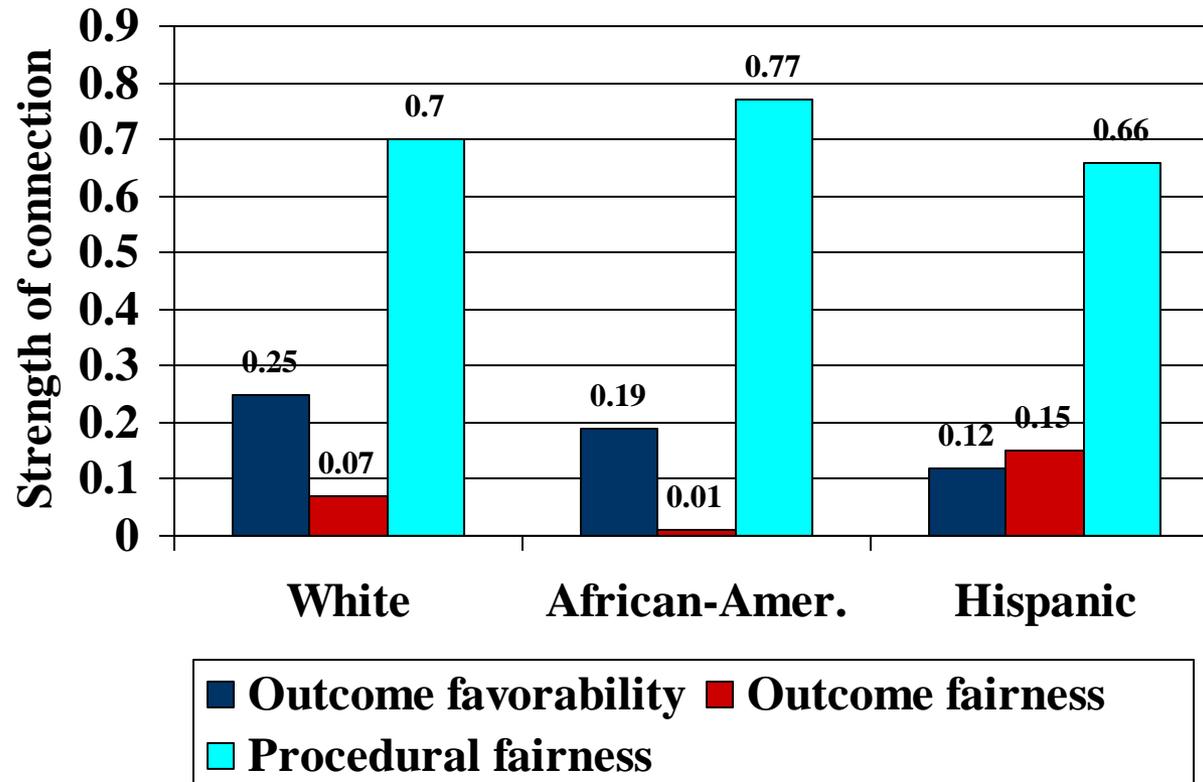
- Outcome favorability – Did I win?
- Outcome fairness – Did I get what I deserve?
- Procedural justice – Was my case handled through fair procedures?

# Why do people accept court decisions?

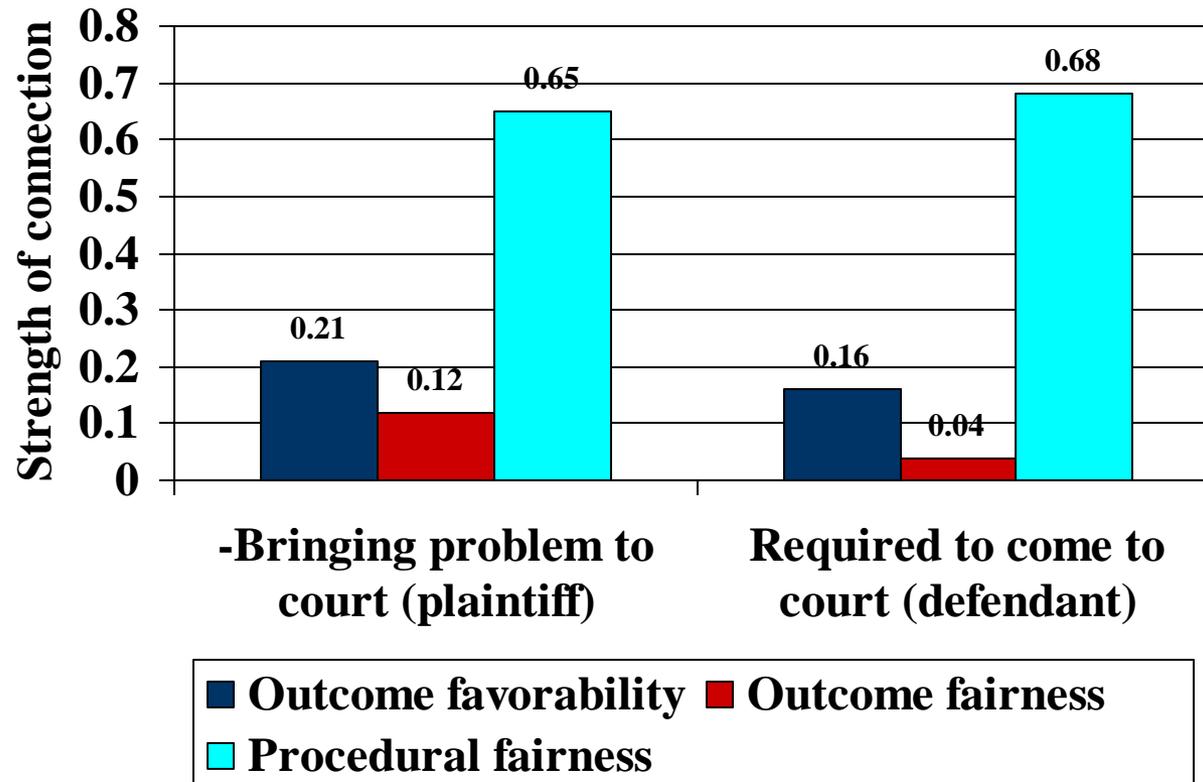
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# Willingness to accept decisions by race.



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

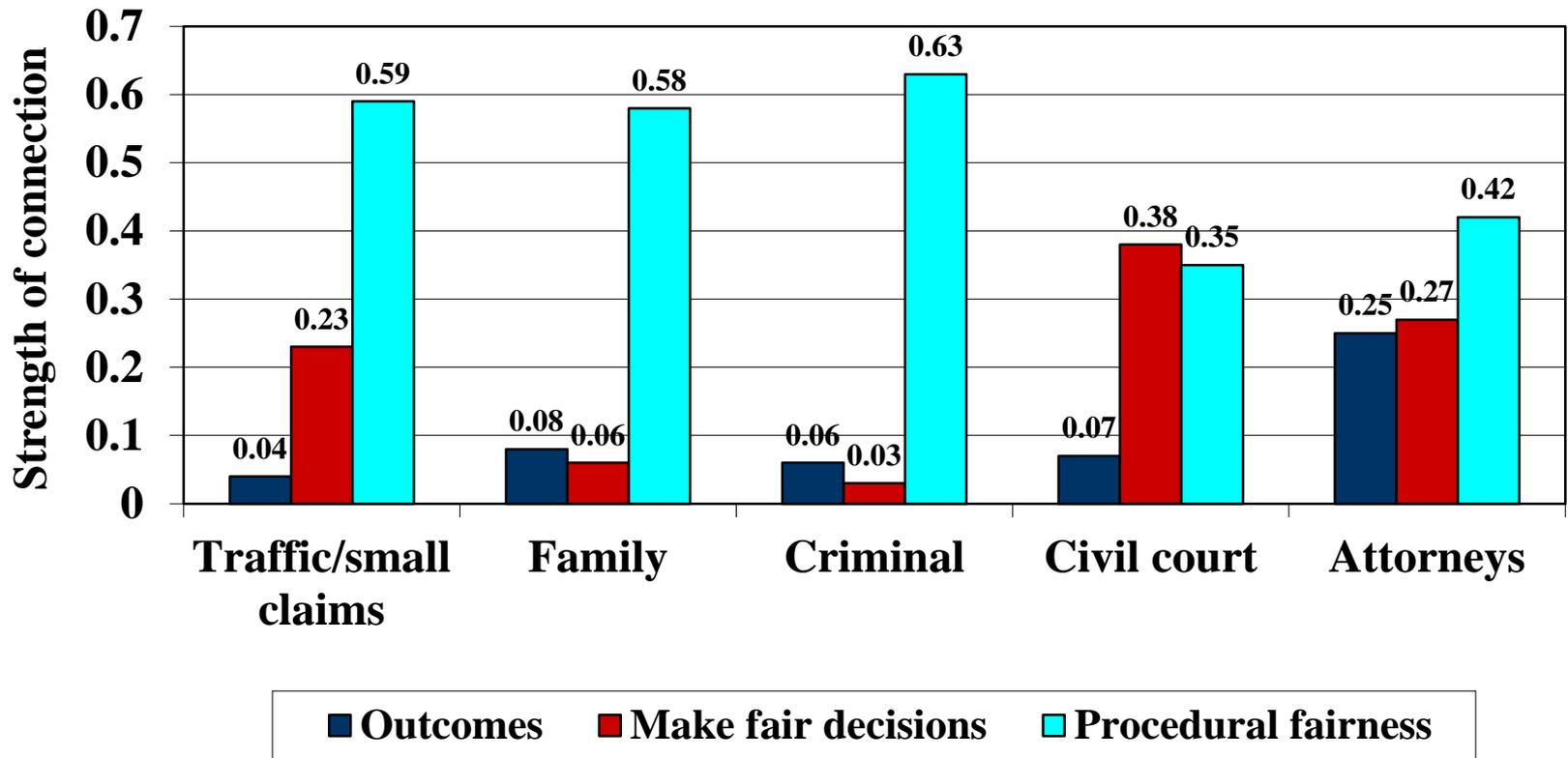


# Range of the procedural justice effects.

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- How do people who have had cases in different courts evaluate the courts and the justice system?
- California – statewide study.
  - Those with personal experience.
    - Traffic/small claims (296).
    - Family (105).
    - Criminal (460).
    - Civil (247).
  - Also, attorneys.

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



# Focus on decision acceptance.

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- Procedural justice does not suggest that people are happy if they lose/receive an undesired outcome.
  - No one likes to lose.
- It suggests that people recognize that they cannot always win/get what they want.
  - Accept “losing” more willingly if the procedure used is fair.

# Procedural justice approach.

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- Minimize the idea of winning and losing (shift focus).
- Focus upon delivering gains for all parties.
  - Someone to listen to and consider their story; understand their concerns.
  - Recognize and acknowledge their right to seek justice in the courts.

# Key points.

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- ❑ Procedural justice is robust.
- ❑ Simple fair procedures can promote trust, confidence and acceptance.
- ❑ Procedures can promote trust and confidence even when delivering negative outcomes.
- ❑ Effects endure over time.
- ❑ Effects found with felons.

# Procedural justice is robust.

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- Studies suggest that procedural justice issues remain important when...
  - The monetary stakes are high (civil cases involving businesses).
  - People are very invested (child custody).
  - Important moral or value based questions are at issue (policy formation).

# Experiences with fairness can increase legitimacy.

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- Queensland field trials. Police stop people for breath tests.
  - Random assignment.
  - Short procedural justice script (2-5 minutes).
- Later questionnaire shows increased legitimacy and greater willingness to work with police.

# Courts.

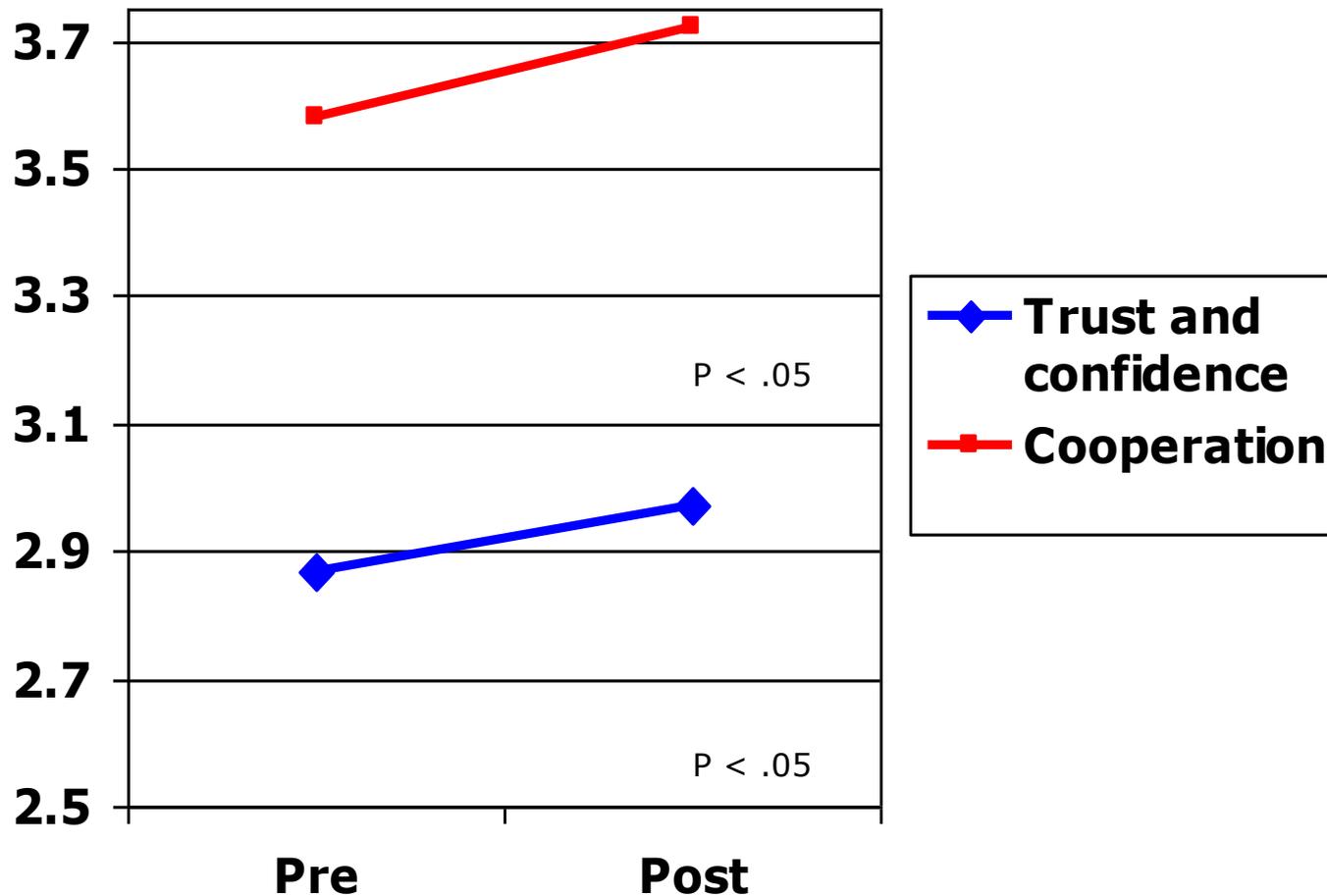
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- Minnesota courts (Chief judge Burke).
  - With randomly chosen cases the judge takes extra time to explain the decision and how it was arrived at.
  - Greater satisfaction and higher acceptance.

# You can deliver justice while building legitimacy.

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- ❑ You can deliver undesired outcomes without being unpopular.
- ❑ Studies show that trust and confidence increases when people experience procedural justice during an experience in which they receive a negative outcome.



Change in trust and confidence and in willingness to cooperate with legal authorities as the result of receiving a **negative** outcome through a **fair** procedure.

# Decision acceptance over time.

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- Does viewing the law as legitimate lead to obeying it in the future?
- Reintegrative shaming experiment (RISE)
  - Adults – driving while drunk.
  - Court/restorative justice conferences.
  - 900 adults in Australia.

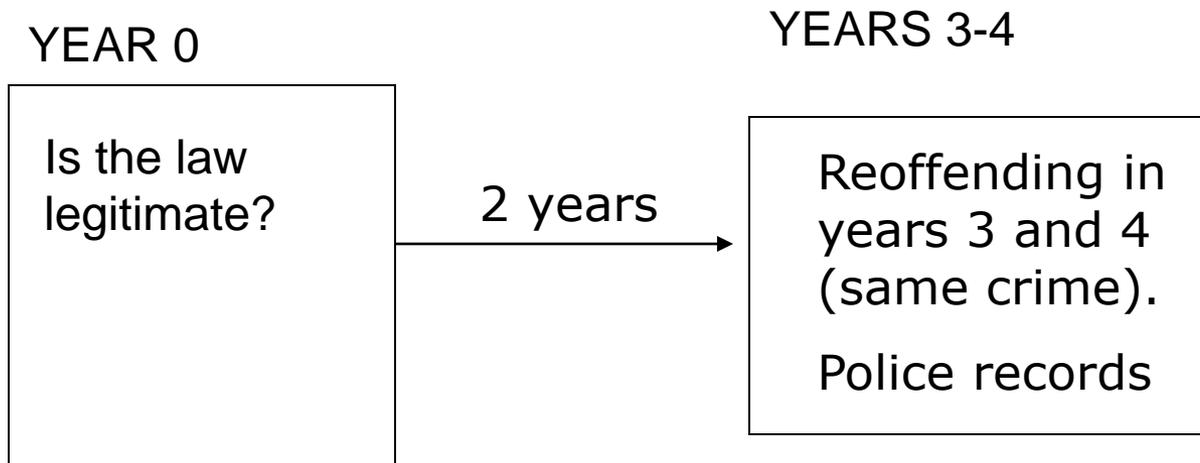
# Consequences.

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- Those with restorative justice conferences felt more fairly treated and evaluated the law as more legitimate.

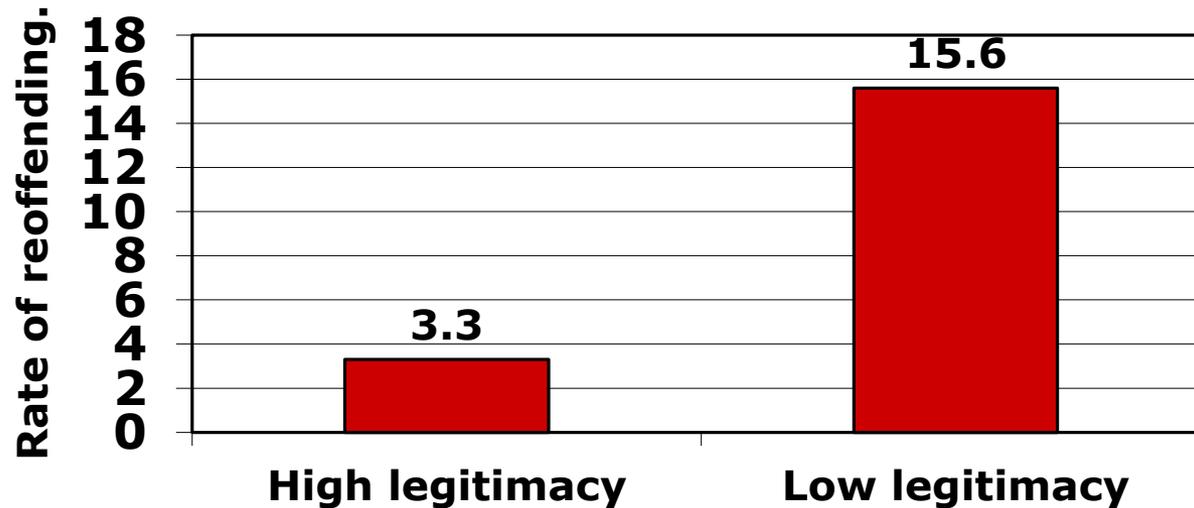
# Model

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# Rearrest rates – Years 3 and 4.

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■ Percentage of people who break the same law again.

# Criminals.

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- These findings also apply to criminal's reactions to criminal justice proceedings during case disposition; in prison; and post-prison.
    - More accepting of decisions that are fairly made.
    - Builds legitimacy.
      - Lowers violence in prisons.
      - Lowers subsequent recidivism.
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# Violent offenders.

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- Released from prison. Will they commit new violent crimes?
- Reentry meeting that stresses procedural justice (Meares project).
  - 40% less likely to be rearrested for violent crime.

# Summary

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- The way members of the public perceive the courts and evaluate court practices shapes their views and behaviors.
  - The key issue is procedural justice and, in particular, how people are treated by the courts.
    - The access that people seek is access to a just procedure for dealing with their case.
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# Importance of interpersonal treatment

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- The quality of interpersonal treatment plays a particularly strong role in shaping perceptions of legitimacy.
  - People care about:
    - Treatment with respect and dignity
    - Respect for their rights
    - Believe authorities care about their needs and concerns
    - Feel that they are listened to and views considered when decisions are made
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# How can we secure these gains?

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- Design case management in a procedural justice framework.

# Procedural justice and case management.

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- We need to treat people's entire experience with the justice system from a procedural justice perspective.

# System level model.

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- Studies suggest that people are influenced by treatment from all types of authorities.
  - Their experiences with law enforcement (police).
  - Out of court experiences with lawyers.
  - Their treatment by court clerks and bailiffs.
  - Their experience in the courtroom dealing with judges and lawyers.

# Cost and delay.

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- These results also show that personal instrumental concerns such as winning or losing or court based issues such as cost and delay are not the key concerns that shape how people evaluate court legitimacy.
    - People focus on whether justice is done.
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# Which aspects of treatment matter?

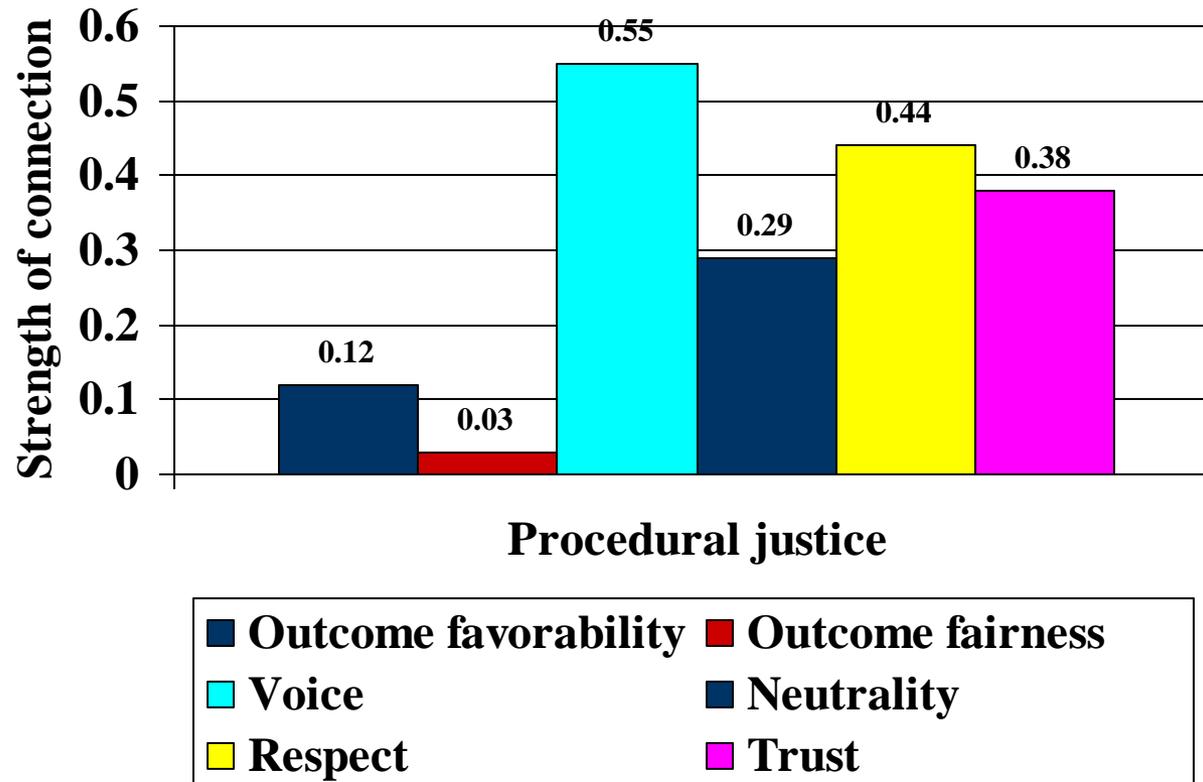
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□ Four key procedural justice ideas.

- Voice
- Neutrality
- Respect
- Trust

# The meaning of procedural justice (California study – personal experience).

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# Voice

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

# Case management implications.

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- Create forums in which people can voice their side of the story.
  - Mediation is very popular because people can speak for themselves.
- Give people the chance to state their case before making decisions.

# Neutrality

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- People bring their disputes to the court because they view judges as neutral, principled, decision makers who...
  - Make decisions based on facts and rules, not personal opinions.
  - Apply rules consistently across people and over cases.

# Accountability.

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- Because of their training legal authorities often are applying legal rules, acting neutrally.
- This does not mean that the people involved know how decisions are being made.
  - Neutrality needs to be true and to be seen to be true by the people involved.

# Case management implications.

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- Give information about what is happening throughout
  - emphasize the procedures being used (how decisions are being made).
  - Be transparent and open about how decisions are being made.
  - Give an explanation. Cite relevant rules.
- Provide information about court procedures.
  - People coming to court are often confused about how cases are handled.
    - Have a brochure on court procedures.
    - Have a help desk

# Respect.

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- Take people and their concerns seriously.
- Show respect for them as people and as citizens who have the right to address the court about their issues.

# Case management implications.

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- Courtesy; Politeness; Respect for people.
  - Train personnel to think of people from a “customer service” perspective.
  - Courts are not stores and litigants cannot simply buy what they want. But they are entitled to feel that they are taken seriously.
- Respect for their 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, those problems will be dealt with fairly.
  - Tell them how to complain to higher authorities.

# Trust

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- Studies constantly show that the central attribute influencing public evaluations of judges/mediators is an assessment of the character of the decision maker (sincere, caring). People focus on whether they think.
  - 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.

# Case management implications.

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- What can you do to be viewed as trustworthy?
  - Give evidence that you are listening to people.
    - Give people a reasonable chance to state their case in their own words. Show that you are listening.
    - 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.
    - Communicate that you are following rules, not acting on your personal opinions.

# Justice in everyday law.

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- These procedural justice findings apply to people's everyday encounters with the legal system (courts; police).
    - Increase decision acceptance (maintained over time).
    - Diminish anger and defiance toward authorities and system.
    - Create legitimacy.
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# Community courts.

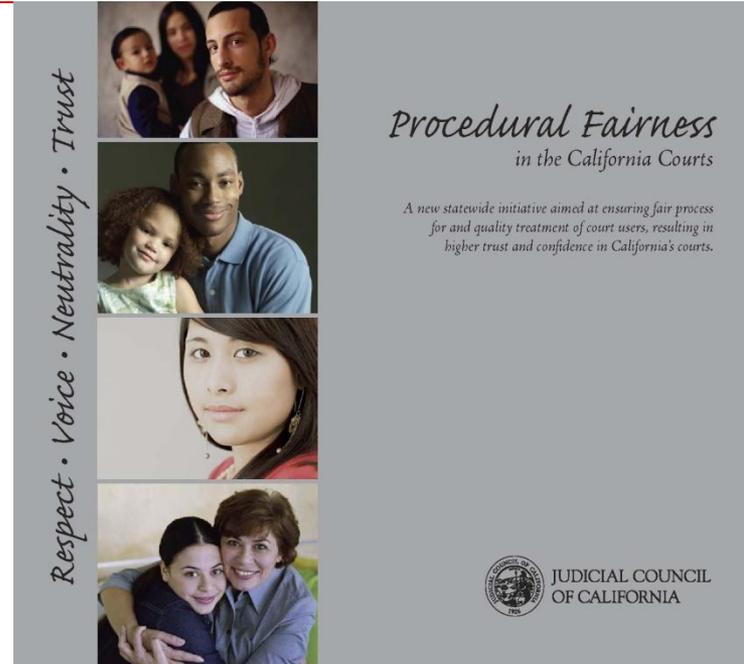
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- They are reflected in the appeal of many types of diversionary courts.
  - Drug courts; problem solving courts; restorative justice conferences.

# System level approach.

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- The California courts are already acting on this idea with a Procedural fairness initiative.
  - Based upon their own independent research confirming these ideas.
  - Responding to diversity, increases in pro se representation, public distrust of the courts.
  - Every experience with the courts – litigant, juror, etc. should build legitimacy.
  - This should occur at all stages: arresting officers; jail staff; court help-desk; bailiff; judge.



# Implementing change in an austere era.

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- Changes in objective procedures to heighten perceived fairness can be straightforward.
    - Giving people a chance to tell their side of the story, explaining policies and procedures, giving reasons for decisions, providing ways to make complaints.
  - These policy changes are inexpensive.
    - Not like adding more officers, buying expensive technology
  - Low cost changes that are high impact.
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# Summary

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- We live in an era of scarce resources and high levels of mistrust.
  - Procedural justice approaches provide a mechanism for managing conflicts that produces authoritative decisions while sustaining and even building trust and confidence in the courts.

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□ Thank you.