

Bias, Culture and the Court Process

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BATTERED WOMEN'S JUSTICE PROJECT

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Learning Objectives

At the end of this segment, you will be better able to:

Define the terms culture and cultural competence and enhance respect for the dynamics of difference.

Identify ways in which culture is relevant in the courtroom.

Recognize cultural misinformation and avoid assumptions about a person or the facts of a situation based on misinformation.

Assess implicit and explicit biases that are brought to the bench that might influence courtroom demeanor or the interpretation of facts and making of decisions in domestic violence cases.

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Cultural Identity Exercise

What is your cultural identity?

How does your cultural identity affect, limit or enhance your work as a judge?

Culture....

Culture shapes an individual's experience of the courts

Culture shapes the defendant's response to intervention and acceptance of responsibility.

Culture shapes access to other services that might be crucial for all.

The culture of the courtroom, the judge and the litigants will impact outcome.

What Is Culture?

Historically and anthropologically thought to be a stable pattern of beliefs, values, thoughts, norms etc., that are transmitted from generation to generation for successfully adapting to other group members and their environment.

The problem is that this is an outdated definition.

Definition Of Culture

A critical definition of culture refers to shared experiences or commonalities that have developed and continue to evolve in relation to changing social and political contexts, based on:

- **race**
- **ethnicity**
- **national origin**
- **sexuality**
- **gender**
- **religion**
- **age**
- **class**
- **language**
- **disability status**
- **immigration status**
- **education**
- **geographic location (space)**
- **rural, urban,**
- **time, or**
- **other axes of identification**
- **within the historical context of oppression**

Cultural Context

In all cultures, contexts of privilege and access are created by certain norms against which all other sub groups are compared.

In the U.S. attributes of the dominant culture include English as a primary language, “whiteness”, Christianity, physically able, male, economic resources and heterosexuality.

Cultural Context

Privileges and access arise from having one or more of the above attributes of identity. Privilege includes not having to recognize own culture as norm, access to resources, connections and status.

Privileges for one group can create the dynamics of domination.

Cultural Context

Domination begins with half-truths, misinformation, lies about persons based on differences. Misinformation becomes ingrained in society and others are thought to be deficient and eventually the target group internalizes the misinformation.

Working Assumptions

CULTURALLY COMPETENT ASSUMPTIONS:

Cultures are contradictory.

- widespread acceptance of domestic violence
- traditions of resistance.
- values that are nurturing and oppressive.

Each litigant is a unique individual with their own responses.

Each individual comes into the courtroom encounter with cultural experiences and perspectives that might differ from those present in the courtroom.

Cultural Misinformation

During the next few minutes, fill in each box presented with stereotypes that exist “out there in the world”

May be positive or negative

Each group divided into men and women

Awareness of a stereotype DOES NOT mean that you believe it

African Americans

Men

1.

2.

3.

4.

5.

Women

1.

2.

3.

4.

5.

Asian American

Men

1.

2.

3.

4.

5.

Women

1.

2.

3.

4.

5.

Muslim

Men

1.

2.

3.

4.

5.

Women

1.

2.

3.

4.

5.

Poor

Men

1.

2.

3.

4.

5.

Women

1.

2.

3.

4.

5.

Caucasian/White

Men

1.

2.

3.

4.

5.

Women

1.

2.

3.

4.

5.

Immigrants/Refugees

Men

1.

2.

3.

4.

5.

Women

1.

2.

3.

4.

5.

Research indicates that stereotyping is part of the normal psychological process of categorization that under pertinent conditions, can lead to inaccurate generalizations about individuals...

Categorization

The process by which we classify items, objects, or concepts, placing them together in groupings on the basis of their similarities with each other.

Stereotypes

A set of attributes ascribed to a group and imputed to its individual members simply because they belong to that group.

Stereotypes

Descriptive

- tell how most people in the group supposedly behave, what they allegedly prefer, and where their competence supposedly lies.

Prescriptive

- tell how certain groups should think, feel, and behave.

Stereotype matching advantage

indicates that information that fits one's stereotypes is automatically processed; it is easy to take in, making stereotypes seem to fit automatically.

Learning Points

Culture is operating:

- Internally
 - Judge's unconscious/implicit bias
- Externally
 - Judge heard information or observed demeanor that would suggest the presence of cultural difference
 - Party directly raised culture as an issue.

Final Points on Culture

“We do not see things as they are; we see things as we are.”-Anais Nin

Everyone has a cultural identity, including you as a judge and the court itself.

- Explain the court’s values around domestic violence to both parties.
- Remember, it takes time for people to accept new systems and ideas.
- Repetition and patience are the keys.

What Compromises Justice System Culture?

- Assumptions?
 - That system responses are trust worthy
 - That litigants “say what they mean”
 - How we establish credibility
 - Speed is good

What is Procedural Justice

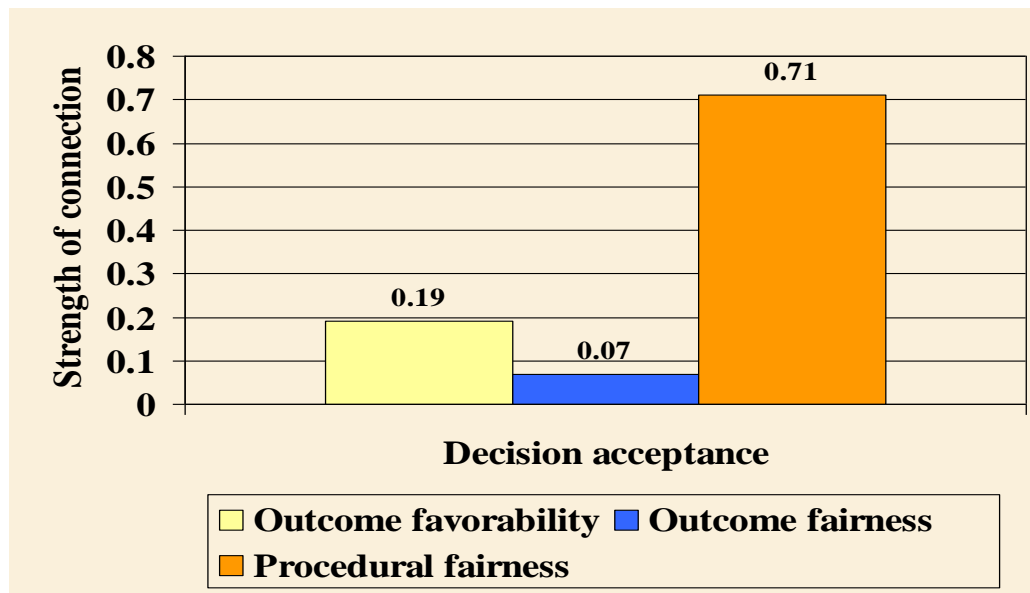
- **Procedural justice:** perceived fairness of **court procedures** and **interpersonal treatment** while a case is processed.

As contrasted with:

- **Distributive justice:** perceived fairness of the final **outcome** (“win” or “lose”)

● Decision Acceptance

Procedural justice is the primary factor in litigants' willingness to accept decisions – regardless of why the litigant came to court.



- Increased compliance means:
 - Fewer violations, revocations, and returns
 - Smaller dockets
 - Cost and resource savings

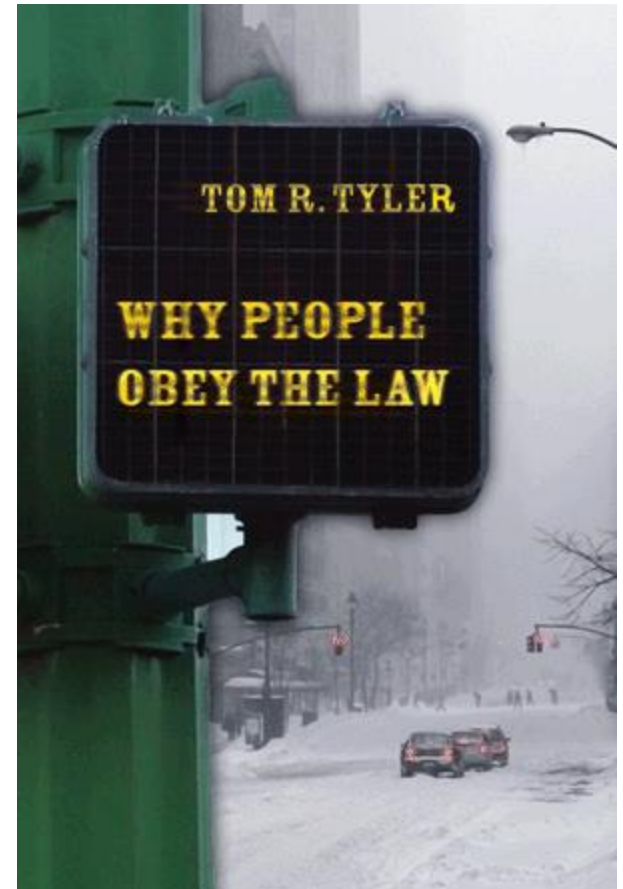
Procedures vs. Outcomes

- Most people like to win!

Outcomes matter.

- **Procedural justice theory assumes that:**
 - People know they can't always win.
 - People will be more likely to accept losing if they perceive as fair the procedures and interpersonal treatment they received.

Source: Tyler (2012).

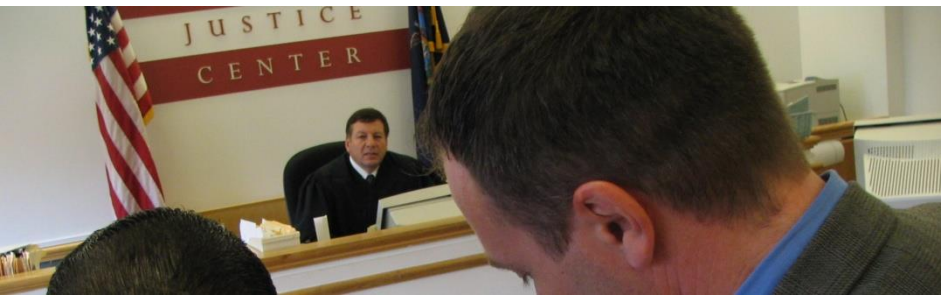


Elements of Procedural Justice

Four Key Components

1. Voice
2. Respect
3. Neutrality
4. Understanding

Rossman et al. (2011).



Elements of Procedural Justice

○ Voice:

- *You felt you had the opportunity to express your views in the court.*
- *People in the court spoke up on your behalf.*

○ Respect:

- *You felt pushed around in the court case by people with more power than you.*
- *You feel that you were treated with respect in the court.*

Rossman et al. (2011).



Elements of Procedural Justice

○ **Neutrality:**

- *All sides had a fair chance to bring out the facts in court.*
- *You were disadvantaged in the court because of your age, income, sex, race, or some other reason*

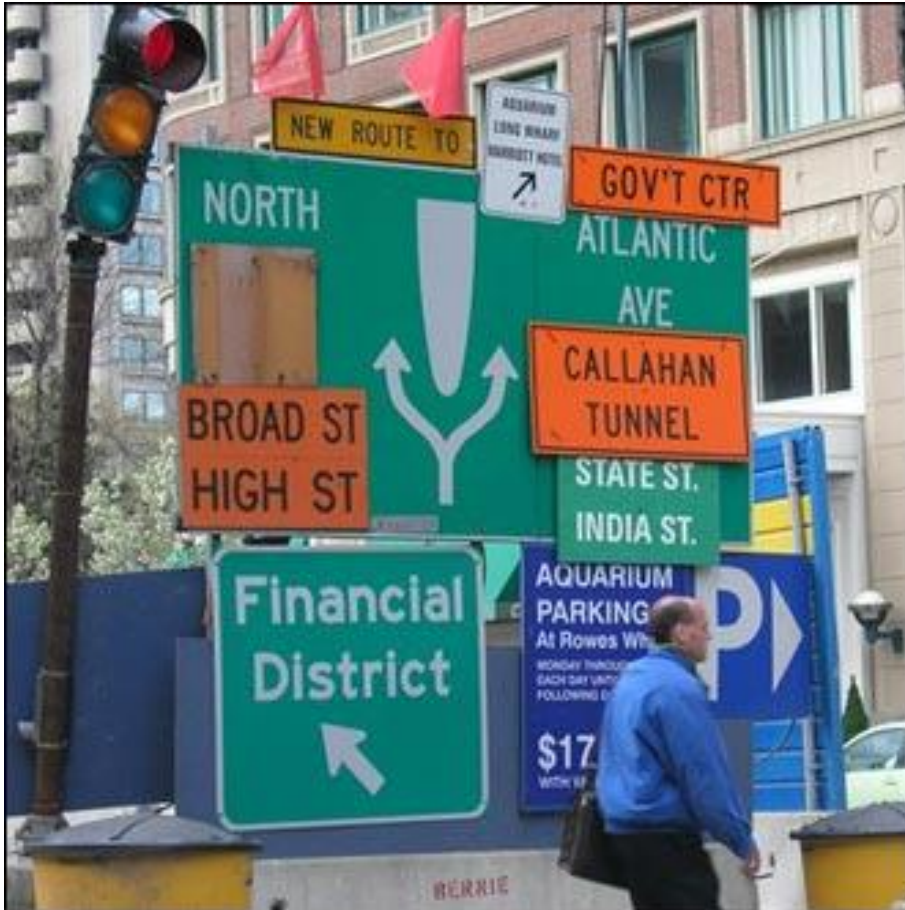
○ **Understanding:**

- *You understood what was going on in the court.*
- *You understood your rights during the processing of the case.*

Rossman et al. (2011).



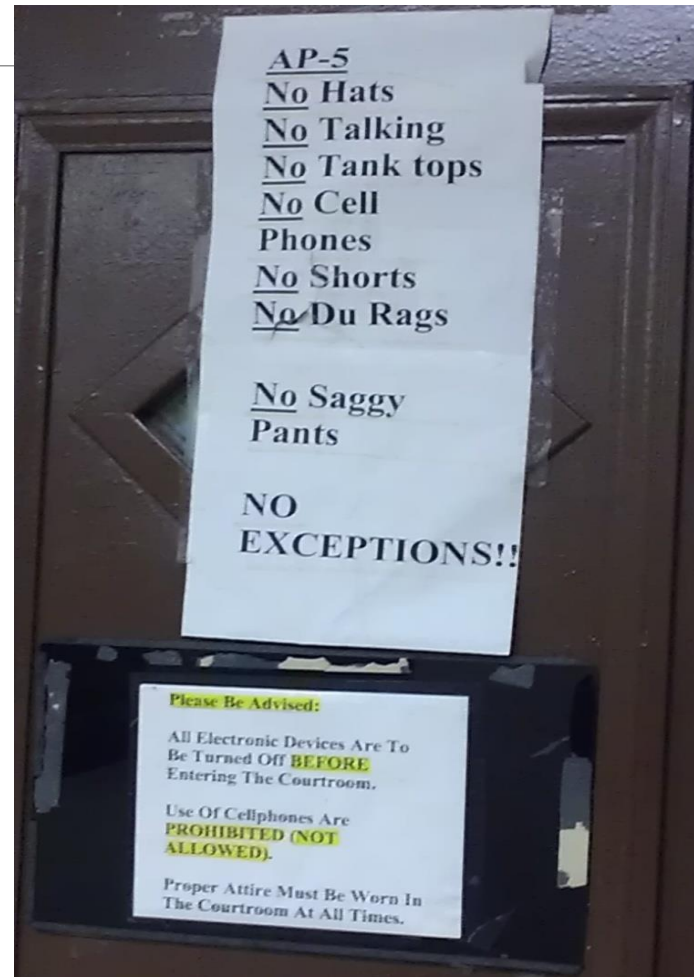
Signage



How much confidence do you have in the government that created this sign?

Photo Credit: Northern New England Chapter of the American Planning Association

Courthouse Signage



Research

- **African-Americans** come to court with lower expectations and, afterwards, **perceive less fair treatment** than others (Tyler and Huo, 2002)

Implementing Procedural Justice

The tone/actions of court security
Legal language
Bench conferencing
Lack of explanation of proceedings

Implementing Procedural Justice

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- **Self Assessment**
 - **Strategies to Minimize the Negative Impact of Court Culture**
 - ✓ How can the court experience be improved for the litigant?

Demonstration Project

COURTROOM RULES



Please help us keep the courtroom quiet.

No talking while court is in session.



Please turn off all cell phones when in the courtroom.

Phones may be used in the hallway.



Please remove all hats and headwear.



Please do not eat or drink in the courtroom.

Eating is allowed in the hallway.

There is a water fountain in the middle of the hallway.

Thank you for your
cooperation.

**Improved signage
uses both images
and words to
convey meaning.**

**Respectful language
is used whenever
possible.**

Role of the Judge

- **Role of Judge = Critical**

- Motivational effect? Perceptions of the judge are the strongest predictor of drug court SUCCESS (see Rossman et al. 2011):
- Supervision effect? More judicial status hearings lead to reduced crime and drug use (e.g., Gottfredson et al. 2007; Marlowe et al. 2003)

(Abuwala and Farole 2008; Curtis et al. 2011; Frazer 2006; Gottfredson et al. 2009)

Implementing Procedural Justice

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- Judicial Demeanor
 - Full understanding of the case/defendant
 - Defendant offered opportunity to be heard
 - Courtroom environment
 - Victim Input/Procedures
 - Allocution
 - Consistency