Procedural Justice:

Fair Treatment Matters

Center for Court Innovation

Consider a time when:

- You had to wait in a long line
- You were treated disrespectfully
- You were the lay person and someone in a position of authority failed to explain something important to you
- Your concerns weren’t taken seriously

How do you wish you had been treated?

- Respectfully (with eye contact, addressed by name)
- Given an explanation
- Invited to ask questions and be heard

As professionals, what do we want?

What do the people the court serves want?

What is Procedural Justice?

The perceived fairness of **court procedures** and **interpersonal treatment**

As contrasted with:

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

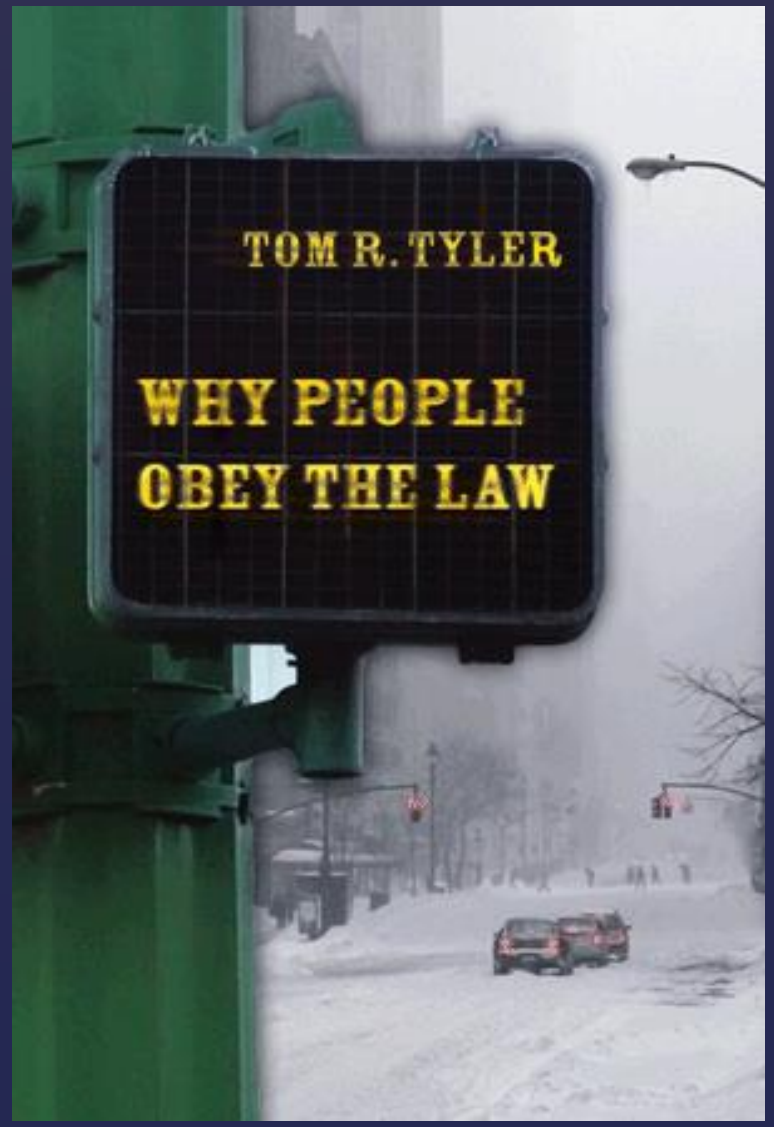
Why do people obey court orders?

People are more likely to accept decisions when they:

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

These are the key elements of procedural justice.

Procedures vs. Outcomes



Most people like to win!

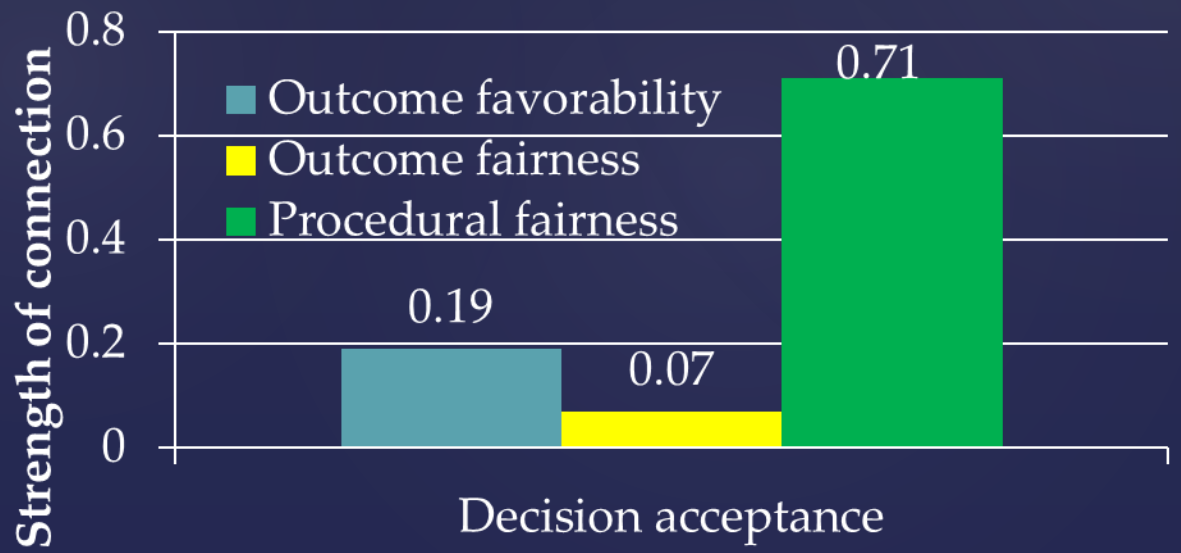
Outcomes matter.

Procedural justice theory assumes:

- 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.

Procedures vs. Outcomes

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



In other words: winning isn't everything!

Tom Tyler, Yale Law School

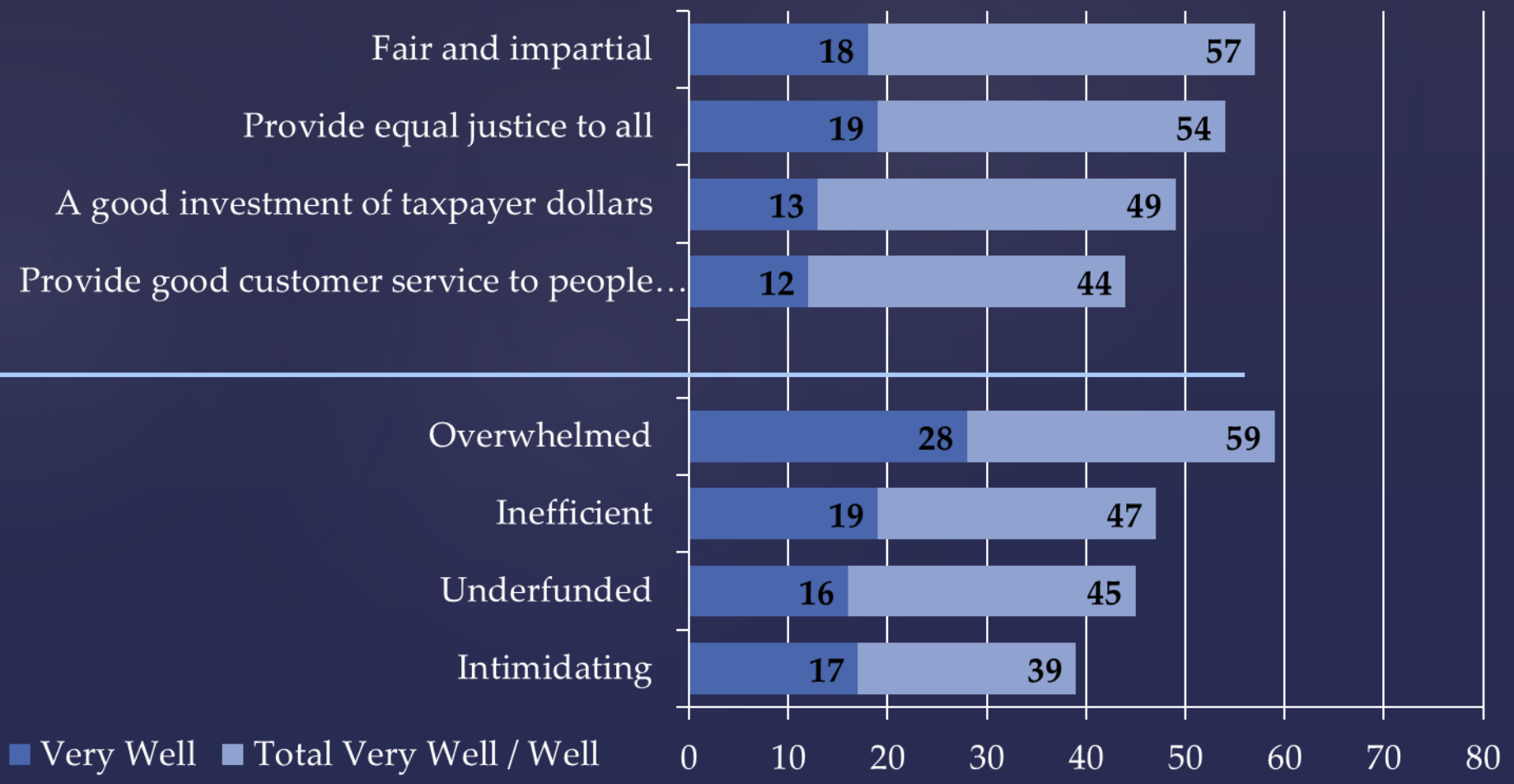
Benefits of procedural justice

Increased compliance means:

- Fewer violations, revocations, and returns
- Compliance with the law generally (*i.e.*, reduced recidivism)
- Smaller dockets
- Cost and resource savings

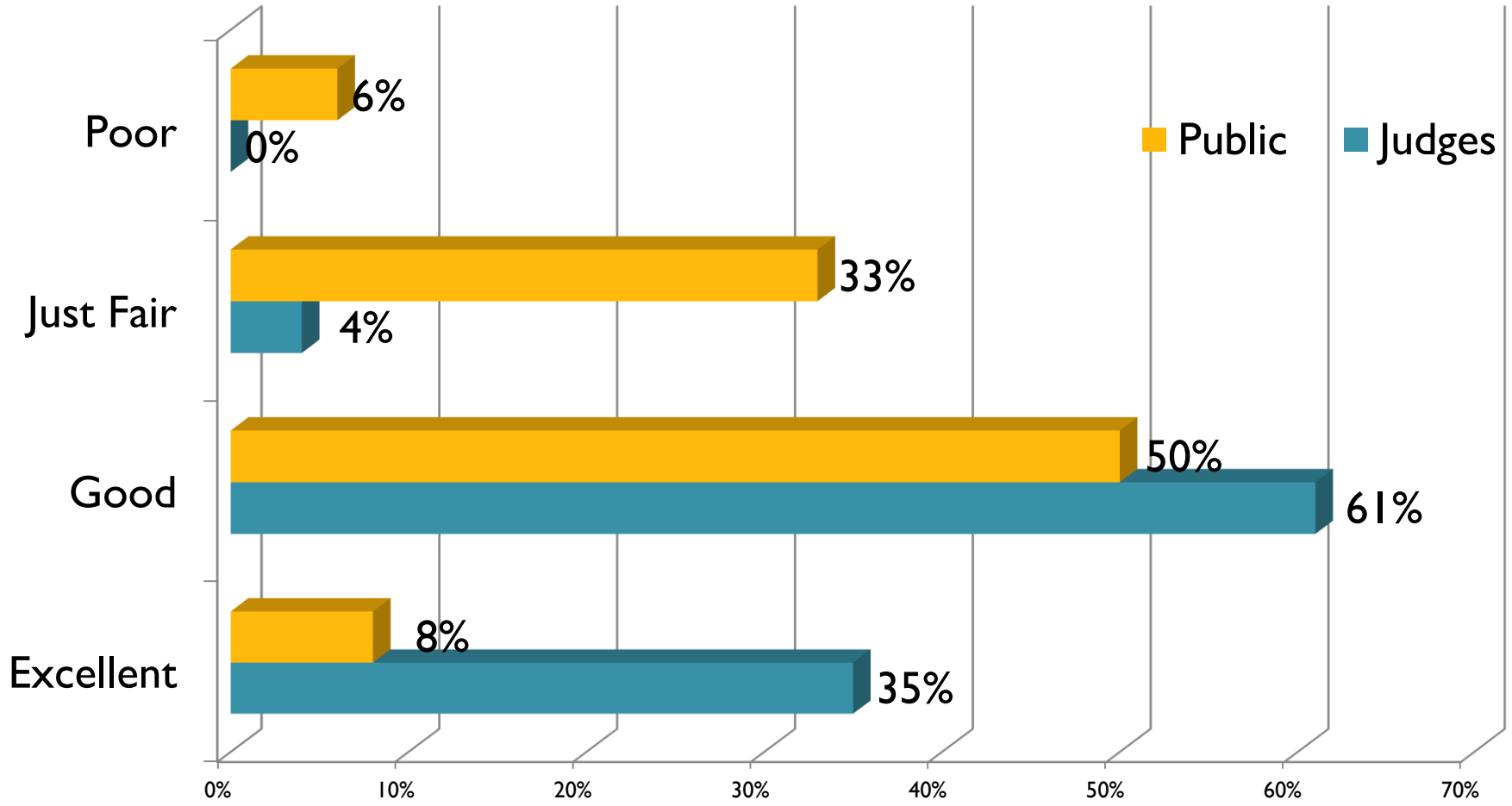
Public opinion about state courts

Thinking about the (state) court system, please tell me whether, in your opinion, each of the following words or phrases describes the state's courts very well, well, not very well, or not well at all.



Source: NCSC/Justice at Stake survey, June 2012 (MOE ± 3%).

Public opinion about state courts

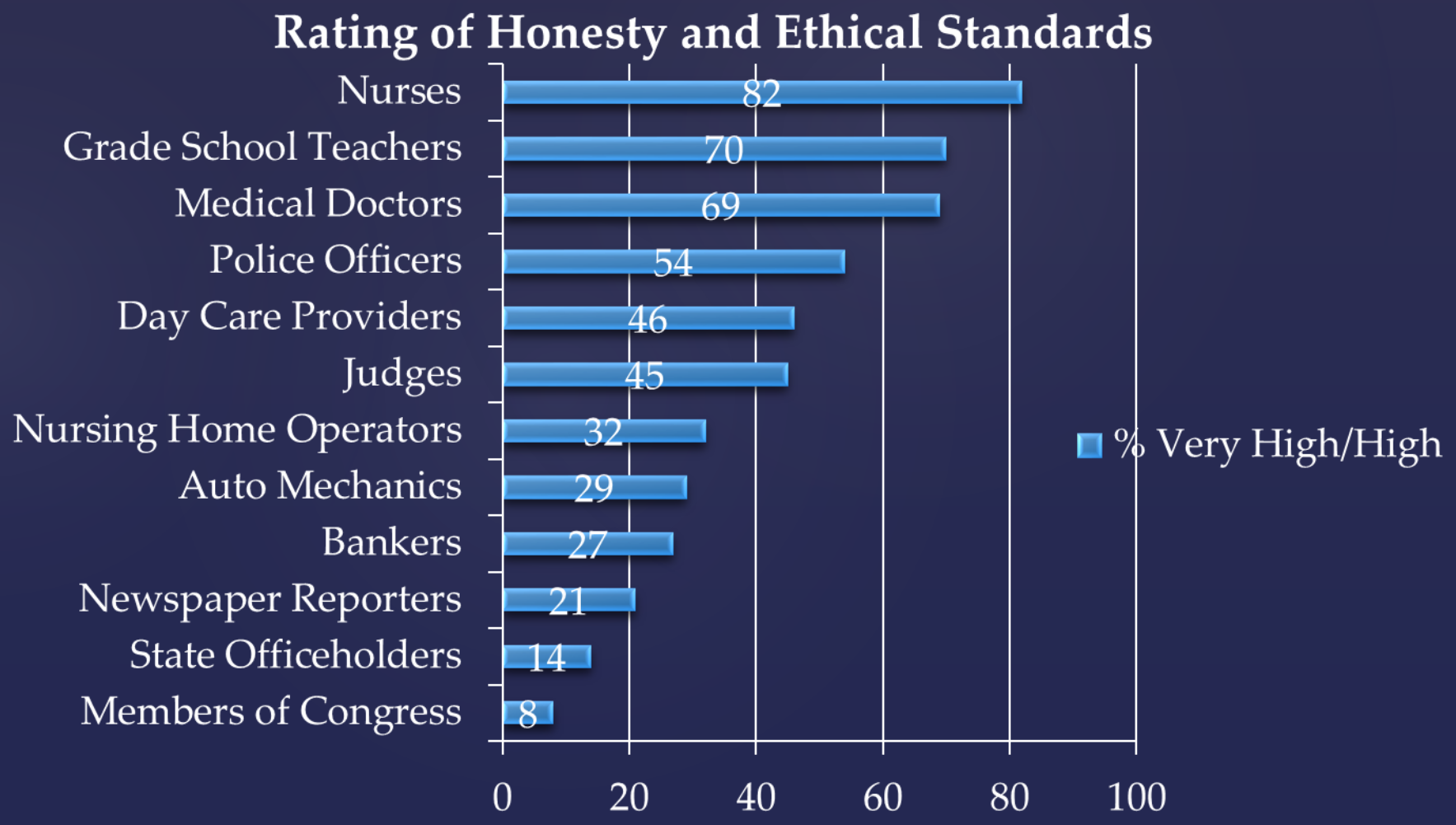


Source: 2001 National Survey for Justice at Stake.

Public opinion about state courts

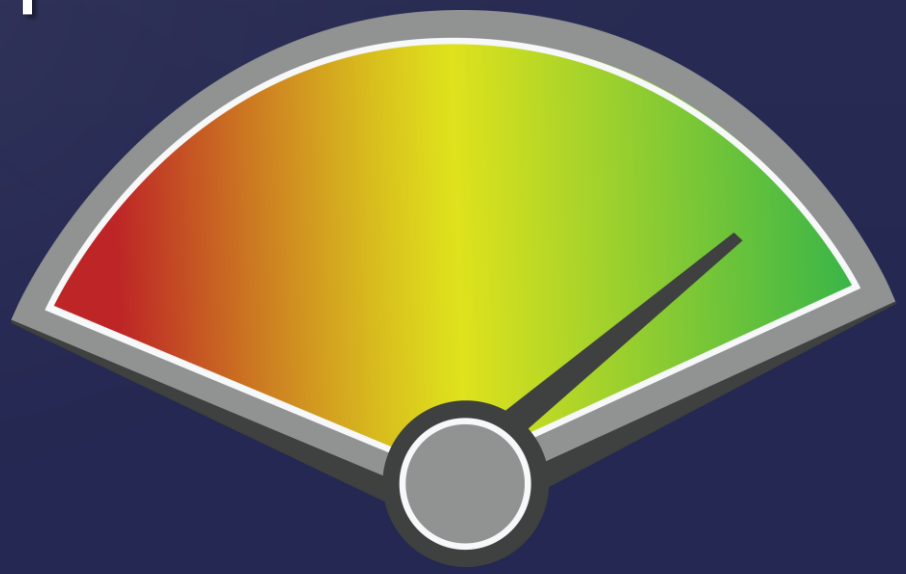
Please tell me how you would rate the honesty and ethical standards of people in these different fields?

Gallup, Dec. 2013



Our legitimacy is not assumed by many who come before us.

Trust must be earned in each encounter.



Legitimacy and Race

Perceived court performance rated as "excellent" or "good"

- White 59%
- Hispanic 47%
- Black/African-American 31%

(Statewide Resident Sample in New York, Farole 2007)

Study excerpt: defendant perceptions

"I was coming from the bus stop, me and my boyfriend, he was walking with me. And do you know that the cops stopped us? They threw him on the freakin' bench like he was a murderer or something. They sprained my wrist … Do you know that Judge Calabrese [Red Hook's judge] made them apologize? 'Cause I went in with a wrist band. Yeah, they don't care over here. They was just rollin' by out there like they was ready to jump out…. But Judge Calabrese, he's the man back here."

Study of the Red Hook Community Court (Lee et al. 2013)

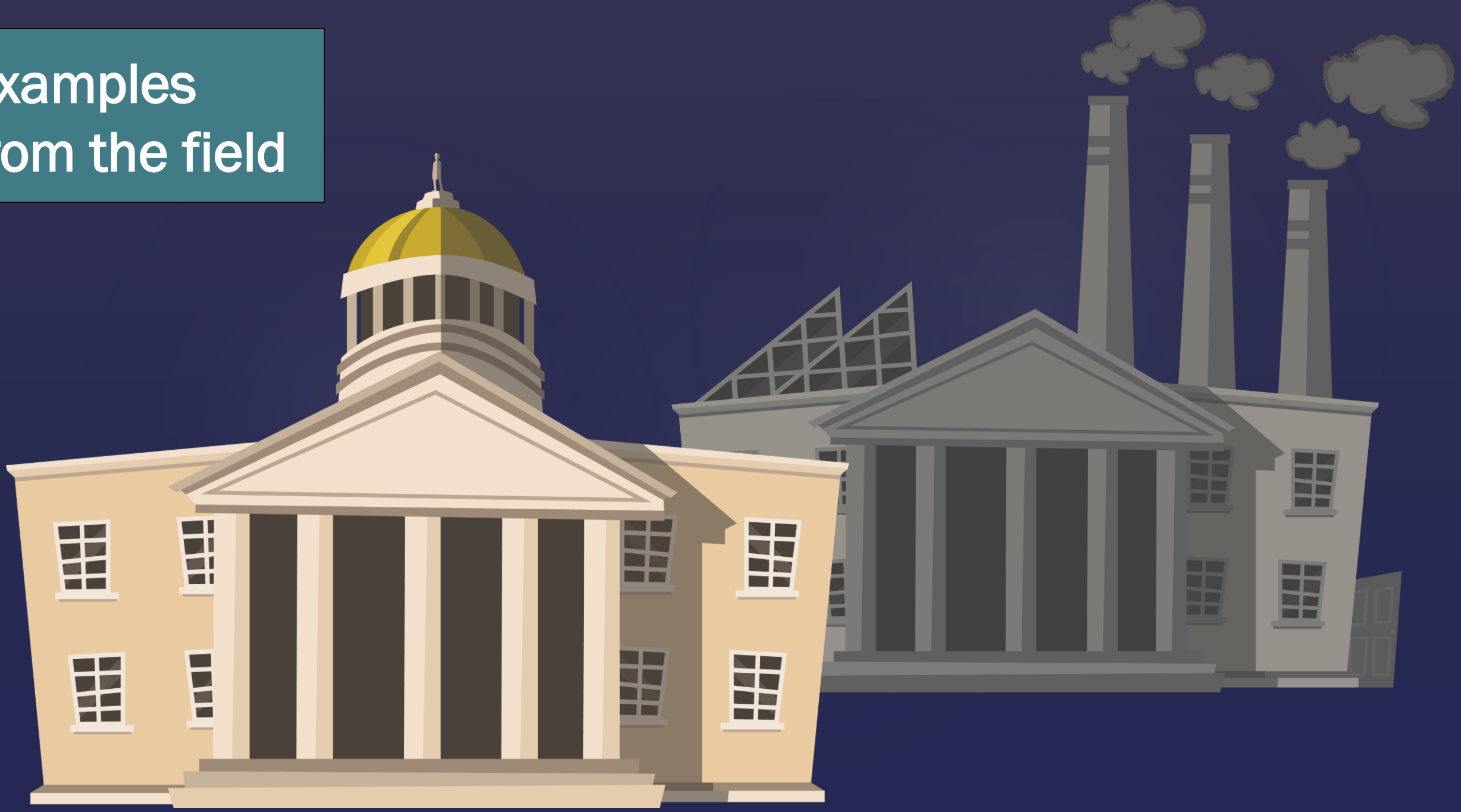
Influence of court professionals

Which court professionals influence perceptions of fairness most?

1. Judges
2. Defense attorneys
3. Court officers and prosecutors (tied for third)

(Red Hook Community Court Study, Frazer 2006)

Examples from the field



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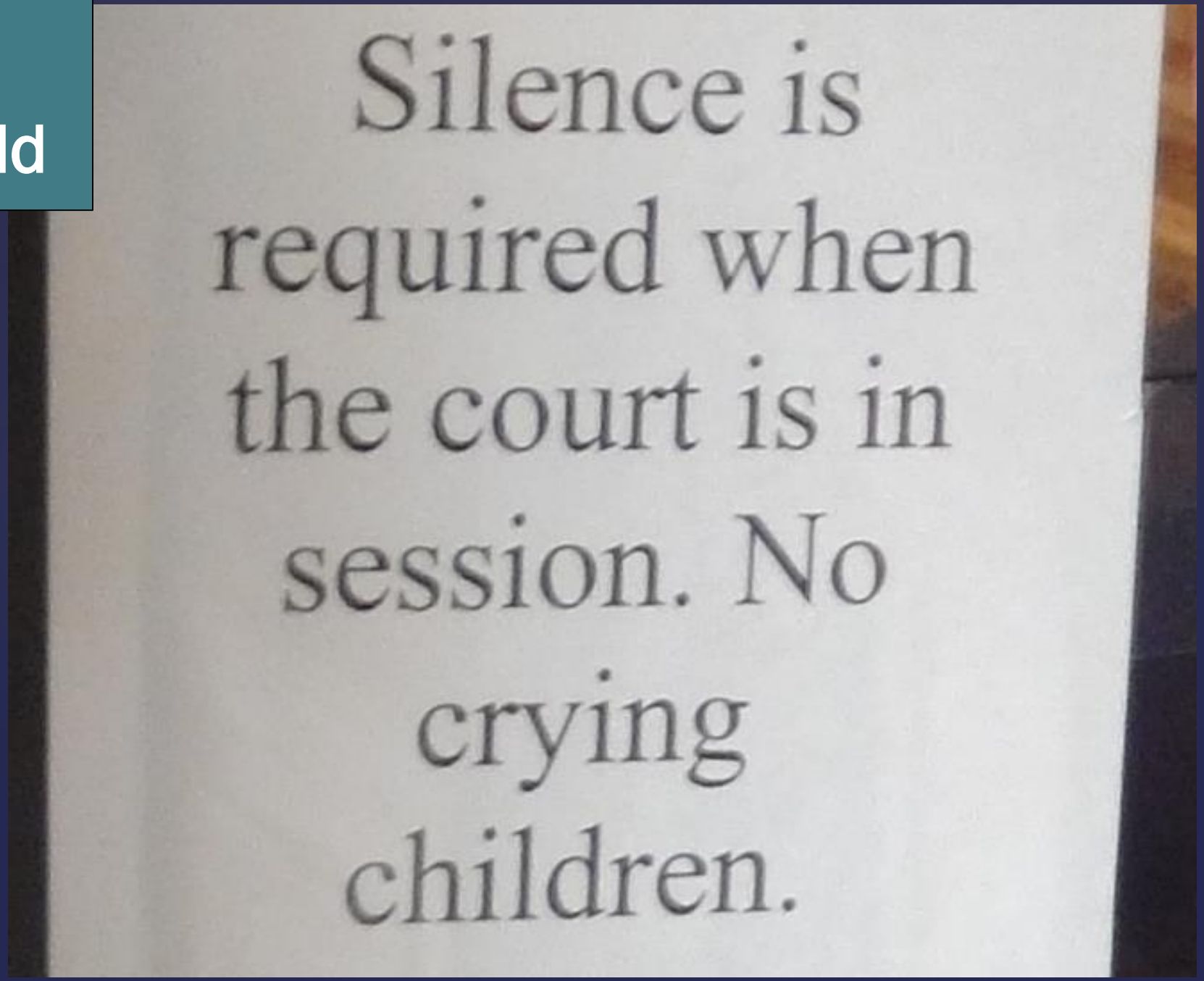

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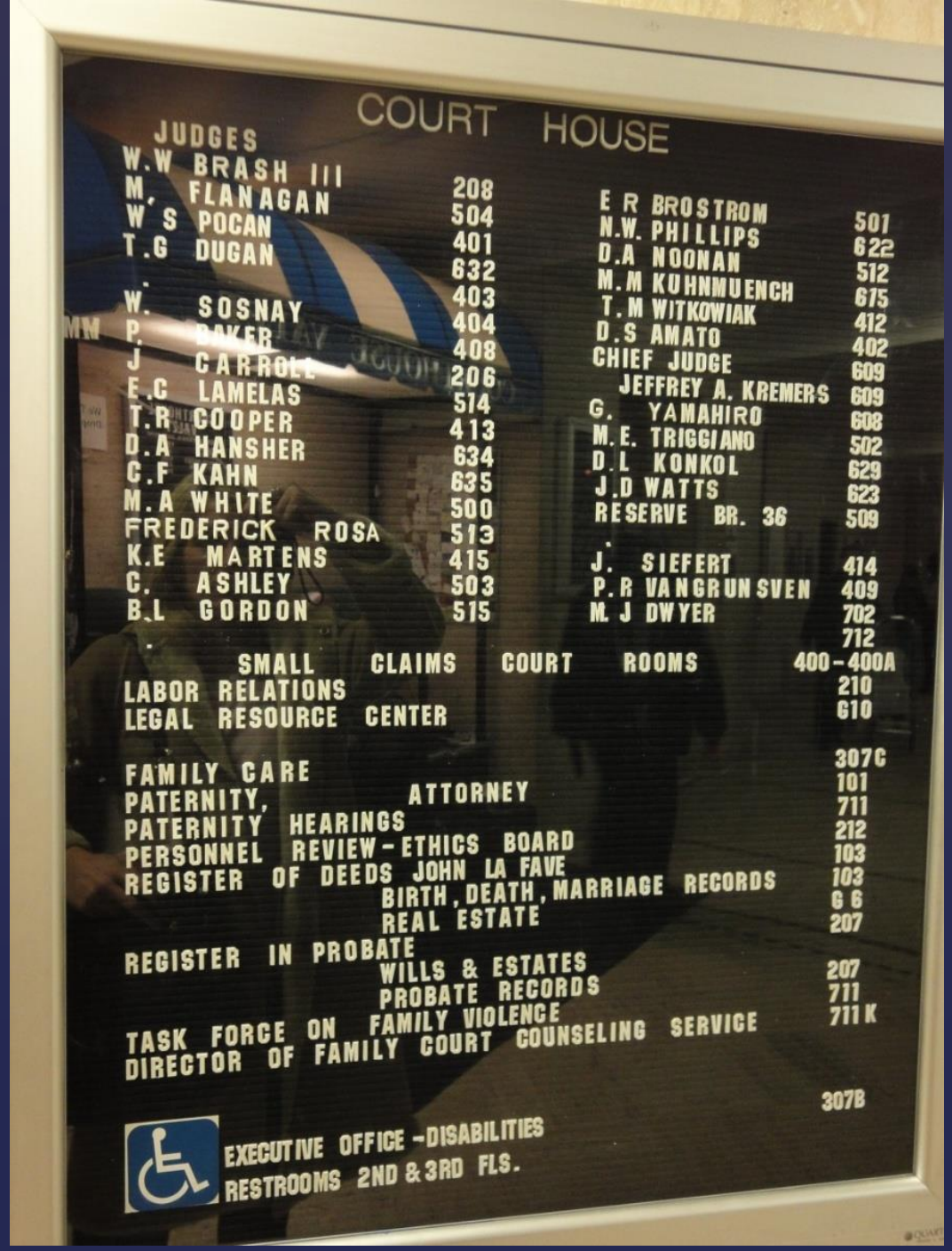

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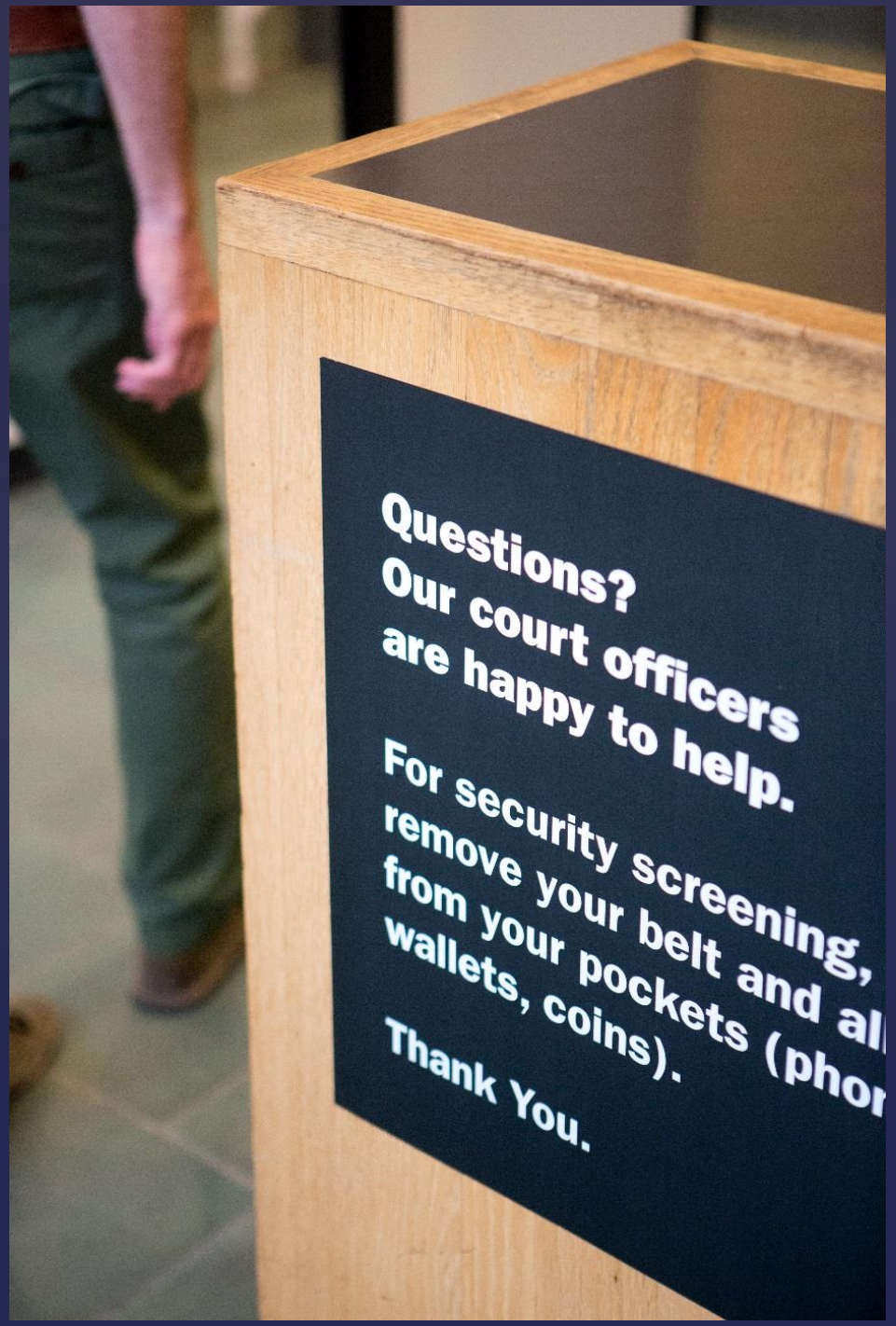


Examples from the field

Examples from the field

Welcome to Judge Smith's Courtroom (Branch #3)

- Please sign in with the court officer when you arrive.
- If you have a lawyer, your case will not be called until your lawyer arrives.
- If you have a question about court procedures, please ask a court officer in between cases.

Si necesita un traductor, por favor diga su nombre y la palabra "Spanish" al agente del corte.

Restrooms are available on this floor.
Handicap accessible restrooms are located on the __ floor.

Examples from the field

WELCOME TO THE ARIZONA COURTS

WE WILL BE HAPPY TO HELP YOU IF WE CAN. AS WE MUST BE FAIR TO EVERYONE, WE ARE ALLOWED TO HELP YOU ONLY IN CERTAIN WAYS.

This is a list of some things court personnel can and cannot do for you:

****

We can	explain and answer general questions about how the court works.
We can	give you general information about court rules, procedures, and practices.
We can	provide you with the number for lawyer referral services, legal aid programs, and other services where you can get legal information.
We can	provide court schedules and information on how to get a case scheduled.
We can	give you information from your case file that is not restricted.
We can	provide you with court forms and instructions that are available.
We can	usually answer questions about court deadlines.

****

We cannot	tell you whether or not you should bring your case to court.
We cannot	tell you what words to use in your court papers or whether they are correct.
We cannot	tell you what to say in court.
We cannot	give you an opinion about what will happen if you bring your case to court.
We cannot	conduct legal research for you.
We cannot	talk to the judge for you or let you talk to the judge outside of court.
We cannot	alter court documents.

OUR ABILITY TO ASSIST YOU WILL DEPEND ON THE TIME AND RESOURCES AVAILABLE AS WELL AS THE SCOPE OF OUR RESPONSIBILITIES, KNOWLEDGE AND EXPERIENCE.

Examples from the field

PLEDGE OF FAIRNESS

The fundamental mission of the Alaska Court System is to provide a fair and impartial forum for the resolution of disputes according to the rule of law. Fairness includes the opportunity to be heard, the chance to have the court process explained, and the right to be treated with respect. The judges and staff of the Alaska Court System therefore make the following pledge to each litigant, defendant, victim, witness, juror, and person involved in a court proceeding:

We will LISTEN to you

We will respond to your QUESTIONS about court procedure

We will treat you with RESPECT

공정한 재판을 위한 서약

알래스카 법원의 기본임무는 법치주의에 의거하여 분쟁의 해결을 위해 공명정대한 재판을 제공하는 것입니다. 공정하다 함은 말할 수 있는 기회, 법정절차에 대해 설명을 들을 기회, 그리고 정중한 대우를 받을 권리를 포함합니다. 그리므로 알래스카 법원의

AKGUIN PICUILRIA ALLAKAKNGAUNRITLLERKAMEK

Alaskam qanercetarviim calvian ciumugta piavciluni ayukluki cali quyugcivigmek cali calivigmek tuani yum ayukucia wall' kitucia allakaukevkenaku caliaknaluku maligtakuluki alerkutet. Ukugrut, niicimallerkak, nallunaigiluteng aperturluku qanercetagviim caliara, cali piyunarkucik aulukllerka yuk qircikluku. Cukcistai cali calistai Alaska Court System-ak wanirpak pikiurtuq makunun: yuk qanercetagvigkun akiligcetarilyagamek

Обещание справедливого отношения

В соответствии с правилом закона, основной задачей Судебной Системы штата Аляски является обеспечение справедливого и беспристрастного отношения во время разрешения споров. Справедливое отношение включает в себя возможность быть услышанным, возможность получения разъяснения судебного процесса и право уважительного отношения

Examples from the field

Please provide your judicial philosophy as it pertains to procedural fairness and give an example of how you have used procedural fairness tools or observed a judicial officer using procedural tools to good effect.

Examples from the field

Study results: Improved understanding of court requirements and expectations

The law says that I must give you between 0 and 12 months of community supervision (also called probation) for each of your offenses.

I have decided that you will spend _____ months on probation.

If you are already on probation in another case,

☐ The time you have already spent on probation in the other case, from today's date on, will count toward the period of probation ordered today. Concurrent.

[OR]

☐ The probation that I order today will not start until you have finished probation on the other case. Consecutive.

Probation or community supervision means that you will have rules that you must follow.

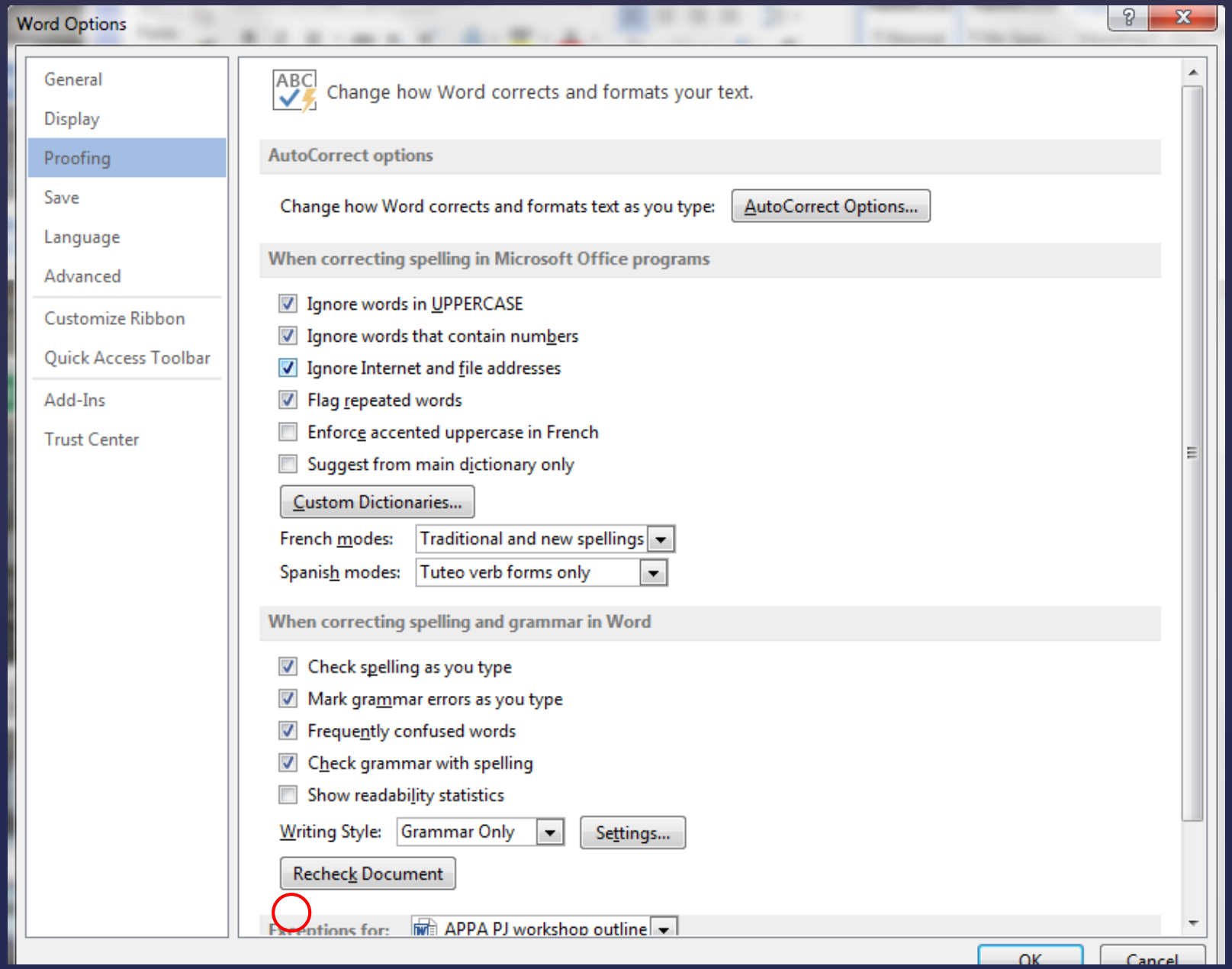
A probation counselor will supervise your probation. You have to meet with the probation counselor when he/she tells you.

You have to follow the directions of your juvenile probation counselor—JPC for short. The rules you have to follow are called "conditions of probation" which I will go over with you now.

Check for reading level:

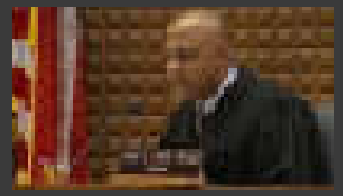
In Microsoft Word:
File > Options > Proofing

Then check the "Show readability statistics" box



Additional Examples from the Field

- Live Courtroom Video and Judicial Perspectives at http://bit.ly/ProJust



Live Courtroom Video: Promising Practices in Procedural Justice

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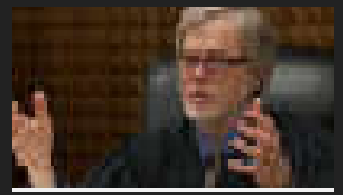

Judicial Perspectives: Enhancing Procedural Justice

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Brainstorming Exercise

Four key components of procedural fairness

- Voice
- Neutrality
- Respect
- Understanding

DISCUSSION QUESTION: *What are promising practices for each?*

Additional Exercises

- See video demonstrations and discussion guides at http://proceduralfairnessguide.org/

(http://proceduralfairnessguide.org/the-counter-clerk-and-the-upset-litigant/)

The Counter Clerk and the Upset Litigant (2:42):
A mother who has just received a court order taking away her children comes to the Clerk's front counter for information. The Clerk may—or may not—be able to help.

(National Center for State Courts)

Measuring Change

"Evaluation Toolkit"

http://www.courtinnovation.org/sites/default/files/documents/P_J_Evaluation.pdf

- Self-Assessment
- Courtroom Observation Form
- Defendant Exit Survey

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Measuring Perceptions of Fairness:
An Evaluation Toolkit

Self-Assessment of Court Practices

To be used with "INSTRUCTIONS: Self-Assessment of Court Practices"

The following statements measure the procedural justice concepts of understanding, voice, respect, neutrality, and helpfulness. Please rate the degree to which most court staff and court practices exhibit these characteristics.

1. Ensuring Understanding

Understanding Average: (add all scores)/4 = ◯

	1-Not at all	2-Infrequently	3-Sometimes	4-Almost always
a. At the beginning of court sessions, the court's bench officers provide a summary of what will happen during the appearance.	1	2	3	4
b. At the end of court appearances, the court's bench officers verify that court users understand the court's decision and what is expected of them going forward.	1	2	3	4

Thank you!

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For more resources and assistance:

www.courtinnovation.org/proceduraljustice

http://bit.ly/ProJust

info@courtinnovation.org

Procedural Justice

Center for Court Innovation • 13 videos • 167 views • Updated yesterday

Research has shown that when defendants and litigants perceive the court process to be fair, they are more likely to comply with court orders and follow the law in the future—regardless of whether they "win" or "lose" their case. The Center for Co... more

Play all | Share | Save

Additional Resources

- www.law.yale.edu/faculty/TTyler.htm
- www.proceduraljustice.org
- proceduralfairnessguide.org
- www.ncsconline.org/d_research/CourTools/ctTemplates.htm