

# PROCEDURAL JUSTICE IN FELONY CASES

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Recent research on the determinants of litigant satisfaction has consistently found that abstract evaluations of the justness of case outcomes and of the fairness of the case disposition process contribute significantly to outcome satisfaction, independent of the favorability of the outcome itself. Most such findings have been produced either in laboratory settings using college student subjects or in survey research involving litigation in which the stakes are relatively small. As a consequence, skepticism has been expressed about whether procedural and distributive justice make a difference in serious civil or criminal cases. Reanalyzing data gathered in a previous panel study of defendants charged with felonies in three cities, we argue that the evidence suggests important effects for procedural and distributive fairness, even among a sample of litigants who share few attributes with college student populations and who are involved in litigation in which the stakes are high. The implications of these findings for case disposition processes such as plea bargaining and alternative dispute resolution techniques are discussed.

## I. INTRODUCTION

In 1975 Thibaut and Walker published their work on the effects of case disposition processes on litigant satisfaction. They suggested that litigants' satisfaction was linked to the manner in which their cases were settled as well as to case outcomes. Since 1975, the volume and diversity of research on procedural justice effects have increased substantially. Subsequent work has confirmed the hypothesis that legal procedures influence litigant satisfaction (for reviews see Lind, 1982; Lind and Tyler, 1988; Tyler, 1987b, 1987c; Walker and Lind, 1984) and that such effects generalize to evaluations of legal authorities (Tyler, 1984; 1986a; 1987c). Such effects occur not only when litigants have experienced for-

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mal courtroom procedures but also in disputant reactions to alternative dispute resolution procedures (Adler *et al.*, 1983; McEwen and Maiman, 1984). Finally, fair process effects have been found outside of the legal arena in allocation and dispute resolution within work organizations (Greenberg and Folger, 1983), politics (Rasinski and Tyler, *in press*; Tyler, 1986b), and interpersonal relations (Barrett-Howard and Tyler, 1986). Despite this replication of the procedural justice effect, several questions about its generality and importance remain.

The bulk of the research has relied upon laboratory simulations, typically using college student subjects. This has led to concerns about the external validity of such research (Anderson and Hayden, 1980–81). Two of the most telling criticisms are: (1) the stakes for litigants in such experiments are invariably low, and (2) the student subjects may differ significantly from actual litigants. Intuitively, it is plausible to imagine that litigants whose liberty, money, or property are truly at stake might be primarily concerned with their own self-interest, and therefore the outcome of the case will be the chief determinant of their satisfaction. Tyler's (1984; 1986b; 1987c) research using sample surveys of adults who have had contact with police and lower courts suggests that procedural justice is important even in nonlaboratory settings. Although this work focuses upon contacts with legal institutions in which the stakes for the participants are surely greater than in the typical simulation study, they are not as high as in many criminal and civil cases. Moreover, compared to student subjects in the lab, adult litigants in the "real world" may have different values, different expectations about case procedures and outcomes, and different levels of attachment to the regime in which courts are embedded. All of these differences might affect the ways in which litigants evaluate their court experiences.

Given these concerns, examining the role of the process and outcome variables in determining the satisfaction of defendants in felony cases would seem to present a difficult and powerful test of the theory that process really matters. Because our findings indicate that procedural justice is important to defendants in felony cases, we will also consider the factors that appear related to a sense of procedural fairness. We evaluate the extent to which various features of the disposition process (e.g., pretrial detention or whether the defendant had a trial or pleaded guilty) seem related to a sense that the process has been fair. Finally, we present a model that assesses the effects of case processing variables as well as outcome (i.e., sentence severity) and measures of perceived procedural and distributive fairness on defendant satisfaction.

We begin by describing three concepts that are central to recent discussions of litigant satisfaction: sentence severity, distributive justice, and procedural fairness. We turn to a discussion of our sample, establishing that these defendants do indeed differ signifi-

cantly from the undergraduate subjects typically used in procedural justice research. We then describe our measures of absolute outcome, procedural justice, and distributive justice. Next we present a regression model that assesses the impact of these three factors on our outcome satisfaction measures, arguing that procedural justice does appear to influence defendant evaluations of their treatment. We then discuss the factors related to a sense of procedural fairness, asserting that many defendant characteristics and “objective” features of case processing do not appear to be related to a defendant’s sense of fair treatment. A structural equation model that assesses the contributions of objective features as well as sentence severity, procedural fairness, and distributive justice to our measures of outcome satisfaction follows. We conclude with a brief discussion of the implications of our findings for our understanding of litigant satisfaction and the role of procedural justice in this process.

## II. THE DETERMINANTS OF LITIGANT SATISFACTION

A variety of factors are typically said to influence a citizen’s satisfaction with an encounter with a legal institution, including case outcome, distributive justice, and procedural justice.

### A. *Case Outcome*

The most intuitively plausible determinant of litigant satisfaction is the outcome of the case. One does not have to be much of an economist to believe that whether litigants win or lose their cases powerfully affect their sense that their interests and concerns have been dealt with appropriately (see Casper, 1978b; Tyler 1984; Heinz 1985a, 1985b; and Landis and Goodstein, 1987). The simplest way to test this hypothesis, and the one we employ, involves comparing evaluations of those with relatively favorable and unfavorable case outcomes.<sup>1</sup>

The appropriate measurement of outcome favorability may require attention not only to the absolute severity of the sentence received but also to its position relative to litigant expectations of likely outcomes. Thus, a defendant in an armed robbery case with an extensive criminal record may find a prison term of three years relatively favorable, while a burglar with a minor record may find

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<sup>1</sup> By using objective indicators of outcome (e.g., months of incarceration), we introduce a potential confounding problem because our dependent variables and assessments of fairness are measured attitudinally. Hence, when considering the relative impact of outcome severity and procedural and distributive justice on outcome satisfaction, it might be suggested that research like ours is weighted in favor of procedural and distributive justice effects, for attitudes may predict other attitudes better than “objective” factors like sentence. In our view this type of problem is inevitable, because outcome favorability is appropriately measured by an objective indicator, while distributive justice, procedural justice, and outcome satisfaction should be measured with attitudinal indexes.

the same sentence quite harsh. Given that courtroom cultures are characterized by “going rates” (expectations about likely sentences for defendants convicted of particular crimes with certain records), an examination of outcome should consider not simply absolute severity but also the relationship between anticipated or normative outcomes and those actually received.

### *B. Distributive Justice*

Research suggests that an evaluation of the justness of the outcome independently affects defendants’ judgments about whether their encounter with courts has been satisfactory. This dimension is often referred to as distributive justice, and there are a variety of potential sources of a sense that an outcome is just or unjust. For example, a defendant might evaluate an outcome in light of previous experience. Thus, those with prior court experience might compare their current sentence against earlier ones. Another locus of comparison might be the outcomes received by others. For example, Casper (1978b) reported that the version of distributive justice he called “comparison level” (defendant evaluations of how their sentences compared to those imposed on others convicted of the same crime) strongly affected evaluations of their treatment. The crucial feature of the notion of distributive justice is that litigants judge the fairness of their outcome on the basis of some abstract or principled criterion and that this evaluation affects their overall satisfaction with their court experience, beyond the impact of the favorability of the outcome itself.

### *C. Procedural Justice*

A third determinant of litigant satisfaction, and the one of major interest here, involves procedural justice. Beginning with Thibaut and Walker (1975), researchers have argued that litigant evaluations depend significantly upon the *process* by which decisions are made. A process in which litigants feel that they have the opportunity to express their point of view fully and in which the decision maker is perceived as having listened to and considered their side’s arguments will promote a sense of fair treatment and thus a sense of satisfaction with the court experience. Some research has simply argued that the influence of procedural justice on outcome satisfaction is independent of sentence severity and distributive justice. A smaller group of researchers have gone so far as to argue that the procedure matters *more* than outcomes (Tyler, 1984, 1986b, 1987c; Tyler and Caine, 1981; Tyler and Folger, 1980). This very strong version argues that litigants who receive unfavorable outcomes but perceive that they have been able to express their views fully and to have them considered may be more satisfied with the overall experience than those who receive more

favorable outcomes yet perceive that they have had less opportunity to have their views expressed and considered.

Interviews with actual litigants reveal that procedural justice issues figure importantly in reactions to the courts (Adler *et al.*, 1983; Tyler, 1984, 1986b). Tyler (1986b; Tyler, Rasinski, and McGraw, 1985) has argued, moreover, that some dimensions central to a sense of procedural justice (such as opportunity to be heard and to have one's views considered) are also related to citizen evaluations of the activities of political officeholders.

Do these findings about the importance of process extend to a population of litigants in cases where the stakes are very high and whose members may have beliefs and attitudes about courts and other government institutions which may differ from those of subjects previously studied? Heinz (1985a; 1985b) argues, for example, that process matters less and outcome more for defendants in criminal cases than for other participants, particularly victims. On the other hand, Landis and Goodstein (1987) find effects for procedural justice in a study of prison inmates' evaluations of their court experiences.<sup>2</sup>

### III. THE THREE-CITY SAMPLE

The data analyzed here come from a panel study of male defendants charged with felonies in three cities: Baltimore, Detroit, and Phoenix (Casper, 1978a). Casper interviewed defendants shortly after their arrest and again after the final disposition of

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<sup>2</sup> Two approaches, one experimental and the other based on field research, have been used to examine the impact of procedural justice on litigant satisfaction. The experimental tradition, exemplified by Thibaut and Walker's (1975) work, focuses upon the effects of structural properties of the disposition process on litigant evaluations. This approach allows the investigator to identify a procedural variation (e.g., disposition by trial versus an inquisitorial process, or trial versus arbitration) that affects both subjects' sense of fair treatment and their satisfaction generally. The field research tradition does not begin with a structural variation but rather with litigant evaluations of the fairness of their treatment; it then examines the extent to which such evaluations appear to influence levels of satisfaction. This approach takes as problematic the relationship between formal processes and perceived procedural fairness, rather than identifying such relationships a priori. Our research clearly falls in the latter tradition.

Both approaches have their strengths and limitations. (For a more detailed discussion of these issues, see Lind and Tyler, 1988.) The experimental method offers more control. The investigator can be sure that differences on satisfaction measures are attributable only to variation in procedure and whatever other aspects of the case are manipulated. The limitations of this method include typically low stakes and the fact that procedures that are examined often do not accurately model those occurring in natural settings. Although there have been a few efforts at natural experiments, their expense and complexity have limited the number of successful field experiments. The field method enjoys substantially higher verisimilitude, but must rely upon statistical control to assess the impact of procedural evaluations on outcome satisfaction, given the variety of other factors that might have an effect. In our view, both approaches have significant strengths that can advance the study of procedural justice.

their case. The study produced completed two-wave interviews with 628 defendants. We will focus upon the attitudes of a subsample of 411 defendants whose cases resulted in conviction by trial or plea.<sup>3</sup>

The defendants in the sample were charged with a variety of felonies, including crimes against the person (30%), property crimes (42%), drug charges (22%), and miscellaneous less serious crimes (7%). As a group, their charges were typical of felony defendants, and carried potentially quite serious sentences. As is common in felony cases, most convictions were obtained by a plea (72%), with the remaining quarter being typically convicted by bench rather than jury trial (the bulk of trial cases came from Baltimore, which was selected because it was among the few major cities which relied upon trials as the primary means of disposing of felony cases).

The sentences received by those convicted ranged from time served to a prison term. Slightly under one-half of the sample received a sentence not involving incarceration (32% received probation; 11% fines; and the remainder either suspended sentence, summary probation, or time served), while 51 percent were incarcerated (34% received a prison term, 17% a term in jail). The median prison term imposed was thirty-six months.

The attributes of cases and outcomes sketched here suggest two points: First, the three-city sample is relatively similar to what would be obtained in a national sample of felony defendants (for a fuller discussion of this point, see Casper, 1978a: Appendix I). Second, these defendants were clearly involved in cases with potentially quite serious penalties, and, indeed, a substantial number of them received severe sentences.

The defendants were typical of felony defendants nationally in several ways: They were young (mean and median ages 25 and 22, respectively); largely black (64%); had relatively low education levels (68% had not graduated from high school); unemployed (55%); and had extensive prior involvement with the criminal justice system (12% had never been arrested before, while 27% had served a prison term). They are, in short, quite different from college student subject populations, and possess attributes associated

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<sup>3</sup> It would be desirable to examine the factors that affect evaluations of defendants who were not convicted as well. In our sample, the vast proportion received dismissals rather than acquittals at trial (14 were acquitted and 183 received dismissals). For those dismissed, the "process" encountered varied enormously, ranging from a dismissal a day after arrest with no court appearance to a dismissal granted after several months in jail and several court appearances. Our measures of procedural justice focus upon perceptions of the activities of the defendant's attorney and the prosecutor and judge who participate in the disposition of the case. Since many of those receiving dismissals were not represented by attorneys and did not appear before a judge in any meaningful sense, these measures are not available, and we have thus been forced to exclude such defendants from our analysis.

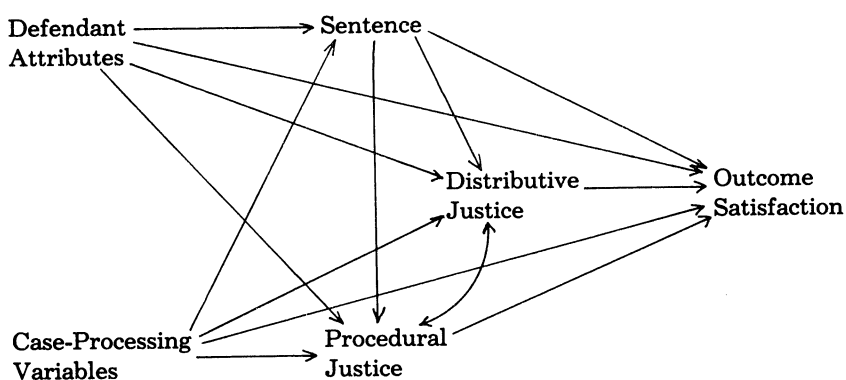


Figure 1. Factors Affecting Outcome Satisfaction

with lower attachment to the legitimacy of the law, courts, and the political regime (for detail, see Tyler, *et al.*, 1987).

#### IV. DEFENDANT EVALUATIONS OF THEIR COURT EXPERIENCE

##### A. Measurement of Variables

We will examine a variety of questions about the determinants of litigant satisfaction among the felony defendants sampled from the three cities. Figure 1 presents a schematic view of the model we explore. In a related paper (*ibid.*), we examine the extent to which defendants may generalize from their particular court experiences to beliefs about the law, courts, and the political system.

Our data offer several ways of measuring outcome severity. The two direct measures of sentence received are: (1) an ordinal scale of the type of sentence imposed, and (2) the number of months of incarceration received. Both have virtues and limitations. The ordinal scale, sentence type, ranges from no incarceration (largely probation, with an additional 10% perceiving a fine as the most serious penalty) to a jail term to a prison sentence. This measure captures a basic set of categories in terms of which defendants, lawyers, prosecutors, and judges discuss and evaluate outcomes. They are the focus of most plea bargaining in the three cities. As noted, the distribution of sentence types received by our sample included 49 percent, no incarceration; 17 percent, jail; and 34 percent, prison.

An alternative measure is the actual months of incarceration imposed, which in our sample ranged from 0 for those not receiving a jail or prison term to 360 months (excluding the four respondents who received life terms). Among those receiving some form of incarceration, the mean term was 43.6 months (the median was

18.0 months). The distribution of months incarcerated is clearly skewed, for roughly 50 percent received no incarceration, and a few received very long terms. In the tables that follow, we employ a natural log transformation of months incarcerated as the primary measure of sentence severity.

This measure of severity is better because its distribution more closely matches the assumptions of the regression models we are testing; the truncation of the distribution of months incarcerated also seems theoretically preferable. The transformation implies that marginal increments of sentence severity decrease as sentences become longer, which seems reasonable when attempting to relate severity to measures of satisfaction.

Both sentence type and months incarcerated fail to tap the dimension of sentence severity relative to anticipated or likely outcomes. For example, a defendant with an extensive record who receives a term of twenty-four months for robbery is coded the same on sentence type or months incarcerated as one with no record who receives the same sentence. The former defendant may have received a substantially lighter than the expected or typical penalty, while the latter may have had notably bad luck. In one sense the sentences *are* the same, for both defendants may serve the same amount of time in prison. From another perspective, one defendant may emerge believing that he did especially well and the other that he had serious misfortune. To the extent that outcome is not simply the degree of punishment but rather punishment measured against expectations, simply focusing on sentence received may miss a dimension relevant to our concern about the impact of outcome on defendant satisfaction.

To deal with this issue, we attempted to predict months incarcerated with available defendant characteristics. Four attributes—seriousness of arrest,<sup>4</sup> prior criminal record,<sup>5</sup> days in pretrial detention, and mode of disposition (trial or plea)—were significantly related to sentence received. Together, they account for 44 percent of the variance in log months incarcerated. Using this equation, we calculated the residual for each defendant, which we employed as a third measure of sentence severity. The sign and size of the residual index the extent to which the defendant fared better or worse than those similarly situated with respect to our predictors. This variable thus controls for key aspects of expected sentence.

Overall, therefore, we have three basic measures of sentence severity: months incarcerated (transformed and untransformed), sentence type, and deviation from expected sentence. In the tables below, we will focus on the log of months incarcerated. For all results, we have also performed similar analyses with sentence type

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<sup>4</sup> Measured on a four-point ordinal scale: crime against the person, property crime, drug crime, and other.

<sup>5</sup> Measured on a five-point ordinal scale: never arrested, arrested, convicted, prior jail term, and prior prison term.



and deviation from expected sentence, with results similar to those reported for log months incarcerated as the measure of sentence severity.<sup>6</sup>

Our measure of distributive justice focuses upon the defendant's evaluation of how his sentence compared with those of similar defendants convicted of the same crime: "Compared with those people convicted of the same crime as you were, would you say your sentence was (1) about the same as most people get; (2) lighter than most people get; or, (3) heavier than most people get?". Thirty-five percent said that they were treated less harshly than others, 36 percent said that they were treated the same, and 29 percent said that they were treated more harshly. Certain evidence suggests that the respondents' judgments were based upon some real understanding of how others were treated. When we examine the residuals of our predicted months incarcerated—that is, the difference between actual time imposed and that predicted by the defendant's charge, prior record, pretrial detention, and mode of disposition—those who asserted that their sentence was heavier than others' received, on the average, statistically significantly higher sentences than predicted by our model when compared to those who said that their sentences were lighter or the same as others.

Our measure of distributive justice concentrates upon only one of several potential dimensions of this concept. Measuring the justness of the outcome received against some normative standard might focus on comparison not only with others but also with prior treatment or against some absolute normative standard. Only one version of distributive justice is available to us, and it suffers from being measured by this single item. Our confidence that we have measured this concept well is thus limited, but it does appear significantly related to litigant satisfaction as well as to broader attitudes about the nature of courts, law, and the political system (see Tyler *et al.*, in press).

Several measures of procedural justice are available in the interviews. The typical way of measuring this concept involves asking respondents a general question about the fairness of the process by which they were treated. We believe that better measures of perceived procedural justice are available in our data. Respondents were asked a series of items about their lawyers, as well as about the judge and prosecutor who participated in final disposi-

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<sup>6</sup> We have also done the analyses reported below using the untransformed number of months incarcerated. This variable produces similar results in the basic regression models of outcome satisfaction, but substantially stronger effects for procedural justice in the structural equation model.

tion of their case. Some of these items deal with dimensions involving fair treatment. We selected these items from the scales, and then summed them to form a sixteen-item measure of perceived procedural fairness, which included:

1. "Did your lawyer listen to you?"
2. "Did he/she believe what you told him/her?"
3. "Did he/she fight hard for you?"
4. "Did he/she tell you the truth?"
5. "Did the prosecutor pay careful attention to your case?"
6. "Did he/she listen to both sides?"
7. "Was the prosecutor honest with you and your lawyer?"
8. "Was the judge honest with you and your lawyer?"
9. "Was the judge concerned about following legal rules?"
10. "Was the judge unbiased and fair to both sides?"
11. "Did the judge try hard to find out if you were guilty or innocent?"<sup>7</sup>

Using items that tap specific dimensions of litigant perceptions of procedural fairness on the part of courtroom participants provides a strong index of procedural justice.

We employ three measures of outcome satisfaction. The first, which we will call sentence evaluation, asked the respondent to evaluate his sentence: "Do you think your sentence is . . . (1) too light [2% chose this category]; (2) too heavy [47%]; or (3) about right [52%]?"<sup>8</sup>

The second item asked of each defendant—"All in all, do you feel that you were treated *fairly* or *unfairly* in your case?"—produced a split, with 55 percent saying they were treated fairly and 45 percent saying they were not.

The third measure was derived from the open-ended question, "Suppose you had to do it all over again—from the time you were arrested to the time your case was ended—what would you do differently?" This elicited a wide variety of responses, including criticisms of the defendant's attorney, the behavior of codefendants, dissatisfaction with the performance of the judge and prosecutor in the case, and regret about a plea of guilty. A substantial proportion of respondents, on the other hand, indicated that they would do nothing differently, expressing satisfaction with the outcome of the case, as opposed to a group who said that they would do nothing differently in a context that suggested dissatisfaction and a sense of fatalism or powerlessness. On this measure of outcome

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<sup>7</sup> See the Appendix for a complete list of items.

<sup>8</sup> When analyzing this item, we collapsed it into a dichotomy: "about right" versus "too heavy" or "too light."

**Table 1.** Correlations Between Outcome Satisfaction Measures and Sentence Received, Distributive Justice, and Procedural Justice\*

Variable	Sentence Evaluation	Overall Fairness	Regret
Log months incarcerated	.25	.38	.24
Distributive justice	.45	.36	.17
Procedural justice	.38	.54	.34

\*  $p < .001$  for all coefficients

satisfaction, 29 percent expressed satisfaction and 71 percent indicated dissatisfaction; we refer to this as a measure of regret.<sup>9</sup>

## V. DETERMINANTS OF OUTCOME SATISFACTION

Our exploration of outcome satisfaction begins with examination of the bivariate correlations between the independent variables outlined and our three measures of outcome satisfaction. As indicated in Table 1, all three measures of outcome satisfaction appear related to the hypothesized independent variables. More directly to our central concern, procedural justice does appear to be related to the defendants' sense that their treatment by courts has been satisfactory.

Table 2 examines the relative magnitude of impact of distributive justice, procedural justice, and months incarcerated on the

<sup>9</sup> The intercorrelations of the three outcome measures are as follows:

Measure	Overall Fairness	Regret
Sentence evaluation	.51	.30
Regret	.39	

The moderate correlations (all significant at the .001 level) suggest that they share some common dimension of satisfaction, although the measures are by no means identical.

The intercorrelations (all significant at the .01 level) of the independent variables are as follows:

Variable	Distributive Justice	Procedural Justice
Log months incarcerated	.16	.39
Distributive justice		.29

The dimensions appear to be distinct.

Table 2. Determinants of Outcome Satisfaction

Variable	Sentence Evaluation	Overall Fairness	Regret
All convicted respondents <sup>a</sup>			
Distributive justice	.36**	.21**	.07
Procedural justice	.23**	.40**	.28**
Log months incarcerated	.11*	.19**	.12*
$R^2$	.27	.36	.13
All sentenced to incarceration <sup>a</sup>			
Distributive justice	.35**	.21**	.07
Procedural justice	.22**	.45**	.28**
Log months incarcerated	.19*	.17*	.21*
$R^2$	.30	.37	.16

\*  $p < .05$

\*\*  $p < .001$

<sup>a</sup> Entries are standardized regression coefficients.

three measures of outcome satisfaction. We report regression equations for the three measures of outcome satisfaction, with the indicators of distributive justice, procedural justice, and outcome severity entered simultaneously.

Across all three measures of litigant satisfaction, procedural justice makes a significant and independent contribution. Distributive justice also contributes significantly to all but the regret measure. The measure of sentence severity is also significantly related to all three measures of outcome satisfaction.<sup>10</sup>

In Table 2, we also examine the determinants of outcome satisfaction among defendants who fared worst (that is, those who received jail or prison terms); ( $N = 209$ ). The coefficients for sentence are somewhat larger, but the pattern of independent contributions for both procedural and distributive justice remains, even among defendants receiving more punitive outcomes.

These results must be interpreted with caution.<sup>11</sup> Despite the relative sizes of the regression coefficients, we do not wish to claim

<sup>10</sup> Because the three cities differ on a variety of dimensions, including systems for providing counsel to indigents and overall level of sentence severity, we tested the relationships reported in Table 2 for each city separately. The results are very similar. Although there is some variation across the cities in the size of the coefficients and their significance, no patterns emerge suggesting consistent intercity differences.

As another test of the effects for city on our measures of outcome satisfaction, we examined the change in  $R^2$  associated with adding dummy variables for two of the three cities to the regression equations reported in Table 2; this increased the  $R^2$  by 1% for fairness and regret, and caused no change for sentence evaluation.

<sup>11</sup> There are several objections, methodological and substantive, that might be leveled against our findings.

Methodologically, it is important to note that some of our variables are

that the evidence shows that either procedural or distributive justice matters *more* than sentence severity in a defendant's evaluation of his treatment. Rather, we would claim that it *does* support the claim that defendants in cases in which the stakes are by any measure very high evaluate their treatment on the basis of not only the favorability of the outcome but also more abstract and principled dimensions like distributive or procedural justice. Procedural justice is related to all three outcome satisfaction measures, which lends support to the conclusion that procedural justice effects obtained from research using experimental methods or experiences in which the stakes are not so high are not simply artifacts of the method or type of case.

## VI. CORRELATES OF A SENSE OF PROCEDURAL FAIRNESS

Assuming that procedural justice does matter, which factors contribute to a sense of having been treated fairly? In their original work on procedural fairness, Thibaut and Walker (1975) sug-

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more accurately measured than others. Our distributive justice and three dependent variables are measured with single items and are thus subject to more measurement error. Our procedural justice variable, on the other hand, is the product of a sixteen-item scale and likely subject to less error. Finally, the distributive justice measure is similar in content to our measure of sentence evaluation (both ask the respondent to evaluate his sentence as the same, lighter, or heavier than those given others or than deserved). This item similarly may contribute to an artifactual correlation between these two items.

Taking these criticisms in turn, we acknowledge the increased possibility of measurement error in those constructs measured with a single item. We note, however, that the theoretically most serious competitor to procedural justice—absolute outcome measured as months incarcerated—is not subject to substantial measurement error. Moreover, outcome favorability has been measured in two other ways as well, sentence type and deviation from predicted sentence, and the results reported here—an independent effect for procedural justice—remain under these forms of measurement. Finally, the procedural justice effect appears for each dependent variable, all of which tap different dimensions of outcome satisfaction, not just for the one that itself seems most similar in content—overall fairness of treatment. Thus, although we acknowledge that our procedural justice measure may be subject to less measurement error than the distributive justice indicator, we have measured absolute outcome in a variety of relevant ways and procedural justice retains its independent contribution.

The similarity of the distributive justice and sentence evaluation items may indeed contribute to their apparent relationship to one another. By the same token, though, we note that distributive justice is also significantly related to another measure of outcome satisfaction—overall fairness—which indicates that its relationship is not entirely artifactual. Moreover, as reported in another analysis of these data (Tyler *et al.*, 1987), the measure of distributive justice also makes an independent contribution to change in defendants' sense of the goals of lawyers, prosecutors, and judges, again suggesting that our measure of distributive justice taps a dimension of defendant evaluations that is real rather than simply artifactual.

Finally and more substantively, the behavior of the regret measure requires brief discussion. Because it is an open-ended item asking whether the defendant would do anything differently, it may focus attention on factors that are under the control of the defendant, such as procedural justice issues (including relationships with the defendant's attorney and decisions about trial or plea).

gested that procedural justice was, among other things, a product of a process in which all parties felt that their views were considered by and had an effect on decision making by a third party. Later elaborations of the concept have focused more on the notion of "voice"—that is, giving all parties the sense that they have had the opportunity to express their point of view—and less upon the exercise of control over the outcome (see Tyler, Rasinski, and Spodick, 1985; Tyler, 1986c, 1987a, 1987d). Our procedural justice scale includes several items that tap such dimensions, and its observed relationship to outcome satisfaction appears consistent with these traditional notions of the nature of procedural justice.

We wish to go a bit further. Defendant evaluations are the product of their experiences. Thus, for example, Thibaut and Walker argued that an adversary trial was more likely to produce a sense of procedural justice than the European inquisitorial system, in part because it was more likely to lead litigants to believe that they had effectively exercised voice in the process. We want to explore how defendant characteristics or "objective" features of the defendant's experience relate to their evaluation of the fairness of the process for a variety of reasons. First, it will give us a better idea of what actual aspects of the case disposition process may be related to a sense of procedural fairness. Is a sense of fair procedure tied most directly to the decision-making process about guilt or by sentencing (as Thibaut and Walker suggested), or is it also influenced by events removed from this formal stage (e.g., predisposing defendant attributes like race or prior record, treatment by the police at the arrest stage, pretrial detention, or interactions with attorneys or prosecutors outside the courtroom)? We also want to deal with the possibility that the relationships observed between procedural justice and outcome satisfaction are in some measure spurious. Perhaps defendant attributes or aspects of the process not generally discussed in the procedural justice literature may be driving both our procedural justice measure and our outcome satisfaction indicators. If so, controlling for such factors may reduce the observed effects of procedural justice on litigant satisfaction. We test such a model in the next section of the paper.

The data available include a rich array of measures of defendants' attributes and of the process they actually encountered, including race, prior criminal record, pretrial detention, type of attorney, interactions between the defendant and his lawyer, and trial versus guilty plea. Using a variety of these attributes, we cast our net widely, and attempted to predict scores on our procedural justice measure. Table 3 reports both the bivariate correlations and the standardized regression coefficients.

The striking result is a negative one: We are unable to predict much of the variance in defendants' scores on our measure of pro-

Table 3. Determinants of Procedural Justice

Predictor	Bivariate Correlation	$\beta$
Race	.12	.00
Prior criminal record	.19***	.01
Seriousness of arrest charge	.00	.11*
Treatment by police at arrest	.33***	.23***
Days in pretrial detention	.10	.14*
Type of attorney (private versus public defender)	.14**	.06
Lawyer visit in jail?	.07	.04
Time talking with lawyer about case	.24***	.16**
Mode of disposition (trial versus guilty plea)	.09	.00
Log sentence in months	.39***	.45***
		$R^2 = .26$

- \*  $p < .05$   
 \*\*  $p < .01$   
 \*\*\*  $p < .001$

cedural justice.<sup>12</sup> Potentially predisposing defendant characteristics like race (coded here as black versus nonblack), prior criminal record, and the seriousness of the arrest charge are not significantly related to the scores when all predictors are entered. Similarly, whether the defendant was represented by a public defender or privately retained counsel or was visited by his attorney while in pretrial detention had no effect in the regression equation. Finally, whether the defendant was convicted by a plea or a trial is unrelated to a sense of procedural justice. We wish to return to

<sup>12</sup> Our inability to explain much of the variance in the measure prevails across all three cities. We find some differences in the magnitudes of various coefficients but no particular patterns. For example, seriousness of arrest charge has a modest but significant relationship to process in Phoenix but in neither of the other cities ( $\beta = .22, .02, \text{ and } .04$  in Phoenix, Baltimore, and Detroit, respectively). The mode of disposition variable has no relationship overall, but exhibits some variation across the three cities ( $\beta = .20, .04, .06$  in Phoenix, Baltimore, and Detroit, respectively). Finally, days in pretrial detention has a modest effect overall but varies across cities ( $\beta = .21, .02, \text{ and } .11$  in Phoenix, Baltimore, and Detroit, respectively). With these exceptions, the patterns in the three cities appear quite similar. We believe that the most important substantive finding is that the variance explained remains very low across all three cities ( $R^2 = .26, .27, \text{ and } .22$  in Phoenix, Baltimore, and Detroit, respectively), suggesting that disaggregating does not produce clearer patterns in predictors of a sense of procedural justice.

We also performed the same regression reported in Table 3, adding dummy coded variables for the cities. The change in  $R^2$  was a modest and insignificant 3%, again suggesting that there were no important differences across the cities.

this point shortly, but first note briefly those factors that did appear related on the procedural justice measure.

Of the several measures of interactions between the defendant and his attorney, the amount of time spent with the lawyer<sup>13</sup> is positively related to reports of procedural fairness. This appears consistent with the notion that procedural justice comes in part from a sense of having a voice in the process. The other variables that were significantly related to our measure of procedural justice are treatment by police at arrest, seriousness of the arrest charge, days spent in pretrial detention, and sentence received.

At the first interview, respondents were asked to describe how the police officer had behaved during the arrest (e.g., acted in a businesslike manner, used disrespectful language, was helpful, or pushed the defendant around unnecessarily. See the Appendix for a complete description of the items). The finding that treatment by the police affects a defendant's sense of fair process is similar to that observed by Tyler (1987d) in a study of citizen contacts with courts in less serious cases. It appears that aspects of police treatment (e.g., politeness and respect) spill over onto defendant evaluations of their experience with courtroom personnel and their general sense of fair treatment.

The effects observed for seriousness of the arrest charge and days in pretrial detention are not easily interpreted. The direction of the relationships suggests that defendants involved in more serious cases (those with more serious charges and more time in pretrial detention) tend to believe that they have encountered fairer procedures, although the relationships are very modest. Finally, defendants receiving harsher outcomes tend to believe that the process was less fair. Although this is the strongest relationship observed, we note that the bivariate correlation is only .39, suggesting that procedural fairness and sentence imposed are by no means synonymous.

The failure of mode of disposition to be significantly related to our process measure is an intriguing finding. Those who plead guilty do not report having received less procedural fairness than those whose conviction was produced by trial. This is true both at the bivariate level and the multiple regression equation reported in Table 3. Thibaut and Walker (1975) suggest that a trial setting ought to produce a higher sense of procedural justice, given the presentation of evidence by the defendant's attorney, the opening and closing arguments, and the general trappings of a procedure in which the defendant and his case are central. In contrast one would expect that the informal setting of plea bargaining, with ne-

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<sup>13</sup> The actual measure employed was the log of the number of minutes reported to have been spent with the lawyer talking about the case. The log transformation was used because the distribution of the actual minutes was characterized by a large number of cases reporting less than 30 minutes and a few cases reporting very large amounts of time spent with the attorney.



gotiations occurring between the defendant's attorney, the prosecutor, and sometimes the judge, without the presence of the defendant, might produce less of a sense of procedural fairness.

The lack of a relationship between mode of disposition and procedural justice is relevant to the longstanding debate about plea bargaining. Critics present a variety of dimensions on which they argue that the process is undesirable. The deficiencies of plea bargaining are said to include the fact that it serves to suppress legal issues and thus makes it difficult for courts to police the police; it shifts the locus of control over sentencing from the legislature to courtroom participants; it may increase sentence disparity because of its reliance on factors like caseload pressure; it encapsulates two decisions that ought to be kept separate, that of guilt or innocence and sentence; and it undercuts the moral authority of the criminal justice system and contributes to defendant cynicism (see, for example, Casper, 1972).

Such criticisms implicitly assert that trials are preferable on these dimensions. Thus, critics share with Thibaut and Walker an assumption that trials ought to give defendants an increased sense of procedural fairness. The lack of a relationship in our data does not support this view, since those who go to trial do not score higher on our procedural fairness index (and, as is discussed in the next section, neither do they report higher overall satisfaction).<sup>14</sup> We should note that most of the trials reported were bench trials that typically lasted half a day or less, rather than the full-blown proceedings we generally imagine criminal trials to be. Although the numbers in our sample do not permit analysis, it may be that jury trials more accurately capture the effects traditionally associated with adversary trials.

Why a higher level of perceived procedural fairness is not associated with the trial setting remains unclear. First, contrary to our intuition, the trial experience may not provide defendants with a sense that they have a greater opportunity to express their side of the case. In an earlier analysis of these data, Casper (1978b) noted that in response to an open-ended item directed at those who reported that their treatment had been unfair, there was a small tendency for those who had trials to report *more* often that they had not been given the opportunity to present their side than were those who pleaded guilty. Second, the trial experience itself may have negative consequences for some defendants. In this sample, as in most jurisdictions, most defendants going to trial were convicted (89%). The trial proceedings—the presentation of arguments and evidence on the defendant's behalf, sometimes including his own testimony; the possibility of an acquittal; and the ultimate conviction—may prove more disillusioning for some than

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<sup>14</sup> This result does not appear to be artifactual, since a similar finding is obtained by Landis and Goodstein (1987). See n. 15 below.

a process in which there is never any serious discussion of a favorable outcome. Finally, plea bargaining provides defendants with a greater sense of certainty about the outcome of their case than do trials. The defendant who pleaded guilty as a result of a plea bargain knew the outcome when he went before the judge, while one who went to trial left his fate in the hands of judge or jury. If, as Thibaut and Walker (1975) suggest, litigants value decision control, this may contribute to a greater sense of procedural fairness.

The lack of a relationship between mode of disposition and procedural justice suggests strongly that the *form* of the disposition process may not capture those elements that define, from the defendant's perspective, the elements of a fair process.<sup>15</sup> Simply assuming that trials or plea bargains have certain attributes is not a substitute for further exploration of how they are actually experienced by the defendants themselves. In other words, we need to better understand the relationship between the objective features of various modes of case disposition and the feeling that one has received fair treatment.

## VII. A MODEL OF OUTCOME SATISFACTION

We have shown that our measures of satisfaction are related to severity of penalty imposed as well as to defendants' more abstract judgments about procedural and distributive justice. We have also noted that case processing variables and personal attributes do not, by and large, appear to be strongly related to defendant evaluations of the fairness of the process encountered. Now we wish to turn to a more complete model of outcome satisfaction, examining the effects of defendant attributes, case-processing variables, outcome, procedural justice, and distributive justice on overall outcome satisfaction.

We begin with the structural equation model depicted in Fig-

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<sup>15</sup> In their analysis of prisoners' evaluations of their court experience, Landis and Goodstein (*ibid.*) report a relatively strong relationship between mode of disposition and outcome satisfaction and a more modest relationship with procedural justice. Guilty pleaders reported higher levels of satisfaction and procedural fairness. Their indicator of mode of disposition is a trichotomy that includes pleading guilty with a bargain, pleading guilty without a bargain, and going to trial. They interpret this measure as an index of certainty, and their interpretation of its result includes the notion that it may tap outcome control. In our sample we tried to replicate their findings in a variety of ways. Only 10% of our respondents reported pleading guilty without a plea bargain. As a result, using a measure similar to their trichotomy produces a variable very highly correlated with our trial versus plea measure of mode of disposition. Using either measure on the whole sample or only on those who were sentenced to prison failed to reproduce their finding of a relationship between mode of disposition and procedural fairness. At this stage, we believe that the appropriate conclusion is simply that further research on mode of disposition and procedural justice is needed before we can confidently state their relationship. What is clear in both data sets is that defendants do not necessarily feel more satisfied and more fairly treated if they have a trial.

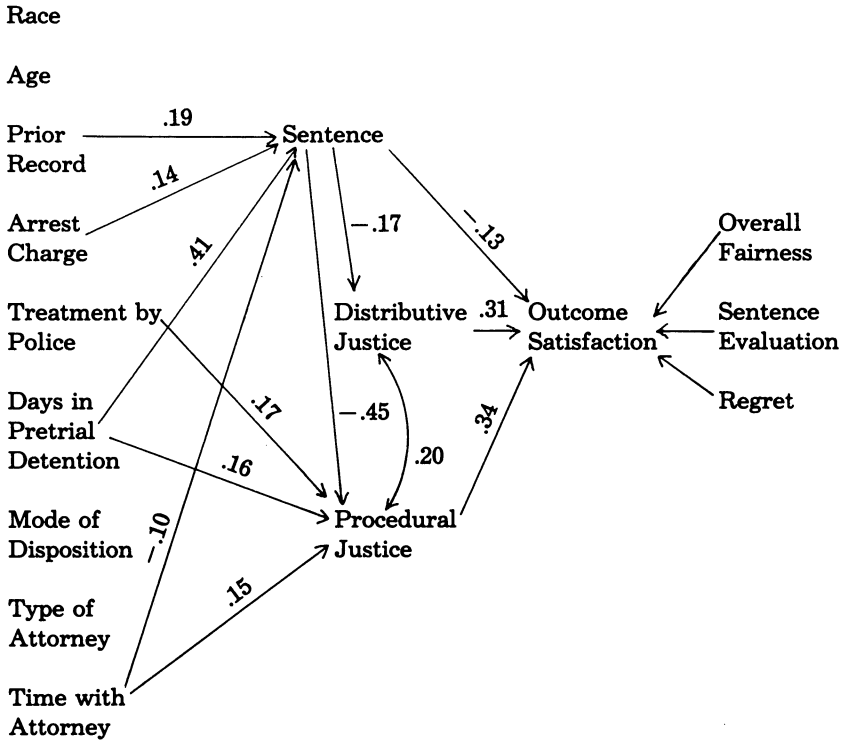


Figure 2. Outcome Satisfaction for All Convicted Defendants (all paths  $p < .05$  are reported)

ure 1, which specifies that outcome satisfaction is affected by sentence, by procedural and distributive justice, and by predisposing defendant characteristics and case-processing variables. Sentence is hypothesized to be affected both by defendant attributes and case-processing variables. Procedural and distributive justice mutually influence one another, and are also affected by sentence, defendant attributes, and case-processing variables.

In estimating the model, we use a structural equation model (LISREL). We assume that overall outcome satisfaction is an unobserved construct that is measured by our three variables (sentence evaluation, overall fairness, and regret). We estimate two models, one for all convicted defendants and the other for those who received a term of incarceration.

Figure 2 presents the coefficients for significant paths in our model for all defendants. Our overall outcome satisfaction measure is most strongly influenced by the overall fairness item, somewhat less related to sentence evaluation, and least strongly in-

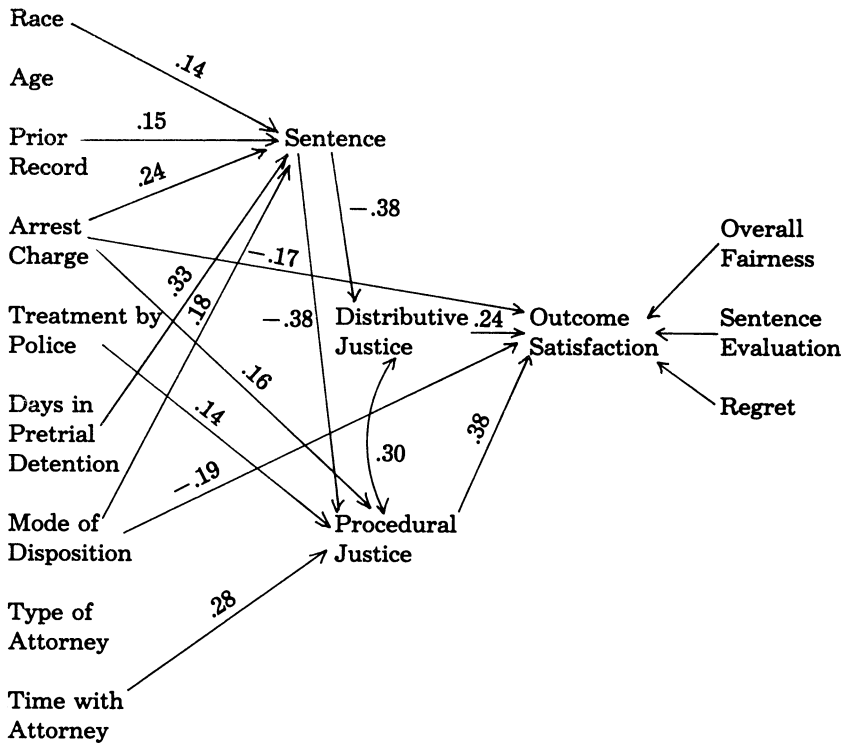


Figure 3. Outcome Satisfaction for Defendants Receiving Sentence of Incarceration (all paths  $p < .05$  are reported)

dexed by the regret measure. The overall fit of the model is reasonably good, with slightly less than half the variance in outcome satisfaction being explained ( $R^2 = .43$ ).

This model reveals no direct paths to outcome satisfaction from either defendant attributes or case-processing variables. If one compares the  $R^2$  for the model that includes only sentence, procedural justice, and distributive justice with one that also includes defendant characteristics and case-processing variables, only 1 percent is added by the latter set of variables. Thus, it appears that defendant satisfaction, as we are measuring it, is largely a product of evaluations of procedural and distributive justice along with sentence severity. Predisposing defendant characteristics or “objective” features of case-processing affect outcome satisfaction only through their impact upon sentence and upon intervening judgments about the fairness of the process and the justness of the sentence.

The structural equation model is consistent with our earlier

regression models in suggesting that sentence, distributive justice, and procedural justice all have independent effects upon outcome satisfaction.

Figure 3 presents a structural equation model of satisfaction for defendants receiving a term of incarceration. This model differs in one marked respect: We do not observe any direct path from sentence to outcome satisfaction. The effects of sentence length upon satisfaction operate by means of its influence upon judgments about procedural and distributive justice.

The structural models further emphasize the complexity of the process through which defendants make judgments about their court experiences. Such judgments are affected by attributes that defendants bring to their encounter with courts, by their experiences with police officers and attorneys, and by the severity of the outcome they receive. But the models also underline the extent to which defendant evaluations of their court experiences depend not simply on these factors but also upon the application of more abstract judgments about the quality of the process and the fairness of the outcome.

### VIII. CONCLUSION

We began by noting that prior findings of procedural justice effects on litigant satisfaction have been robust across a variety of populations but also the subject of a good deal of skepticism. The skepticism has in part come from the quite plausible intuition that when litigants become involved in cases in which the stakes are truly high, such as substantial sums of money or property, much less their very freedom, abstract notions of justice will take a back seat to self-interest in influencing evaluations. While we agree that this intuition is plausible, our data suggest that procedural and distributive justice play a role in litigant satisfaction even when the stakes are quite high. Our litigants were all involved in felony cases. Half received outcomes that included incarceration, a third went to prison, and all faced the possibility of serious sanctions. Their evaluations of their treatment, however, do not appear to depend exclusively upon the favorability of their sentences. Rather, their sense of fairness—in terms of both procedural and distributive justice—appears to have substantially influenced their evaluations.

These results run counter to one of the most damning criticisms of prior procedural justice research: that procedural justice will only matter when the outcomes involved are trivial. This finding is supported by recent data obtained by Tyler (1986b; 1987c) and Landis and Goodstein (1987). Given the limitations in our measurement of variables, we do not wish to argue that process fairness matters *more* than the other factors. But we are comfortable in arguing that previous findings of the importance of pro-

cedural fairness are probably *not* simply an artifact of the experimental method, the use of college student subjects, or situations in which stakes are not especially high.

In addition, our findings also raise important questions about the lack of relationship between various features of the defendant's experience and his evaluation of the process. This in turn raises issues about the meaning of the concept of procedural justice. In particular, the lack of observed relationship between mode of disposition and procedural justice suggests that formal procedures may not, from the litigant's perspective, operate as outside observers may assume. Although a trial may appear to a judge or researcher to offer a defendant more participation and voice than a plea bargain, it may not be experienced in this fashion by the defendant.

Attention to the determinants of litigant satisfaction and to their relationship to the form of dispute resolution has potential policy implications as well. Many in the legal community believe the outcome is all that matters to defendants, and sometimes argue that less formal procedures will not reduce defendants' satisfaction so long as they do not operate to their disadvantage at the outcome stage. If procedures do matter, such prescriptions may not be correct. For example, Tyler (1984) found that judges who handled minor cases believed that litigants would not pay attention to procedures so long as the outcomes in their cases were positive. Litigants, on the other hand, were deeply concerned with issues of process and paid less attention to the outcomes. As a result of these different concerns, the procedural shortcuts the judges used to handle the cases led to unanticipated hostility.

Thus, partitioning the impact of outcome and other abstract standards by which litigants may evaluate their court experiences has both theoretical and practical significance. Further research on the determinants of a sense of procedural fairness and on the relationship between formal structures and perceived fairness will improve our understanding of procedural justice. It can also help in assessing the likely impact on defendants' sense of fairness of various reforms of plea bargaining and of alternative dispute resolution processes in civil settings.

## APPENDIX

The procedural justice scale had an  $\alpha$  of .87 and comprised the following items:

Your lawyer . . .

- a. believed what you told (him/her).  
or, did not believe what you told (him/her).
- b. did not fight hard for you.  
or, did fight hard for you.
- c. did not tell you the truth.  
or, did tell you the truth.
- d. listened to what you wanted to do.  
or, did not listen to what you wanted to do.
- e. did not give you good advice.  
or, did give you good advice.
- f. cared more about getting your case over with quickly than about getting justice for you.  
or, did not care more about getting your case over with quickly than about getting justice for you.

Generally speaking, would you say your lawyer was . . .

- on your side?  
or, on the state's side?  
or, somewhere in the middle between the respondent and the state?

The prosecutor [in your case] . . .

- a. paid careful attention to your case.  
or, did not pay careful attention to your case.
- b. listened only to what the police told him.  
or, listened to all sides in the case.
- c. cared more about getting your case over with quickly than about doing justice.  
or, did not care more about getting your case over with quickly than about doing justice.
- d. was honest with you and your lawyer.  
or, was not honest with you and your lawyer.

The judge [in your case] . . .

- a. was honest with you and your lawyer.  
or, was not honest with you and your lawyer.
- b. was concerned about following the legal rules.  
or, was not concerned about following the legal rules.
- c. did not try hard to find out if you were guilty or innocent.  
or, tried hard to find out if you were guilty or innocent.
- d. listened only to what the prosecutors and police officers told him.  
or, listened to all sides in the case.
- e. was unbiased and fair to both sides.  
or, was biased in favor of the prosecution.

- f. did not care more about getting your case over with quickly than about doing justice.  
 or, cared more about getting your case over with quickly than about doing justice.

The following items comprised the scale measuring the defendant's evaluation of his treatment by the police:

What about the police officer who arrested you? Did he . . .

treat you in a businesslike manner?	Yes	No
use disrespectful language?	Yes	No
do his best to be as helpful as he could?	Yes	No
push you around when he didn't have to?	Yes	No
embarrass you in front of others when he didn't have to?	Yes	No

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