

Thinking about Judges and Judicial Performance: Perspective of the Public and Court Users

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Abstract

Studies of the courts, conducted primarily in the United States, suggest that the way legal professionals think about judging underpins nearly all official evaluations of judicial performance. The general public has a different view than lawyers of judging that merits consideration along with the type of criteria emphasized by the legal community. Research demonstrates that the public places the greatest importance on the extent to which a judge reaches decisions through a process that meets the public's expectations of fairness. Surveys of California residents and California attorneys are used to demonstrate the importance of procedural justice for explaining whether people have trust in the courts and regard court decisions as legitimate. The article describes and critiques existing judicial performance evaluation programs that incorporate procedural justice principles as a dimension for measuring judicial quality through both survey and observational methods.

Key words

Judicial Performance Evaluation; judges; measurement; procedural fairness

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Resumen

Los estudios sobre tribunales llevados a cabo principalmente en Estados Unidos, sugieren que la opinión sobre el hecho de juzgar de los profesionales del derecho están detrás de casi todas las evaluaciones del rendimiento judicial oficiales. El público general tiene una visión del hecho de juzgar diferente a la de los abogados, que debe tenerse en cuenta junto con los criterios destacados por la comunidad jurídica. La investigación demuestra que el público da mayor importancia a que un juez tome una decisión a través de un proceso que cumpla con sus expectativas de justicia. Se emplean encuestas a residentes de California y abogados de California para demostrar la importancia de la justicia procesal, a la hora de explicar si la gente tiene confianza en los tribunales y perciben las decisiones judiciales como legítimas. El artículo describe y critica los programas de evaluación del rendimiento judicial que incorporan principios de justicia procesal como una dimensión para medir la calidad judicial, tanto a través de encuestas como de métodos de observación.

Palabras clave

Evaluación del rendimiento judicial; jueces; medición; legitimidad procesal

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1. Introduction

Thinking about judging requires attention to a variety of perspectives. For the most part, the thinking underlying official evaluations of judicial performance is that of professionals in the legal field. As a result, evaluations of legal authorities and institutions have typically centered on two issues: the legality of their decisions and the quality of their performance on instrumental matters. In the case of the courts and judges, legality is determined through review by higher level legal authorities and quantified in terms of rates of being overturned on appeal or criticism by state disciplinary authorities. Instrumental performance is defined in terms of the number of cases managed, time to disposition, and other "objective" indicators.

This article conceptualizes judging and judicial performance in a different manner. Our focus is upon the criteria through which the public evaluates judges, courts, and other legal authorities. In other words, we seek to explain how the public thinks about judging and the implications of that way of thinking for the task of evaluating judges. Our concern is with the legitimacy of these institutions and actors in the eyes of the public (Tyler and Sevier 2014, Tyler and Jackson 2014).

This article takes three steps to encourage greater use of procedural justice criteria in evaluating the performance of individual judges. First, an analysis of a unique survey of both the public and of attorneys demonstrates the importance the general public places on procedural justice criteria when evaluating the courts and the extent to which legal professionals use the same criteria when reaching their own evaluations. Second, the current use of procedural justice in judicial performance evaluation programs is characterized and critiqued. Third, suggestions are made for moving toward a new generation of procedural justice measures for judicial performance evaluation (JPE) programs that not only rate judges but also guide judges in how to use procedural justice principles to improve the quality of judicial decision-making and compliance with court orders.

Why should we care about public views? One reason for evaluating judicial performance is to offer courts and judges feedback that can assist them in furthering their behavioral goals. For example, one goal is that people bring their problems to the courts instead of engaging in private vengeance. A second is that judges are able to issue orders that the parties will obey, both immediately and over time. And yet a third is that experiences with the courts increase compliance with the law, support for legal authorities, and the willingness to cooperate with the courts, for example by being a witness or serving on a jury. Research shows that these goals are advanced when the public views the legal system and legal authorities as being legitimate (Tyler and Jackson 2014). If the public accepts that the law and legal authorities play a legitimate role in maintaining order and resolving conflict, this promotes the effectiveness of the courts because people will defer to judicial decisions and will be more broadly supportive of and adherent to the law.

In numerous studies in judicial and other contexts, perceptions that the decision-making process has met the criteria of procedural justice, also called procedural fairness, is found to be the primary factor influencing whether members of the public are satisfied with their court experience and trust the judiciary (Tyler 2005, Tyler and Jackson 2012, p. 3, Tyler and Sevier (2014, pp. 1102-1103, footnote 27). Procedural justice concerns outweigh other key considerations such as perceived distributive justice, favorability of an outcome, or instrumental concerns such as the amount of time required to reach a decision. Moreover, the meaning of fair procedures to be used by the police and courts are "constant across age, gender, income, and ethnicity" (Tyler 2004, p. 436).

Procedural justice is a field of social psychology concerned with understanding how people respond to decision-making authorities. Procedural justice is present when people perceive they are experiencing:

- Respect: Being treated with dignity and having one's rights respected
- Neutrality: Believing decision makers are honest and impartial, and that their decisions are based on facts
- Participation: Having an opportunity to express one's viewpoint to the decision maker
- Trustworthiness: Perceiving decision makers as benevolent, caring, motivated to treat individuals fairly, and sincerely concerned about the individual (Tyler 2004).

Perhaps the most compelling evidence for the ability of procedural justice practices by individual judges to improve judicial outcomes comes from evaluations of problem-solving courts in the United States. Problem-solving courts are court dockets held regularly that exclusively adjudicate defendants selected for special processing based on specific characteristics or problems. Most of these courts address substance abuse issues. In the United States, there are approximately 3,700 operational problem-solving courts, two-thirds of which are drug courts (Rottman and Bowman 2014). Recent research confirms that adult drug courts work in that they reduce substance use and recidivism rates. An evaluation of 23 adult drug courts concluded that:

". . . the primary mechanism by which drug courts reduce substance use and crime is through the judge. Drug court offenders believe [as reported in surveys] that their judge treated them more fairly than the comparison group, including demonstrating greater respect and interest in them as individuals and greater opportunities to express their own voice during the proceedings" (Rossman *et al.* 2011, p. 7).

Observational research independently confirmed the greater adherence to procedural justice principles by drug court judges. Neither the extensive availability of or use of treatment programs and staff, nor the practice of strict monitoring of compliance with conditions of drug court rules appear to make a difference in recidivism rates relative to traditional courts (Rossman *et al.* 2011).

The public's evaluations of procedural justice can be further refined into two basic types of judgments: those made by members of the general public without direct experience of the courts and the evaluations made by those who have been participants in the legal system, such as litigants, defendants, jurors, or observers. In other words, members of the public may differ in how they think about judging depending upon whether they have past experience and what that experience has been (Tyler 2001, Benesh and Howell 2001). There are reasons to anticipate that the relative importance of different evaluative criteria, particularly those influencing, for example, trust in the judiciary, might differ depending on whether the evaluation is based upon an actual experience with the courts, images developed without any first-hand knowledge of the courts, the experiences of others, or even largely formed from information in the media and popular culture.

The existence of a gap between the judicial performance criteria emphasized by legal professionals and those that shape popular legitimacy is suggested by research indicating that decision-makers and decision-recipients evaluate fairness differently: ". . . decision makers are less affected by procedural concerns than are decision recipients" (Sivasubramaniam and Heuer 2007-2008, p. 62). Decision makers, including judges, are more likely to give primacy to instrumental concerns than to the procedural justice-based criteria relied upon by the general public (Sivasubramaniam and Heuer 2007-2008, Tyler and Huo 2002, p. 55). As a result, there are solid reasons for anticipating that a judge's performance might be rated highly by legal professionals but at the same time be rated poorly by the public. The criteria upon which the greatest importance is placed may simply be different for attorneys and the public, giving judges incomplete feedback on their performance.

If there is a gap between professional and public evaluations, how can that gap be bridged? One possibility already recognized by several jurisdictions in the United States is to explicitly address public concerns by adopting procedural justice as an important part of their judicial performance evaluation programs (see e.g., Leben 2011).

2. Findings from the California public and attorney surveys

This article establishes the public's criteria for good judging by drawing upon a 2005 survey of the residents of California (n = 2,414) commissioned by the Administrative Office of the Courts of California (Rottman 2005). The study is particularly useful for our purposes because it allows us to contrast the views of members of the public with experience in the courts and those without. Also, it is possible to contrast the general public's way of thinking about judging with that used by a random sample of California attorneys (n = 502) who were asked many of the same questions.

Another strength of the survey is its proportional inclusion of non-English speaking Hispanic residents of the state. Our analysis relies on an unweighted sample of interviews with members of the California public because our purpose is to measure the relationships among different variables rather than to estimate population parameters.

Using multiple regression techniques, the relationship between a variety of predictor ("independent") variables and the dependent variable "trust and confidence in the courts" (hereafter "trust") was measured. The results of the multiple regression modeling are presented through tables constructed such that independent variables, factors that potentially explain why people differ in their level of trust in the courts, are presented in the column on the left. Some of those factors are demographic, while others are designed to represent concepts like procedural justice or distributive justice. The importance of each factor as a predictor of trust levels is expressed through coefficients called "beta weights," a standardized measure of the strength of the relationship between a specific factor and trust in the court that can range from zero to one. Statistically significant relationships are indicated by the presence of one or more asterisks.¹ The second to last entry in each column is another measure called the "R-Squared." The R-Squared is expressed as a percentage and indicates the proportion of the total amount of the variation in trust levels that can be explained by all of the factors included in a model combined. An appendix describes the survey items used to measure each variable included in the analysis.

2.1. The public

The starting point is an analysis of the relative strength of the various factors (variables) in explaining levels of trust (Table 1), as shown in the column to the left of the table. As is seen in Table 1, when people make overall evaluations of the court system, estimates of procedural justice emerge as the strongest explanatory variable (beta = 0.52, p < .001); distributive justice also is important (beta = 0.21, p < .001), but to a lesser degree than procedural justice. Demographic variables are of limited or no significance, as is knowledge about the courts. Instrumental performance considerations are of limited substantive significance (e.g. performance beta = 0.09, p < .001).

Among those with personal court experience, estimates of the overall procedural justice of the courts are more important (beta = 0.34, p < .001) than is either satisfaction with one's own experience (beta = 0.17, p < .05) or the favorability of one's own outcome (beta = 0.22, p < .05). Hence, the power of general procedural

¹ * = significance at the p < .05 level, ** = significance at the p < .01 level and *** = significance at the p < .001 level. For a summary of the methodology and the survey instrument, see Rogers (2005).

justice estimates is great enough to overshadow what people experience if they personally go to court.

Table 1. What Shapes Public Trust in the Courts?

	Trust		
	All Respondents	No Personal Experience	Personal Experience
Procedural justice	0.51***	0.43***	0.34***
Overall distributive justice	0.21***	0.20***	0.15*
Distributive justice to groups	-0.02	0.09*	-0.01
Performance	0.09***	0.04	0.15
Gender	-0.05*	-0.01	0
Age	-0.05*	-0.09	0.03
Education	0.02	0.02	-0.05
Income	0.06**	-0.02	0.12
Hispanic	0.6*	-0.01	0.001
African-American	-0.03	-0.04	-0.04
Asian	-0.01	-0.1	0.08
Ideology	0.03	-0.01	0.05
Years in California	0.06	0.07	0.01
Born in the US	-0.01	-0.06	0.02
Satisfaction with experience	---	---	0.17*
Outcome of experience	---	---	0.22*
Knowledge about the courts	0.01	0.02	0.01
Adjusted R-sq.	47%	33%	46%
N	2414	804	1050

This finding is important because it reinforces the suggestion of prior studies that the public's most important concern is about the fairness of judicial procedures. As noted, much of the prior discussion of public sentiment about the judicial system has implicitly or explicitly adopted the view of judicial professionals and focused upon instrumental issues such as cost and delay, believing that addressing these issues will shape public legitimacy. This study suggests that efforts to build legitimacy should address concerns about the fairness of the courts.

The findings are further important because they suggest that the various demographic factors dividing the public: age, education, ethnicity, gender, and income level are not important factors shaping court legitimacy. Hence, there is widespread agreement within the public that procedural justice issues are the core issues that the courts need to engage with. From a legitimacy perspective this is a very important result since it suggests that the authorities do not need to address different issues for different constituencies. One approach can speak broadly to the concerns of the public.

Of course it is important to distinguish the general public from lawyers, who both have formal training and are repeat players in the system. In this study, a separate sample of lawyers indicated that they do not evaluate the courts in exactly the same way as lay users. Lawyers do care about procedural justice but relative to the general public they are more concerned about outcomes.

The findings from the models shown in Table 2 further support the argument of other studies of procedural fairness and the courts that a key issue is whether a judge or court is exercising their authority fairly (Tyler 1990, 2007-2008, Tyler and

Huo 2002). This primarily means treating people fairly (beta = 0.42, $p < .001$) and secondarily means making decisions fairly (beta = 0.11, $p < .001$). This is followed by a judgment about whether the courts render fair outcomes ("distributive justice"; beta = 0.21, $p < .001$). Both results support the argument that there is a normative basis for public evaluations of legal authorities. Instrumental performance type issues, such as timeliness, are of secondary importance (beta = 0.09, $p < .001$). It is possible to analyze which specific aspects of procedural justice (labeled "quality of treatment" in Table 2) are the most influential and also to assess whether the same aspects are important both for those with and those without court contact (see Table 2). When all respondents are included, it is most important whether judges "listen carefully" and "treat with respect." These are the statistically significant factors influencing trust. When the respondents were categorized based on whether they had experience with the courts, both "listen carefully and "treat with respect" are significant for those who had personal experience, but only "treat with respect" was statistically significant for those without personal experience in the courts. Additionally, only people without court experience were influenced by their perception of whether judges "take [peoples'] needs into account," another aspect of procedural fairness. All in all, some subtle differences are present in the criteria that are most important for people with and without court experience. But the centrality of procedural justice is shown within both groups.

Table 2. What procedural factors matter to members of the public?

	Trust					
	All Respondents		No Personal Experience		Personal Experience	
Quality of decision making	0.11***	---	0.08	---	0.14***	---
Judges follow rules	---	0.16***		0.09		0.18***
Judges are honest	---	0.09***		0.09*		0.10**
Juries are representative	---	0.01		0.05		0.04
Are unbiased	---	0.01		0.05		0.00
Quality of treatment	0.42***	---	0.41***	---	0.41***	---
Listen carefully	---	0.09***		0.04		0.14***
Treat with respect	---	0.18***		0.17***		0.17***
Take needs into account	---	0.05		0.17***		0.00
Protect rights	---	0.06		0.04		0.05
Courts in touch with communities	---	0.09***		0.06		0.11***
Distributive justice	0.21***	0.21***	0.22***	0.21***	0.22***	0.21***
Performance	0.09***	0.08***	0.07	0.08	0.08**	0.07
Adj. R-sq.	47%	49%	37%	50%	50%	54%
N	2414		804		1050	

The analysis shown above in Table 2 also allows us to compare members of the public with direct court experience to those who have not had such experience. We can ask whether members of the two groups consider the same issues when assessing trust. Turning to the two right-most columns of the table, the analysis shows that while procedural justice is the most important factor in both groups, quality of decision making is less important for the group with no personal court experience, while quality of treatment and fairness of outcomes are of similar importance. This leads us to conclude that having experience in a courtroom leads people to put more weight on certain aspects of procedural justice, such as whether

judges follow rules, whether they listen carefully, and whether they are viewed as being in touch with their communities.

The importance of procedural fairness might also vary depending on the reason that brought the survey respondents before the court. We were able to consider the relative strength of procedural justice and other factors in influencing levels of trust in four types of cases: traffic/small claims, family cases, criminal cases, and civil cases (Table 3). The results indicate that procedural justice was less important for civil litigants and that distributive justice was the most important issue for that group. It is possible that respondents who went to civil court were already thinking about the courts differently, particularly if they were seeking monetary damages, or that their experience shaped their subsequent evaluations. Instrumental performance as measured for this study was not a significant factor in understanding respondents' levels of trust in the courts in any of the groups considered.

Table 3. Does personal experience with different types of courts shape the basis of public trust in the courts?

	Court with which respondent has had personal experience			
	Traffic/small claims	Family	Criminal	Civil
Procedural justice	0.59***	0.58***	0.63***	0.35***
Distributive justice	0.23**	0.06	0.03	0.38***
Instrumental performance	0.04	0.08*	0.06	0.07
Adj. R-sq.	62%	39%	50%	57%
N	296	105	460	247

Although the reason for going to court is not a part of the theoretical models previously discussed, the California survey data allows us to examine the extent to which a person's trust in the courts might be based on whether they accessed the courts in order to address a problem, or whether they were drawn into court for some other reason. There was a relationship. For example, respondents who considered going to court about a dispute but did not do so (25% of the sample) were four percent less trusting in the courts (see Table 4). Two of the reasons respondents cited for not going to court impacted on trust: lacking money for an attorney and being uncertain about what would happen if they went to court. Physical access was the least important factor identified by the survey respondents (12%), with a higher proportion of respondents citing a lack of money for a lawyer or court fees (68%) and loss of work time (49%). More than one-third of the respondents (40%) reported that "uncertainty about what would happen" was an access barrier to them. A loss of trust in the courts was most closely associated with having forgone the use of the courts, uncertainty about what would happen, and lack of money for an attorney. Such perceptions potentially might affect the evaluations members of the public give to the courts, both for those who have and those who have not taken a case to court.

Table 4. Does the perceived denial of access influence public trust?

	Percentage saying yes	Influence on trust in the courts
Considered going to court, but did not go	25%	---
Due to lack of physical access	12%	-0.04
Lack of money for a lawyer	68%	-.12**
Lack of money to pay fees	42%	-.04
Too hard to travel	33%	-.08
Lack of English skills	11%	0.09
Loss of work time	49%	-0.02
Uncertainty about what would happen	40%	-.09*
Length of time to reach a decision	43%	-.07
Having another way to resolve the problem	46%	0.04
	---	4%***
N		2414

2.2. Attorneys

Using the data from the surveys of California attorneys, we are able to investigate what factors shaped attorneys' trust in the courts and whether that profile of factors is similar to that found for the general public. Table 5 examines factors shaping attorney trust. As with the public, procedural justice emerges as a primary concern among lawyers. However, distributive justice is more important among attorneys than with the general public. Unlike the general public, instrumental court performance was a statistically significant consideration for attorneys.

Table 5 also reveals some differences between attorneys whose work involves a low level court involvement versus those with a high level of involvement. For those with low involvement, as was true of members of the public without court experience, procedural justice was the most important factor influencing confidence in the courts (beta = 0.41, $p < .001$). Attorneys with low involvement were also more influenced by satisfaction with their personal experiences than were those attorneys with a high level of court involvement. Finally, distributive justice appears to be more important to attorneys with a high level of involvement (beta = 0.34 vs. beta = 0.18 for those with low involvement).

Table 5. What shapes attorney trust in the courts?

	All attorneys	Level of attorney involvement in the courts	
		Low	High
Procedural justice	.37***	.41***	.33***
Distributive justice	.41***	.18***	.34***
Distributive justice to groups	-0.03	0.02	0.02
Performance	.21***	0.1	.18***
Frequency of experience with courts	0.06	---	---
Knowledge about courts	-0.02	-0.04	-0.04
Satisfaction with personal experiences	---	.38***	.24***
Age	0.03	0.06	0
Gender	0.02	-0.09	0.06
Income	-0.01	0.01	-0.02
Ethnicity	0.01	-0.03	0.04
N	502		
Adjusted R.-sq.	57%***	65%	61%

The analysis is based upon a sample of 502 lawyers.

Table 6 makes it possible to look at the relative importance of the component variables making up our measures of "quality of decision making" and "quality of treatment," while also considering the impact of distributive justice and instrumental importance on levels of trust (both columns include the full sample). This can be seen in the right hand column in the table, which includes criteria such as "judges follow rules" and "judges are unbiased." "Listening carefully" and "protecting rights" were statistically significant criteria, while "respect," which was a statistically significant factor among the general public, was not. Generally, when compared to public judgments, California attorneys were more focused upon outcomes, although they still viewed fair procedures as important. Interestingly, those attorneys who had lower levels of court involvement focused more upon procedural justice. In other words, their perceptions rely on similar criteria to those used by the general public, and more particularly, like members of the public without direct court experience. For attorneys overall, distributive justice emerges as the most important factor influencing confidence in the courts, followed by quality of treatment.

Table 6. What procedural factors matter to attorneys' trust?

	Trust in the courts	
Quality of decision making	.10**	---
Judges follow rules	---	.13**
Judges are unbiased	---	0.03
Quality of treatment	.30***	---
Listen carefully	---	.17***
Treat with respect	---	0.06
Take needs into account	---	0.04
Protect rights	---	.20***
Distributive justice	.37***	.35***
Performance	.20***	.20***
Adjusted R.-sq.	51%	54%
N=502		

2.3. Discussion of findings from the California surveys

The findings permit a number of conclusions relevant to understanding how the public and attorneys think about judging and the factors each group regards as most important in evaluating the courts in terms of public trust.

First, the data from the California study provides additional research evidence supporting the value of a procedural justice explanation for how the public regards legal authorities and the extent to which perception of procedural justice trumps other factors influencing trust in the courts.

Second, having direct court experience does affect the relative importance of various factors as predictors of trust. Distributive justice appears to be a more important concern among those members of the public without personal experience than among those with actual courtroom experience (Table 1). Among procedural justice criteria, quality of decision making, and especially whether judges "follow the rules," are statistically significant factors only for people with court experience.

Third, legal professionals evaluate judges differently than do members of the public, whether or not they have experience in the courts. Attorneys gave greater weight to distributive justice and to instrumental court performance than the general public does. But as with the public, those attorneys with the lowest involvement with the courts stressed procedural justice more than do those with higher levels of involvement. Instrumental performance concerns were only a significant factor in establishing levels of trust for high involvement attorneys.

Although the California survey sought views on the courts as an institution rather than about a specific judge, other studies (Tyler and Huo 2002) support a direct translation of our findings into a portrait of how people view the judges they have appeared before. A study of trust and confidence in the "courts in your community" based on a 2000 survey asked questions about both general perceptions of the courts as an institution and, for people with prior courtroom experience, their perceptions of how they were treated by the judge in their case. Much the same criteria predicted trust and confidence for perceptions of the courts in general and in perceptions of how the courts handled their own case (Rottman *et al.* 2003).

3. Current applications of procedural Justice in judicial performance evaluations

The California survey asked members of the general public to evaluate “the courts in your community,” a reference to the courts as an institution of government, not to individual judges. The criteria that the public uses to evaluate courts are likely to coincide to a large extent with the criteria being used by defendants, litigants, and others to assess what occurs in a judge’s courtroom. That makes a strong case for including procedural justice concerns in any evaluation of judicial performance. To a modest extent, elements of procedural justice can be found in existing judicial performance evaluation programs. The extent and manner in which procedural justice is considered varies somewhat based on the specific purpose for which a judicial performance evaluation (JPE) program is designed.

JPE programs in the United States are carried out for three main purposes: (1) to enable judges to benefit from data-informed self-evaluation, (2) to provide the voting public with information to use in deciding whether to retain a judge in office, and (3) for use by senior administrative judges in making case assignments and, in a few states, deciding if a serving judge should remain on the bench. However, procedural justice principles have, to date, had a limited presence in American JPE. That presence is largely shaped by the procedural justice criteria that are embedded in attorney and other evaluation surveys inspired by the American Bar Association (ABA).

Contemporary judicial performance evaluation programs are, to a significant degree, based on a model established in 1985 by the American Bar Association and then revised in 2005. The ABA identified five basic criteria for judicial evaluations, relying primarily on surveys given to attorneys who had appeared in a judge’s courtroom in the recent past. Procedural justice criteria were not directly incorporated into JPE programs; they were instead introduced as ways of measuring other criteria. The ABA Guidelines included considerations related to procedural justice as part of two of the five criteria it recommended for evaluating judges: “Integrity and Impartiality” and “Professionalism and Temperament.” The 2005 Guidelines include at least four criteria that express procedural justice concerns.

“Guideline 5.2: A judge should be evaluated on his or her integrity and impartiality, including the following criteria:

- 2.2 Treating all people with dignity and respect
- 2.4 Acting fairly by giving people individual consideration
- 2.3 Consideration of both sides of an argument before rendering a decision

Guideline 5-4: A judge should be evaluated on his or her professionalism and temperament, including the following criteria:

- 4.2 Treating people with respect”

Several states have already taken explicit steps to evaluate judges in part or primarily based on their adherence to procedural justice principles. Thus far, evaluations of procedural justice have been used to inform voters, promote judicial self-improvement, or both. The judicial performance evaluation program in Utah (official and mandatory) offers the best example of how procedural justice is factored into voter information programs. Minnesota’s Hennepin County Court (unofficial and voluntary) exemplifies use of procedural justice ratings for self-improvement.

3.1. Utah: evaluating judges for voter information

The State of Utah pioneered the incorporation of procedural justice as a dimension on which judges should be evaluated as part of an official program. The Utah

Judicial Performance Evaluation Commission (UJPEC), which is unique among such state commissions in being independent from the judiciary, initially chose to rely on qualitative observational methods to measure procedural justice. Starting in 2014, the UJPEC will combine those qualitative results with quantitative ratings, based on a set of fixed-choice questions that are asked as part of a survey of attorneys. The results for each judge will be compared to minimum standards for procedural justice established by the UJPEC (Woolf and Yim 2011, p. 84).

The existing attorney survey for trial court judges includes the following items related to procedural fairness in a four-item scale (UJPEC 2014a).

Figure 1. The UJPEC attorney survey

Attorney Survey - Trial Court ²	
Judges are rated on a scale of 1 to 5 where 1=inadequate performance and 5= outstanding performance	
Procedural Fairness	The judge treats all courtroom participants with equal respect.
	The judge is fair and impartial.
	The judge promotes public trust and confidence in the courts through his or her conduct.
	The judge provides the parties with a meaningful opportunity to be heard.

The more recently established observational component was mandated in the statute creating the UJPEC as an executive branch entity. The statute also requires that the methodology be codified in the Utah Administrative Code. The Commission adopted three core elements of procedural justice as criteria for evaluating judicial behavior: neutrality, respect, and voice.³ Working with a management consultant specializing in qualitative research methods, the UJPEC developed a set of observation protocols, a system for training volunteer observers (who, in effect, are treated as representing the perceptions of non-attorney participants in court proceedings), and a method for synthesizing the narrative information provided by the observers in a manner that can "demonstrate by a preponderance of the evidence, based on courtroom observations and relevant survey responses that the judge's conduct in court promotes procedural fairness for court participants" (Utah Administrative Code 2014).

A minimum of five observers separately and anonymously visit a judge's courtroom and complete a form by following instructions on how to describe in detail using their own words (1) the behaviors they observe and (2) their personal reactions to those behaviors. The courtroom observation report looks at each procedural justice element in turn. The instructions include a list of sample behaviors associated with each of the three procedural justice elements. For the element of neutrality, for example, observers are asked: "How would you describe this judge's ability to be neutral, principled and consistent?" and are provided with a blank space for the observer to enter comments in their own words. Examples are offered of each procedural fairness element for the observer to consider. For neutrality, these include: "displayed judicial fairness and impartiality toward all parties; acted in the interests of the parties without regard to personal prejudices; listened carefully and impartially, etc." Observers provide the date or dates of the observation, the type or types of proceedings observed, and whether the judge seemed aware a volunteer observer was present.

² Source: Utah Judicial Performance Evaluation Commission (2014a).

³ Originally trustworthiness was also a criterion, but many of the behaviors associated with the criterion of trustworthiness were collapsed into measures for neutrality and respect criteria.

The unedited comments from the five observers are subjected to content analysis. The management consultant identified 50 judicial behaviors from the academic literature on procedural justice that appeared to be related to whether procedural justice "was experienced or not experienced." These were consolidated into 20 criteria organized in six groups, into which the contents of each narrative report are coded."⁴

The combined reports of the five observers are analyzed for themes and commonalities to create a synthesis captured in short paragraphs intended to "evoke as accurately as possible the experience of reading all of the narrative associated with each criteria." The syntheses for each judge are made available to the UJPEC and to the public in summary form, along with exemplar verbatim language taken from observers' comments. Starting in 2014, the narrative synthesis will be merged with ratings from attorney survey questions into a single rating. The observer instructions for measuring "voice" are shown below as Figure 2 (UJPEC 2014b).

Figure 2. Observer instructions for measuring the degree of voice

Voice

People want to have the opportunity to tell their side of the story in their own words before decisions are made about how to handle the dispute or problem. Having an opportunity to voice their perspective has a positive effect upon people's experience with the legal system irrespective of their outcome, as long as they feel that the authority sincerely considered their arguments before making their decisions.

Tom Tyler, "Procedural Justice and the Courts," Court Review

Consider, for example, whether the judge:

- allowed participants to voice their perspectives/arguments;
- demonstrated to the parties that their story or perspective had been heard;
- behaved in a manner that showed the judge had fully considered the case as presented through witnesses, arguments, and documents before the court;
- attended, where appropriate, to the participants' comprehension of the proceedings.

3. How would you describe this judge's skill at providing the participants a voice in the proceedings?

Observer Comments:

The survey results and observational results for each judge up for retention election are publicly available to prospective voters on a question by question basis. The Utah program is also designed to benefit the judge "by providing candid and anonymous feedback based on actual behaviors observed" and by drawing attention to procedural fairness for the judge and the judiciary as a whole (Woolf and Yim 2011, pp. 89-90). Judicial training opportunities on procedural fairness are provided to assist judges in changing their behavior as appropriate. As a general rule, however, evaluation programs should be used for a single purpose. There are serious problems in relying upon the same evaluation program for the objectives of both voter information and self-improvement (Elek *et al.* 2014).

⁴ Consisting of the 20 criteria and nine other more detailed aspects of procedural justice.

3.2. Hennepin County, Minnesota

The leader in using perceptions of procedural justice as a way of promoting judicial self-improvement is the Hennepin County (Minneapolis), Minnesota District Court.⁵ In 1995, the Court began offering judges voluntary evaluations through short surveys developed by the Court's Research Department in collaboration with academic social psychologists. The surveys were designed explicitly to rate judges according to the degree to which they are perceived as adhering to procedural justice principles (Tyler and Huo 2002). Since 2002, the District Court's Research Department has carried out studies using those surveys of specific court dockets, such as family, juvenile, and housing, with the report from each study reporting on measurement validation and using multivariate statistical techniques to examine the antecedents, correlates, and, in one instance, compliance effects, of procedural justice ratings.⁶

After their interaction with a judge, surveys are distributed to attorneys, litigants, and others. Examples of these "exit" questions (to which they were asked to "agree" or "disagree" on a nine-point scale) are:

- The judicial officer gave reasons for his or her decision.
- The judicial officer made sure I understood the decision.
- The judicial officer seemed to be a caring person.
- The judicial officer treated me with respect.
- The judicial officer listened carefully to what I (or my lawyer) had to say.
- I understand what is required of me in order to comply with the judicial officer's decision.

The results of the surveys are tabulated both for individual judges and for the court as a whole. At the court level, initiatives are then developed to encourage and facilitate behaviors by judges and court staff that are consistent with the criteria of procedural fairness (Podkopacz 2005).

The measurement of perceived procedural justice in Hennepin County has at times been supplemented by a program of courtroom observations. In particular, the District Court has taken steps to evaluate judges based on their nonverbal behavior, such as sighing, failure to make eye contact, and body position, which could promote negative perceptions of procedural justice (Ostrom *et al.* 2007).

This concern led the Court in 2001 to commission a study by an independent researcher that was the first to conduct in-court observations of nonverbal behavior by trial judges (Porter 2001). The study continued with a survey on sentiments toward nonverbal communication given to those judges who were observed. The results found that "almost all of the judges observed used nonverbal behaviors . . . that are considered to be ineffective and in need of improvement. About one-third of the judges used these ineffective behaviors frequently" (Porter 2001, p. 4). Examples included failure to make eye contact, the use of an exasperated tone of voice, sighing audibly, and body position. Since then, video tapes of the judge on the bench have been available for use if the judge chooses to receive coaching and mentoring assistance.

Another hallmark of the Hennepin approach is an emphasis on ensuring that defendants understand what they are supposed to do when they leave the courtroom. One study looked at whether defendants left the courtroom knowing the conditions of their probation or bail orders (Podkopacz 2005).

⁵ The District Court consists of 62 judges, 16 referees, and a staff of 550.

⁶ The results of the fairness studies and the survey instruments used are located at <http://www.mncourts.gov/district/4/?page=396>. Individual fairness studies are classified according to type of case or under a special heading for studies of jurors and Spanish speaking litigants.

3.3. Assessment of existing evaluation programs

Lessons can be learned from the California public and attorney surveys and from the Hennepin County and Utah experiences about how individual judges should be evaluated. There are several basic implications.

First, judicial performance evaluations programs should give weight to the criteria that matter to members of the public. Research demonstrates that defendants, litigants, witnesses and others rely on the same basic criteria when evaluating their own experience in court as they do when rating the courts as an institution. As a result, the dimensions of judging measured in judicial performance evaluations are not well aligned with the ones the public uses in making their own evaluations of judges and of the judiciary as a whole. It also is notable that the dominance of procedural justice concerns is consistent across racial and ethnic groups.

Second, it cannot be assumed that surveys completed by attorneys and court personnel about their experience with a judge are representative to how members of the public would respond. Thus, it is important for judicial performance evaluations to include the results of surveys administered directly to members of the public who find themselves in the courtroom. Some judicial performance evaluations already include the survey responses of jurors, litigants and others, but there are fundamental problems of reliability and validity in the current survey instruments (Elek *et al.* 2012; Elek *et al.* 2014, Gill 2014).

Third, the experience thus far in Utah and Hennepin County simultaneously bolsters the case for using procedural justice principles to measure the performance of individual judges and warns about the conceptual and methodological challenges to be confronted when doing so. On the positive side, and perhaps most clearly for self-improvement purposes, ratings on procedural justice provide judges with feedback they can realistically use to change their behavior through mentoring and training programs. Quantitative and qualitative methods can be combined to offer a sophisticated assessment of strengths and weaknesses. The next section offers a pathway toward realizing the full potential of procedural justice in judicial evaluations.

4. Enhancing procedural Justice in judicial evaluations

There are conceptual, methodological, and professional development aspects to designing a judicial performance evaluation program that effectively incorporates procedural justice criteria. As in all job performance evaluation programs, the manner in which these aspects evolve will be shaped in part by the purpose for which the evaluation program was established. Unless that is agreed upon, the results of performance evaluation programs are difficult to interpret (Elek *et al.*, 2014, p. 14-15).

The first step to be taken is to improve upon the way procedural justice is conceptualized and measured. The question of what constitutes good judging also cannot be avoided. For example, an evaluator or evaluation committee must decide whether procedural justice is an important trait for a judge to possess. Once the objective is decided, conceptual issues that must be confronted include whether procedural justice can or can should be regarded as a separate dimension of judicial behavior. Arguably, procedural justice perceptions are already being assessed in some state programs as a component of criteria related to "temperament" and "communication skills."

The second step is improved measurement of performance criteria. The efforts by Hennepin County to develop reliable and valid survey-based measures of procedural justice offer a foundation upon which to build. Those surveys were developed with expert assistance, implemented by a well-qualified research team, and the results were analyzed using sophisticated methods to study specific divisions within the District Court (e.g., family, housing traffic, etc.), including one

study linking procedural justice perceptions to compliance with court orders (Eckberg and Podkopacz 2004). More work is needed. The surveys now in use in most states need to be revised to conform to best practices in general survey design. Few currently meet that standard (Elek *et al.* 2012, 2014, Elek and Rottman 2014, Gill 2014). In particular, surveys need to be tested for bias based on a judge's gender, or race/ethnicity, or both. While the potential for systematic bias may not be considered a problem in studies of public opinion about institutions, when an evaluation is of an individual decision-maker, the very real potential for bias becomes a problem (Johnson *et al.* 2012).

Even with these tasks are accomplished, the measurement challenge remains formidable. It will be necessary to replace questions and response categories used for public opinion purposes with ones informed by best practices in organizational psychology, which is dedicated specifically to developing methods for evaluating job performance. Specific best practices are well-established for designing survey and other approaches to measuring job performance (e.g., Aguinis 2013) but are rarely found in JPE programs.

Existing observational methods, such as those used in Utah, can also be improved by building on methodological developments in academic research. One example is a recent study by a group of social psychologists looking at the influence of judges' behavior on the procedural justice perceptions by defendants and others in the courtroom. Surveys captured the perceptions of defendants and audience members. Observational methods were used to obtain a behavior-based index of the extent to which judges were following procedural justice practices (Beier *et al.* 2014, p. 48). Twenty separate measures were developed, with two coders independently rating the judge for each trial included in the study. The inter-rater reliability coefficients, which indicate the degree to which independent observers rating the same material code it in the same way, ranged from a low of .63 to .92, with most coefficients falling in the .8 range.⁷ In measuring Tyler's dimension of respect, "the following aspects of the judge's behavior were coded during observation: the judge's tone, a frequency impression of interruption by the judge, and a specifically interruptions while the defendant was talking about emotions, and a frequency impression of `disrespectful comments by the judge" (Beier *et al.* 2014, p. 50).⁸

Once the issues of conceptualization and measurement are addressed, improvements can be made in how the results of measuring procedural justice-based evaluations are used as a part of ongoing judicial professional development programs. More than most aspects of being a judge, the ability to project procedural justice is a quality on which a judge can be offered practical tools, training, and knowledge that can improve their performance. A combination of video-taping and access to experts on communications or trained judicial mentors can make a difference in the relatively short-term.

Other trial courts and state court systems are adopting video-taping as a method for assisting judges in undertaking self-improvement, generally an extension of what was learned in Hennepin County. In New Hampshire, for example, as a part of a training program on procedural justice, judges volunteered to be video-taped on the bench for a half day. The tapes were used by the faculty for the training session to prepare a presentation for all judges but also to provide mentoring to the individual judges who were taped as they watched their performance. Participating judges answered in writing two questions about their videotapes:

⁷ Following the guidelines set by Cicchetti and Sparrow (1981) none of the 21 "coding scheme variables" were rated as of poor or fair reliability. Five fell into the "good" category, and 16 fell in the excellent level of inter-rater reliability.

⁸ Another approach to observations made by researchers of the presence of procedural justice practices by judges was used in the Multi-Site Adult Drug Court Evaluation as a check on defendant perceptions of procedural justice (Rossman *et al.* 2011).

Question 1: Please give two observations of things you noted when watching the tapes that you may not have been aware of or paid sufficient attention to before.
Question 2: Please list two items on which you believe you might be able to improve your on-the-bench performance after viewing the tapes (Leben 2014).

What might be called the New Hampshire model is being replicated by courts in other states. The model includes voluntary participation in video-taping, with some judges agreeing to be video-taped on the bench in advance of a day or multi-day training program on procedural justice, followed by critiques of their bench presence, with the possibility of another round of video-taping after an interval of time has passed. In this way, the objective of judicial performance evaluation becomes diagnostic and a link to appropriate resources and training, rather than a ranking of judges from lowest to highest performing.

5. Conclusion

The timing is excellent for introducing procedural justice as a basic component of judicial evaluations. There is growing recognition in the court community of the potential for procedural justice practices to improve public opinion of the judiciary, performance of court systems and individual judges, and the outcomes of court orders. The United States Conference of Chief Justices and the Conference of State Court Administrators (CCJ and CSCA) have officially endorsed the importance of being attentive to procedural justice principles in a joint resolution: In Support of State Supreme Court Leadership to Promote Procedural Fairness. The resolution includes a mandate that state supreme courts, "[H]old judges and court staff accountable for operating courts in which everyone is treated with respect, has the opportunity to be heard, and receives an adequate explanation of court orders" (CCJ and CSCA 2013). Similarly, one of the National Center for State Court's *Principles for Judicial Administration* recommends that "Decisions of the courts should demonstrate procedural fairness"⁹ (National Center for State Courts 2012).

There is a strong case for greater reliance on procedural justice criteria for judicial evaluation purposes. The California survey findings reinforce the general conclusion that procedural justice is the key to influencing the legitimacy assigned by the public to the legal system, in particular with the courts. Procedural justice shapes trust more than other factors do. The findings of prior studies concerning procedural justice are strongly reinforced by the diverse sample available for analysis. Further, the results point to the quality of interpersonal treatment as an especially important element of trust and confidence in the courts, to be considered along with distributive justice and other aspects of good judging.

Overall, these findings reinforce the argument that JPE programs conducted through surveys of legal professionals will not adequately capture the concerns of citizens or be regarded by the public as appropriate and valuable. As JPE programs emerge that recognize the importance to the public at large of measuring perceptions of procedural justice, those programs will both better reflect the priorities of the public and also provide judges with practical feedback that can be used, if the proper resources are in place, to improve their performance.

While some states incorporate procedural justice principles within the overall ABA Model for judicial evaluations, including surveying defendants, civil litigants and others in the courtroom, much more is needed. The California survey served to demonstrate the importance the public places on procedural justice when thinking about courts and judges. It also pointed to specific aspects of procedural justice that should be a focus of judicial evaluations. As noted earlier, it is likely that another set of survey questions and response scales are needed for evaluation purposes. A specific challenge is to ensure that the measures used do not vary

⁹ The commentary states that "[P]erceptions that procedures are fair and just influence a host of outcome variables, including satisfaction with the process, respect for the court and willingness to comply with court rulings and orders."

systematically by the gender, race or ethnicity of the judges (Gill 2014). This article also points to some steps that can be taken to reposition judicial performance evaluation away from a rank ordering of judges and more toward providing judges with practical information they can use to improve their performance.

This is important. The bottom line for improving the degree to which judges are viewed as practicing procedural justice is not merely enhancing public satisfaction with the work of the courts. Instead, perceptions of procedural justice are causally related to the success of the judiciary and individual judges as indexed by failure to appear rates, recidivism rates, non-compliance with court ordered conditions, and payment of civil judgments. It is possible to develop judicial performance evaluation programs that yield results that can help judges become more in tune with procedural justice expectations of the public and reap the benefit of higher levels of compliance with court order, cooperation from the public, and the legitimacy needed to do its work. In doing so, procedural justice will add value to programs now focused primarily on qualities of judging that are important to the legal and judicial communities. The public's voice will be heard.

References

- Aguinis, H., 2013. *Performance management*. 3rd ed. Harlow, England: Prentice Hall.
- Beier, S., *et al.*, 2014. Influence of judges' behavior on perceived procedural justice. *Journal of applied social psychology* [online], 44 (1), 46-59. Available from: <http://onlinelibrary.wiley.com/doi/10.1111/jasp.12199/pdf> [Accessed 20 December 2014].
- Benesh, S., 2006. Understanding public confidence in American courts. *Journal of politics*, 68 (3), 697-707.
- Benesh, S. and Howell, S., 2001. Confidence in the courts: a comparison of users and non-users. *Behavioral sciences and the law*, 19 (2), 199-214.
- Cicchetti, D. and Sparrow, S., 1981. Developing criteria for establishing interrater reliability of specific items: applications to assessment of adaptive behavior. *American journal of mental deficiency*, 86 (2), 127-137.
- Conference of Chief Justices and Conference of State Court Administrators, 2013. *Resolution 12: In Support of State Supreme Court Leadership to Promote Procedural Fairness* [online]. Available from: <http://ccj.ncsc.org/~media/Microsites/Files/CCJ/Resolutions/07312013-Support-State-Supreme-Court-Leadership-Promote-Procedural-Fairness-CCJ-COSCA.ashx> [Accessed 17 October 2014].
- Eckberg, D., and Podkopacz, M., 2004. *Family court fairness study* [online]. Minneapolis: Fourth Judicial District of the State of Minnesota, Fourth Judicial District Research Division. Available from: http://www.mncourts.gov/Documents/4/Public/Research/Family_Court_Fairness_Report_Final_%282004%29.pdf [Accessed 30 November 2014].
- Elek, J.K., Rottman, D.B., 2014. Methodologies for Measuring Judicial Performance: The Problem of Bias. *Oñati Socio-legal Series* [online], 4 (5), 863-879. Available from: <http://ssrn.com/abstract=2533937> [Accessed 23 December 2014].
- Elek, J., Rottman, D., and Cutler, B., 2012. Judicial performance evaluation: steps to improve survey process and measurement. *Judicature* [online], 96 (2), 65-74. Available from: http://www.ncsc.org/~media/Files/PDF/Information%20and%20Resources/65-75_Elek_962.ashx [Accessed 20 December 2014].

- Elek, J., Rottman, D., and Cutler, B., 2014. Judicial performance evaluation in the states: a re-examination. *Judicature*, 98 (1), 12-19.
- Gill, R., 2014. Implicit bias in judicial performance evaluations: we must do better than this. *Justice system journal* [online], 35 (3), 301-324. Available from: http://digitalscholarship.unlv.edu/political_science_articles/4/ [Accessed 20 December 2014].
- Johnson, C., et al., 2012. Feeling injustice, expressing injustice: how gender and context matter. In: S. Correll, ed. *Advances in group processes: social psychology of gender*. Bingley, UK: Emerald Group Publishing, 149-186.
- Leben, S., 2011. *Procedural fairness in the courts of Utah* [online]. Available from: <http://www.proceduralfairness.org/Resources/~media/Microsites/Files/procedural-fairness/Utah%20Courts%20and%20Procedural%20Fairness%2009-2011.ashx> [Accessed 30 October 2013].
- Leben, S., 2014. Starting the new year right: building procedural fairness skills (part three). *Procedural Fairness For Judges and Courts* [online], 1 January. Available from <http://proceduralfairnessblog.org/2014/01/01/ending-starting-the-new-year-right-building-procedural-fairness-skills-part-three/> [Accessed 29 November 2014].
- Lee, C., et al., 2013. *A community court grows in Brooklyn: a comprehensive evaluation of the Red Hook Community Justice Center, final report* [online]. Williamsburg, VA: National Center for State Courts. Available from: http://www.ncsc.org/RH_Eval_Report [Accessed 20 December 2014].
- National Center for State Courts, 2005. *CourTools trial court performance measures: access and fairness* [online]. Williamsburg, VA: National Center for State Courts. Available from: http://www.courtools.org/~media/Microsites/Files/CourTools/courtools_Trial_measure1_access_and_fairness.ashx [Accessed 14 August 2014].
- National Center for State Courts, 2012. *Principles for justice administration* [online]. Williamsburg, VA: National Center for State Courts. Available from: <http://www.ncsc.org/~media/Files/PDF/Information%20and%20Resources/Budget%20Resource%20Center/Judicial%20Administration%20Report%209-20-12.ashx> [Accessed 17 October 2014].
- National Center for State Courts, 2014. *CourTools: reports from courts* [online]. Williamsburg, VA: National Center for State Courts. Available from: <http://www.ncsc.org/sitecore/content/microsites/courtools/home/Reports-from-Courts.aspx> [Accessed 14 August 2014].
- Ostrom, B., et al., 2007. *Trial courts as organizations*. Philadelphia, PA: Temple University Press.
- Podkopacz, M., 2005. *Fourth Judicial District of the State of Minnesota report on the judicial development survey* [online]. Available from: http://www.mncourts.gov/Documents/4/Public/Research/Judicial_Development_Survey_%282005%29.pdf [Accessed 20 December 2014].
- Porter, L., 2001. *Nonverbal communications in courtrooms at the Hennepin County Government Center: a report on observations of Fourth Judicial District Judges in March and April 2001*. Hennepin County, MN: Hennepin County District Court.
- Rogers, J., 2005. *Trust and confidence in the California courts part II: executive summary of methodology with survey instruments* [online]. San Francisco State University. Available from: http://www.courts.ca.gov/documents/4_37pubtrust2.pdf [Accessed 30 October 2013].

- Research Division, Minnesota Judicial Branch, Fourth District, Serving Hennepin County, s.d. *Research Department* [online]. Available from: <http://www.mncourts.gov/district/4/?page=396> [Accessed on 22 December 2014].
- Rossman, S., et al., 2011. *The multi-site adult drug court evaluation: executive summary* [online]. Washington, DC: Urban Institute. Available from: <http://www.urban.org/uploadedpdf/412353-multi-site-adult-drug-court.pdf> [Accessed 20 December 2014].
- Rottman, D., 2005. *Trust and confidence in the California courts part I: findings and recommendations* [online]. Williamsburg: National Center for State Courts. Available from: http://www.courts.ca.gov/documents/4_37pubtrust1.pdf [Accessed 30 October 2013].
- Rottman, D., 2011. Procedural fairness, criminal justice policy, and the courts. In: K. Ismaili, ed. *U.S. criminal justice policy: a contemporary reader*. Sudbury, MA: Jones and Bartlett Learning, 96-116.
- Rottman, D. and Bowman, J., 2014. Problem-solving courts. In: G. Bruinsma and D. Weisburd, eds. *Encyclopedia of criminology and criminal justice*. New York: Springer, 4000-4010.
- Rottman, D., et al., 2003. *Perceptions of the courts in your community: the influence of experience, race and ethnicity, final report* [online]. Williamsburg, VA: National Center for State Courts. Available from: <http://www.ncjrs.gov/pdffiles1/nij/grants/201302.pdf> [Accessed 20 December 2014].
- Sivasubramaniam, D. and Heuer, L., 2007-2008. Decision makers and decision recipients: understanding disparities in the meaning of fairness. *Court review* [online], 44 (1-2), 62-70. Available from: <http://digitalcommons.unl.edu/ajacourtreview/222/> [Accessed 20 December 2014].
- Tyler, T., 1984. The role of perceived injustice in defendants' evaluations of their courtroom experience. *Law and society review*, 18 (1), 51-74.
- Tyler, T., 1990. *Why people obey the law: procedural justice, legitimacy, and compliance*. New Haven, CT: Yale University Press.
- Tyler, T., 2001. Public trust and confidence in legal authorities: what do majority and minority group members want from the law and legal institutions? *Behavioral sciences and the law*, 19 (2), 215-235.
- Tyler, T., 2004. Procedural justice. In: A. Sarat, ed. *The Blackwell companion to law and society*. London: Blackwell, 435-452.
- Tyler, T., 2005. *Readings in procedural justice*. Burlington, VT: Ashgate.
- Tyler, T., 2007-2008. Procedural justice and the courts. *Court review* [online], 44 (1/2), 26-31. Available from: <http://digitalcommons.unl.edu/ajacourtreview/217/> [Accessed 20 December 2014].
- Tyler, T. and Huo, Y., 2002. *Trust in the law: encouraging public cooperation with the police and courts*. New York: Russell Sage Foundation.
- Tyler, T. and Jackson, J., 2012. *Future challenges in the study of legitimacy and criminal justice* [online], Yale Law School Working Paper No. 264, Available from: <http://ssrn.com/abstract=2141322> [Accessed 30 October 2013].
- Tyler, T. and Jackson, J., 2014. Popular legitimacy and the exercise of legal authority: motivating compliance, cooperation, and engagement. *Psychology, public policy, and law*, 20 (1), 78-95.

- Tyler, T. and Sevier, J., 2014. How do the courts create popular legitimacy? The role of establishing the truth, punishing justly, and/or acting through just procedures, *Albany law review* [online], 77 (3), 1095-1137. Available from: <http://ssrn.com/abstract=2396945> [Accessed 20 December 2014].
- Utah Administrative Code, 2014. *Rule 597-3-4* [online]. Available from: <http://www.rules.utah.gov/publicat/code/r597/r597-003.htm#T4> [Accessed 14 August 2014].
- Utah Judicial Performance Evaluation Commission, 2014a. *Attorney Survey* [online]. Utah: Judicial Performance Evaluation Commission Available from: <http://www.judges.utah.gov/docs/Surveys/Attorney%20Trial.pdf> [Accessed 14 November 2014].
- Utah Judicial Performance Evaluation Commission, 2014b. *Courtroom Observation Report* [online]. Utah: Judicial Performance Evaluation Commission. Available from: <http://www.judges.utah.gov/docs/CourtroomReport.pdf> [Accessed 14 November 2014].
- Woolf, N. and Yim, J., 2011. The courtroom-observation program of the Utah Judicial Performance Evaluation Commission. *Court review* [online], 47 (4), 84-91. Available from: <http://digitalcommons.unl.edu/ajacourtreview/368/> [Accessed 20 December 2014].

Appendix: Major variables and indices: California surveys

The main predictor (independent) and dependent variables were measured in the following manner:

The public

Trust in the courts. Three items (alpha = 0.75): "Thinking about the courts in your county, what is your opinion of the overall job they are doing (very good – very poor)."; "In general, how would you rate your trust in the California State court system (very confident – not at all confident)?" and "In general, how would you rate your trust in the courts in your county (very confident – not at all confident)?".

Satisfaction with personal court experience: Two items (alpha = 0.71): "In general, were you satisfied or dissatisfied with" "your phone contact" and "your personal contact" (very satisfied – very dissatisfied)."

Procedural justice. Nine items (alpha = 0.86): "The California courts are protecting the constitutional rights of everyone (strongly agree – strongly disagree)"; "California courts do enough to make sure judges follow the rules (strongly agree – strongly disagree)"; "Local courts have judges who are honest and fair in their case decisions (strongly agree – strongly disagree)"; "Most judges are representative of the community (strongly agree – strongly disagree)"; "The local courts are in touch with what is going on in the community"; "The courts in my county are unbiased in their case decisions"; "The courts in my county treat people with dignity and respect"; "The courts in my county listen carefully to what people have to say"; and "The courts in my county take the needs of people into account".

Overall distributive justice. One question: "In general, how often do you think people receive fair results when they deal with the courts in your county (nearly every time – never)?"

Distributive justice to groups. Four items on relative quality of treatment for people in different groups (alpha = 0.74): all "Much better – about the same – much worse"): "In your local courts, would you say" "African-Americans", "Asian Americans", "Latinos", "and "low income people" usually receive better or worse results than others?".

Performance. Three items (alpha = 0.52; all "strongly agree – strongly disagree"): "California courts are ensuring public safety; "Local courts conclude cases in a timely manner"; and "Local courts are open at times convenient for working people".

For the attorneys

Trust. Four items (alpha = 0.90). "Overall, what is your opinion of the California court system (excellent – poor)"; "Thinking of the courts where you practice – what is your opinion of the overall job they are doing (very good – very poor)"; "In general, how would you rate your trust in the California state court system (very confident – not at all confident)"; and "In general, how would you rate your trust in the local courts where you usually practice (very confident – not at all confident)".

Satisfaction with personal experience. Two items (alpha = 0.60; scale = very satisfied –very dissatisfied). In general, are you satisfied or dissatisfied with the service you receive from the courts over the telephone"; and "In general, are you satisfied or dissatisfied with the service you receive in person?"

Procedural justice. Seven items (alpha = 0.79). The items were; "California courts are protecting the legal and constitutional rights of everyone (strongly agree – strongly disagree)"; "California courts do enough to make sure judges follow the rules (Strongly agree – strongly disagree)"; "In the courts where you practice, most local juries are representative (strongly agree – strongly disagree)"; "The courts

where I practice are unbiased in their case decisions"; "The courts where I practice treat litigants with dignity and respect"; "The courts where I practice listen carefully to what people have to say"; and "The courts where I practice take the needs of people into account".

Distributive justice. In general, how often do you think people receive fair results when they deal with the courts where you practice (nearly every time – once in a while)?

Distributive justice to groups. (alpha = 0.77). Some people feel the courts provide everyone with fair and equal results, while others feel the courts favor certain groups over others in terms of the outcomes they receive. Does each of the following groups receive better or worse results than others: African Americans, Latinos, Low-income people, Non-English speakers?

Performance (0.50). Items: "The courts where you practice conclude cases in a timely manner (strongly agree – strongly disagree)"; "How effective do you feel the State Bar is in responding to consumer complaints about attorneys (very effective – very ineffective)"; and "How effective do you feel the State Bar approved CLE programs are in enabling you to stay abreast of the law (very effective – very ineffective)