Perceptions of justice: views of jailed defendants on procedural and distributive justice

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PERCEPTIONS OF JUSTICE:
VIEWS OF JAILED DEFENDANTS ON
PROCEDURAL AND DISTRIBUTIVE JUSTICE

by

Kirstin A. Morgan

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Abstract

The current study examines defendant perceptions of their recent experiences in one of two criminal courts in an urban-suburban county. Forty-three interviews were conducted with jail sentenced participants, during which they were asked about the perceived fairness of the case process and outcomes, as well as their relationship with their defense attorney for the case. This study was undertaken to answer four research questions: 1) Are the concepts of procedural and distributive justice related from the defendant perspective? 2) Are perceptions of procedural justice related to satisfaction with case outcomes? 3) Are perceptions of procedural justice related to satisfaction with the defendant’s defense attorney? 4) Are defendant perceptions of distributive justice related to satisfaction with case outcomes? Procedural and distributive justice, defined as fair process and fair outcomes respectively, have traditionally been theorized to explain how people develop assessments of satisfaction with outcomes, particularly in settings in which they have little to no process control (Holtfreter, 2016; Lind & Tyler, 1984). Applying these concepts to criminal justice settings, both policing and courts, has generally provided support for four main components of procedural justice (agency, respect, neutrality, and trustworthiness) and two main components of distributive justice (comparison and expectancy) (Rottman, 2006). That is, defendant assessments of these issues have been demonstrated to be predictive of outcome satisfaction assessments. Methodological and substantive gaps exist in the literature, both of which this study addresses. First, most studies have used close-ended survey questions, which may only allow for a fragmented understanding of these broad concepts. The current study utilized open-ended interviews to allow defendants to identify the issues most important to them, a strategy found useful by other researchers for detecting new components of procedural justice (De Mesmaecker, 2014). Second, despite evidence that distributive justice is
unique from procedural justice, and has its own impacts on outcome satisfaction, to date researchers have not successfully distinguished a single model for how the two concepts interact when examining defendant perceptions of criminal justice (Hauenstein et al., 2001). While the current study cannot solve this issue, it does contribute to the discussion by suggesting a model of the relationship based upon connections made directly by defendants when discussing fair process and outcomes. This study also contributes by providing more support for several newly identified components of procedural justice, as well as some of the traditional components of both concepts. Third, the seemingly related literature on attorney-client relationships has yet to be examined in the context of procedural and distributive justice, an issue explored in the current study. Defendants related issues of procedural justice to the perceived quality of their attorney, suggesting that future research should examine both issues together. Finally, implications for future research are discussed.
Chapter 1: Introduction

The current study examines the intertwined concepts of procedural and distributive justice, as well as attorney-client relationships, from the defendant perspective. Procedural and distributive justice were originally formulated by two social psychologists in their attempts to predict people’s satisfaction with decision-making procedures and outcomes in various settings (Lind & Tyler, 1988; Rottman, 2007; Thibaut & Walker, 1975; Tyler, 2009). By the 1980s scholars had begun to apply these concepts to decisions made within the criminal justice system by police, courts, and in prisons in an attempt to understand the role procedural justice played in these settings (Lind and Tyler, 1988; Rottman, 2007). Yet to date, there has been relatively little procedural justice research utilizing defendant populations, and much of what has been published focuses on traffic court or misdemeanor charges.

A related but separate literature on clients’ satisfaction with their attorney also developed in the late 1970s, and indeed the American Bar Association’s standards currently state that providing effective counsel must involve the establishment of working relationships with clients (ABA, 2015). Most studies have shown client trust in their attorney, as well as overall client perceptions of the fairness of proceedings, to be related to client satisfaction with their attorney (Boccaccini, Boothby, and Brodsky, 2004; Boccaccini and Brodsky, 2001; 2002; Flemming, 1986; Winick, 1999). Again, this is an area where more research is needed, particularly with people who may have had increased involvement with the criminal justice system and thus may have already developed negative views of authority prior to their most recent case (Duran, 2008; Papachristos et al., 2012; Novich, 2016).

Procedural and distributive justice theory is arguably more developed than that focused purely on defendant satisfaction, likely because the former can take advantage of populations
that are easier to access compared to defendants, such as employees and college students. Justice theories were first developed in the fields of communication and group dynamics, which can involve subjects who work in offices or form groups in various settings and are relatively easy to access. Indeed, the usual college student sample was used for many of the early psychological studies (Lind & Tyler, 1988; for examples see Lind, Kanfer, and Earley, 1990; Tyler, Huo, and Lind, 1999). Client satisfaction research requires actual defendants, which are notoriously hard to locate and to convince to participate, particularly once a case is over.

There are also methodological gaps in the justice literature that must be addressed before we can fully understand not only how defendants understand the concepts of procedural and distributive justice, but also the relationship between these two concepts (Barragan, Sherman, Reiter, & Tita, 2016; Holtfreter, 2016). While researchers in other fields have long employed both quantitative and qualitative methods, those researchers interested in the issues of procedural and distributive justice have limited themselves almost entirely to quantitative methods – namely experimental and survey based research (Barragan et al., 2016; Holtfreter, 2016; Lind & Tyler, 1988; Tyler, 1990). Recently, more research utilizing interviews to examine procedural justice has been conducted, but there it is still a need for work exploring what fairness means to the people involved in legal proceedings (De Mesmaecker, 2014; Holtfreter, 2016).

The second goal of this research was to explore the relationship between procedural and distributive justice, something that has been examined in only a few studies utilizing defendant populations, and which has been suggested via at least one meta-study of quantitative research on both concepts (Hauenstein, McGonigle, & Flinder, 2001). The two concepts were found to be correlated, but still unique enough to warrant being studied as separate concepts, as opposed to employing distributive justice as a measure of procedural justice as some studies have done.
More recent procedural justice literature has identified several components not part of traditional conceptualizations of the concept, and suggested that expanding procedural justice to include these new components may increase our understanding of how defendants formulate perceptions (Barragan et al., 2016; De Mesmaecker, 2014; Holtfreter, 2016).

The final goal, like the first, is to deepen our understanding of how defendants define terms and understand questions about outcome satisfaction. When given the chance, will they relate their satisfaction, or lack thereof, to procedural issues or to concerns about the fairness of the outcome itself? Prior research has argued that satisfaction is more (if not solely) dependent on procedures than the actual outcome, but these conclusions are based on research using close-ended questions, which may miss some issues important to defendants (De Mesmaecker, 2014; Tyler; 1990). The qualitative approach of the current study can add to our understanding of how defendants arrive at satisfaction judgements about their experiences by providing defendants the opportunity to define the most important issues for themselves.

The findings of this study can be summarized in three categories: perceptions of procedural and distributive justice, definitions and experiences of quality defense, and concerns about system legitimacy. These categories are based on careful analysis of the interviews, with a focus on the issues raised by defendants when asked generally about their experiences. From those findings, several conclusions were drawn. Findings provide support for some traditional aspects of procedural justice such as voice and neutrality, as well as for some suggested by more recent work such as a need for information. Only one new procedural issue arose, which is the concern over case processing time.

Support was also found for both traditional components of distributive justice, comparison and expectancy. Interestingly, perceptions of distributive justice impacted more
defendants’ assessments of outcome satisfaction than did perceptions of procedural justice. This suggests that the importance of distributive justice should not be discounted and that the concept should receive more examination in conjunction with procedural justice.

Examining participant thoughts on attorney-client relationships showed more concern for communication and advocacy from attorneys than for their legal knowledge or decision-making. And the procedural justice component of need for information was directly related to attorney communication by many defendants. This analysis also yielded the most consistent finding in the sample – defendants preferred private over public attorneys.

Finally, some participants also expressed concern over perceived legal actor misconduct and threats to system legitimacy. While some defendant stories should be viewed with a skeptical eye, the fact that they believed there had been misconduct by one or more legal actor directly challenged their belief in a fair system. Issues of the system being focused on sustaining itself, in maintaining jobs and income for local communities, colored some defendants’ perceptions of the legitimacy of that system, making them question if the process could ever be fair.

This dissertation is organized into eight chapters, the first three of which address the current state of research and study design for this study. The remaining chapters are organized around topics that emerged from defendants’ thoughts, rather than around researcher defined constructs. During the coding process (described in Chapter 3), I identified patterns in how participants discussed issues and organized the study findings around those patterns as opposed to utilizing constructions from prior research. This allows the reader to gain a better sense of how defendants structure their perceptions when asked general questions about their criminal court case processing and outcomes.
Chapter 2 provides an in-depth discussion of the history of justice research, starting with the early theoretical development built on experimental research and moving into a discussion of early studies employing defendant samples. In this chapter I also discuss more recent research in criminal justice, including some studies that utilize qualitative methods. Finally, I end with a discussion of the more limited research on client perceptions of their relationships with their defense attorneys. Research design, data collection, and interview coding are detailed in Chapter 3. This provides an overview of the research questions, sample demographics, data collection procedures, changes to the interview instrument post-prospectus, and coding and analysis procedures.

Chapter 4 focuses on findings from the interviews with jail sentenced defendants. Issues raised by participants relating to outcome fairness, as well as how those issues related to their satisfaction with the final case outcome are the focus of this chapter. The fifth chapter focuses on the varied procedural justice concerns raised by participants as they relate to law enforcement, judges, and prosecutors. The relationship of process concerns to outcome satisfaction is also discussed.

The quality of representation was discussed by all participants, and it is their concerns about the attorney-client relationship that are covered in Chapter 6. The final chapter on findings, Chapter 7, focuses on concerns defendants had with the criminal justice system at large. While many of these could be defined as process or outcome concerns, they are discussed separately due to their macro nature, focused as they are on perceptions of legal actor misconduct and threats to system legitimacy.

Finally, Chapter 8 provides a discussion of the findings presented in Chapters 4 through 7, drawing conclusions from the themes identified in the in-depth interview data. I also take care
to discuss these findings in relation to prior justice and attorney-client relationship research, examining how the current study contributes to the general knowledge base and recommending future research endeavors.
Chapter 2: Perceptions of Justice

Procedural and Distributive Justice

The extensive research on procedural and distributive justice has provided researchers with some generally agreed upon definitions. Procedural justice can be defined as perceptions of the fairness of procedures used to make decisions and reach outcomes, whereas distributive justice can be defined as perceptions of the fairness of the distribution of outcomes (Lind and Tyler, 1988; Rottman, 2007; Tyler, 1984; Tyler, 2004). Both have been utilized to predict participant satisfaction with decisions and outcomes in various situations, including court proceedings. By definition procedural and distributive justice are matters of perception, rather than objective measures, since for the procedures to matter people must perceive them to be relevant. Research has also identified certain types of procedures, such as adversarial proceedings, that are more likely to result in disputants perceiving said procedures as fair (LaTour, 1978; Lind and Tyler, 1988).

The concepts of procedural and distributive justice are not exclusive to the field of criminal justice, and in fact were first conceptualized and studied in relation to issues of organization and decision-making in the workplace and groups more generally (Lind & Tyler, 1988). Since then multiple fields that fall under the large umbrella of social science, including psychology, communication, and economics, have utilized theories developed under both concepts to explain relationships between outcome satisfaction and procedural variation (Lind and Tyler, 1988; Raaijmakers, 2009; Rottman, 2007). The application of procedural justice theories to criminal justice systems specifically began in social psychology with Thibaut and Walker’s groundbreaking research (1975). They were the first to propose the relevance of prior...
research on procedural and distributive justice theories to how people legitimize criminal justice systems and authorities, and defendant satisfaction with case outcomes\(^1\) (Lind & Tyler, 1988; Thibaut & Walker, 1975; Tyler, 2009).

More recently, scholars have operationalized procedural justice as four components: respect, neutrality, agency or participation, and trustworthiness (Rottman, 2007; Tyler, 2004). These components have been used to measure procedural justice in many areas of criminal justice, not just court proceedings and case processing (which are the focus of the current study). Each component is based on the defendant’s or arrestees’ perceptions; thus, respect refers to whether the person felt they received respect from the criminal justice actors. Neutrality is whether the defendant felt decision-makers were honest and impartial, while agency is how much opportunity defendants felt they had to tell their story and express their opinions, both to their attorney and judges (Rottman, 2007; Tyler, 2006). The final component, trustworthiness, refers to decision-makers who treat defendants fairly, as well as the trust clients have in their defense attorneys (Boccaccini & Brodsky, 2002; Rottman, 2007). It is these four components I also plan to measure, but first the underlying theory development that led to this operationalization must be discussed.

**Theory Development**

Early studies of procedural and distributive justice in criminal justice settings had a foundation in social psychology (Lind & Tyler, 1988). These early studies are set apart from much

\(^1\) Independent of the research on procedural justice, another line of inquiry developed in the mid-1970s that examined the consequences of jury procedures on verdicts, including some research on group processes in jury decision making, with the overall results showing that procedural variations do affect jury decisions. Although neither of the two areas of study were directly about procedural justice, they affected the development of procedural justice research by providing a theoretical and empirical basis for studies that focused on process rather than outcomes in a criminal justice setting.
of recent research by the use of experimental designs compared to the survey based field studies more often conducted today (Holtfreter, 2016; Lind & Tyler, 1988; Thibaut & Walker, 1975; Van den Bos, Wilke, Lind, & Vermunt, 1998). This early experimental research did much to advance procedural justice theory, and more recent endeavors owe their empirical and theoretical foundations to these scholars.

The benefits of conducting early research in laboratory settings lay in the ability of researchers to control conditions and confounding variables (Lind & Tyler, 1988). Theories can be, and often are, developed via experimental methods, and later tested in field studies that do not allow for the level of control unique to experimental methods\(^2\). More procedural and distributive justice studies today are being conducted in real world settings, with convenience samples, building on the earlier research done in lab conditions (Lind & Tyler, 1988; Rottman, 2007).

Most studies on procedural justice also examine distributive justice, yet the bulk of theory development and policy implications have been focused on procedural justice. A meta-analysis of research on these concepts in an employment context found that while the two concepts are significantly related, they are different enough to warrant being studied as separate concepts (Hauenstein, McGonigle, & Flinder, 2001)\(^3\). And most theory development has been focused on procedural justice and its relationship to disputant satisfaction, except for some earlier distributive justice theory development (Lind & Tyler, 1988). The discussion of this early procedural and

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\(^2\) The exception to this is randomized field studies, which create randomized samples on the variable of interest, thus randomly distributing variations among other variables across the samples.

\(^3\) Although this meta-analysis did not examine research done in criminal justice settings, the research on procedural and distributive justice has been surprisingly consistent across settings (Lind & Tyler, 1988). So while this meta-analysis cannot be directly applied to criminal justice research, it can be cautiously extrapolated.
distributive justice research, which did not directly address criminal justice settings, will focus on the theoretical contributions as those have had the largest impact on current justice research.

Scholars in the 1960s were largely concerned with distributive justice, defined as the perception of the fairness and distribution of outcomes, and focused their research on how the distribution of benefits and costs within groups affected participant satisfaction with outcomes (Adams, 1963, 1965; Blau, 1968; Hauenstein et al., 2001; Homans, 1961; Lind & Tyler, 1988; Messick & Sentic, 1983; Van den Bos, Wilke, Lind, & Vermunt, 1998). The theory of relative deprivation was the first theory developed to address distributive justice and provided support for the importance of the concept (Merton & Rossi, 1957). The theory’s authors proposed that individuals compare themselves to others when making judgements about their situation, rather than relying solely on absolute terms (Lind & Tyler, 1988). Early research demonstrated that people could be unhappy with objectively good outcomes and happy with objectively poor conditions, all dependent on the comparative outcomes of others (Lind & Tyler, 1988). As applied to court proceedings, this theory implies that defendants may formulate outcome expectations based on what they believe others received as outcomes in similar cases.

The development of equity theory in the early 1960s, which states that people will be most satisfied when the distribution of benefits and costs within a group is proportional to the perceived contributions of group members, was particularly influential on later studies of distributive justice in criminal justice settings (Adams, 1963, 1965; Lind & Tyler, 1988). Adams argued that the concept of equity is a fundamental norm, so much so that people will react when the distribution of outcomes seems disproportional and that individuals within the group will suffer “inequity distress” (Adams, 1963, 1965; Lind & Tyler, 1988, pg. 10). This distress should lead group members to work to restore equitable distribution of costs and benefits within the group. Although
those members who benefited may try to find solutions that do not involve loss of any benefits, research suggested they would give up advantages if that were the only way to restore equity\(^4\).

Adams’ theory was applied to several studies in various fields and the results supported the idea that the equity of outcomes within groups indeed mattered, often despite outcome advantage among some group members (Festinger, 1957; Leventhal, 1976; Lind & Tyler, 1988). That is, group members preferred outcomes be equal for all within the group, and this sentiment held even for those members who had some outcome advantage. The idea of equity, or equality, has more recently been applied in studies of distributive justice in court cases, specifically to how defendants develop comparisons of their case outcomes to others’ case outcomes (Lind & Tyler, 1988; Tyler, 1984). These studies found that in criminal justice settings the equity theory can be applied so that defendants base their perception of distributive justice on how the outcome of their court cases compared to outcomes of other defendants\(^5\) (Lind and Tyler, 1988; Rottman, 2007).

The modern operationalization of distributive justice embodies the theories defined by these early works. The concepts of comparison (fairness of outcome compared to others) and expectancy (fairness of outcome compared to what was expected) are the most oft employed when researching distributive justice (Tyler, 1990). Procedural justice theory was built upon the foundations laid by distributive justice researchers, and on the hypothesis that procedure might matter more than the concepts of comparison or expectancy (Lind & Tyler, 1988).

The earliest theory of procedural justice, and the one most often employed in subsequent studies, is control theory as it was originally postulated by Thibaut and Walker in 1975. Their

\(^{4}\) Equity research focused less on different personality types as group dynamics. There may be research on this matter in the communication and organization literature, but that is beyond the scope of this literature review.

\(^{5}\) While some studies took care to compare defendants that were similarly-situated, most did not. This is likely because what matters most is the defendant’s perception of others being similarly-situated, which in many cases meant being charged with the same or similar crimes.
theory states that the distribution of participant control over proceedings is key to the sense of procedural fairness experienced by involved parties. They also made an important distinction between decision control, which is control over decision-making, and process control, which is control over the opportunity to state one’s case or to be heard before a decision is reached (Thibaut and Walker, 1975; Tyler, 1990). Basically, people rate the fairness of proceedings based on how much control they could exert over the process, which in turn is believed to affect outcomes. For example, defendants who are able to relay their story in court (or have their attorney relay the story) may feel the court proceedings to be fair and just, even if the outcome is not in the defendant’s favor.

Researchers have been careful to distinguish between decision and process control in their research, with most criminal justice based research focusing on process control, likely because defendants almost always have little decision control (Tyler, 1990). And these studies have consistently found that process control has independent effects on satisfaction and perceived fairness of both proceedings and outcomes, as does decision control (Houlden, Latour, Walker, & Thibaut, 1978; Lind, Lissak, & Conlon, 1983; Tyler, 1990). Unfortunately, most of this work has been done on trial proceedings, which comprise very little of what actually happens in criminal justice (Tyler, 1990).

As to the question of why process control matters, especially given that it may have no effect on outcomes, there have been several proposed hypotheses (Tyler, 1990). Two of those hypotheses have been included in many modern procedural justice theories and research. One claims that when parties have process control, they are more likely to believe that the decision-making authority is less likely to behave in a biased or self-serving manner (Folger, 1977; Tyler, 1984; Tyler, 1990). A second explanation could be that people make assumptions about whether
or not their views or stories are considered by decision-makers (Lind & Tyler, 1988; Tyler, 1990). Even if it has no influence on the actual decision, this may convince involved parties that the decision maker is striving to be balanced and find solutions that reflect everyone’s needs. More research is needed to parse out which of these explanations best explains the effects of process control researchers have demonstrated on satisfaction with proceedings (Tyler, 1990).

A second theory is Leventhal’s theory of procedural justice, thus called because it was proposed to be a more expansive framework than earlier theories (Leventhal, 1980; Tyler, 1990). He was the first to suggest that procedural justice might consist of several components beyond process control and fairness to include a total of six criteria that might predict perceptions of procedural justice among involved parties. Representation was conceptualized to include both process and decision control, although it was never made clear which of these two concepts representation is meant to embody (Leventhal, 1980; Tyler, 1990). Consistency was described as the similarity of treatment and outcomes for all parties involved, which could be related to the ability of procedures to prevent favoritism, what Leventhal referred to as suppression of bias (1980). The accuracy of a decision is dependent on the use of accurate information in the creation of high-quality solutions, while correctability is the existence of opportunities to correct inaccurate outcomes or decisions (Leventhal, 1980; Tyler, 1990). The final criteria Leventhal named was ethicality, which describes the general standards of fairness that decision-making processes should adhere to.

While some have noted the ambiguity of these criteria, there have been limited attempts to operationalize and measure them for research purposes (Tyler, 1990). The research conducted has all demonstrated consistency, across people rather than time, to be the most important of Leventhal’s criteria used by involved parties in their assessments of procedural justice (Barrett-
Howard & Tyler, 1986; Fry & Leventhal, 1979). Accuracy and the related issue of suppressing bias were also found to be important by the same studies. A separate line of research identified representation as an important criterion, which is in line with the research on Thibaut and Walker’s control theory (Tyler, 1987; Tyler, 1990; Tyler, 2003; Tyler, 2006).

In conclusion, it is important to note that almost none of the above research, on either distributive or procedural justice, was done in criminal justice settings or with defendants as participants. Some experimental studies used undergrads as mock defendants in labs, while other studies were done on managerial practices and non-binding arbitration (Lind & Tyler, 1988; Tyler, 1990). The next section goes into further detail on those studies that have applied the theories and hypotheses outlined above to real world samples of defendants. These studies are the most applicable to the current study due to the unique nature of defendants and offenders as research participants, as well as the binding and often life altering consequences of involvement in the criminal justice system. The consequences of management decisions and non-binding arbitration rarely, if ever, reach the level of severity of those in criminal justice, thus the perceptions of people in those different situations may not be comparable.

**Criminal Justice Research on Procedural and Distributive Justice**

As briefly mentioned above, the earliest procedural and distributive justice research was done not in criminal justice, but in various other fields concerned with group and workplace dynamics, communications, and dispute resolutions (both binding and non-binding) (Lind & Tyler, 1988). And when studies began to consistently demonstrate the importance of procedural justice to participant satisfaction and perceptions of legitimacy above that of distributive justice, research on the latter as a unique concept noticeably declined (Lind & Tyler, 1988; Tyler, 2004;
Tyler, 2009). Yet recent studies continue to find that distributive justice is significantly related to participant perceptions of fairness (Hauenstein, McGonigle, and Flinder, 2001).

Recent research has usually either focused solely on procedural justice, or used distributive justice as simply one component of procedural justice (Lind and Tyler, 1988; for examples see Sunshine and Tyler, 2003; Tyler, 1990; 2003). Several studies from the 1990s examined both types of justice, although only one did so in a criminal justice context, and found that distributive justice perceptions played a role in outcome perceptions (Bos, Lind, Vermunt, and Wilke, 1997; Flinder, 1994; Tyler, 1994). One study found that distributive justice perceptions mediated the effects of procedural justice on outcome judgements (Flinder, 1994). That study completed phone surveys with a sample of Chicagoans about their experiences with legal authorities, including court appearances and police interactions (Tyler, 1994). Participants were asked about four aspects of their experience: the favorability of the outcome, comparison of their outcome to what was expected, comparison of their outcome to what others received, and their perception of the control they had over the decisions and process. The author found support for the influence of components of both procedural and distributive justice on outcome satisfaction. The results suggested that procedural justice was the primary influence on outcome satisfaction, but that distributive justice exerted a separate and significant effect on how participants felt about their outcome (Tyler, 1994).

The meta-analysis conducted by Hauenstein and colleagues is worth discussing here because it represents the only meta-analysis ever done to examine the statistical relationship between the two justice components (2001). Their analysis of sixty-three studies found a robust relationship between measures of procedural and distributive justice, which was stronger in dispute resolution situations (which by definition would include criminal justice courts) than in
reward allocation situations⁶. This suggests that there may be more of a relationship between the two justice concepts in criminal justice settings than has previously been supposed. Most importantly, this relationship was not distorted by research design, including the differences in measurement across studies (Hauenstein et al., 2001).

Although all reviewed studies were survey or experiment based, the robustness of the relationship across these papers suggests the need for a qualitative examination of this issue. The Hauenstein piece was unable to address the mechanisms of this relationship, but the authors do cite prior research that suggests a simpler view of justice perceptions that is divorced from the trend to focus on singular components of justice rather than examine defendant experiences as a whole (2001; Lind, 2001). Some scholars have suggested that all perceptions of fairness, both in process and outcomes, are derived from expectations, thus the divide between the two issues in most justice research may have been falsely imposed (Cropanzano and Ambrose, 2001). These findings provide some evidence that a more in-depth examination of the relationship between these two issues is required to fully understand how and why defendants develop fairness perceptions.

Most procedural justice research in criminal justice can be divided into two categories: studies that examine how fair procedures affect people and studies that examine what about certain legal procedures people perceive as fair (Tyler, 1990). Both types of research fall under the heading of subjective procedural justice, which refers to the perceptions people have of procedures rather than any actual measure of procedures (Lind & Tyler, 1988; Raaijmakers, et al., 2015). There is also objective procedural justice, which refers to measures of outcomes for

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⁶ Note that almost all of the studies examined for this article were conducted in non-criminal justice settings.
which there is supposedly a correct and incorrect outcome, such as accuracy of procedures and frequency of acquitting innocent defendants and convicting guilty defendants.

Objective procedural justice is the more difficult of the two to study, mostly due to unavoidable research subjectivity and debate in measurement and definition decisions that preclude any definitive conclusions about the objective merit of any procedure. To avoid these issues, Thibaut and Walker used laboratory settings and artificially balanced measures to ensure objective measures (1975). The contribution of research on objective procedural justice is important, but will not be further discussed here since the focus of the current study is entirely subjective procedural justice.

Early procedural justice research demonstrated that decisions are more likely to be accepted as fair and just when those affected by the decision are able to participate in the process (Lind and Tyler, 1988; Raaijmakers, et al., 2015; Thibaut and Walker, 1975; Tyler, 1984; Tyler, 2009). Research in other areas, such as communication networks and dispute resolution, has come to similar conclusions as the procedural justice research, suggesting the efficacy of control theory (Lind and Tyler, 1988). One of the most consistent findings in multiple areas of research is that participants were most likely to view procedures favorably if they were given freedom to communicate their views, story, and or argument (Lind & Tyler, 1988, pg. 9). Most of what about the research has demonstrated about distributive justice is that defendants tend to compare their case and circumstances to others. This creates an expectancy bias wherein they expect a particular outcome, thus partially basing satisfaction with the actual outcome on how it compares to the expected outcome (Lind & Tyler, 1988; Van den Bos et al., 1998).

_Procedural Justice and Legitimacy_
The US criminal justice system is an adversarial justice system, which in a procedural justice context means that a third-party exerts control over much of the decision-making throughout a case, while the prosecution and defense (in the form of lawyers) control the investigation and information development processes (Lind & Tyler, 1988; Raaijmakers et al., 2015). In comparison, inquisitorial procedure involves a third party (the judge) controlling both the process and decision-making throughout a case. Early procedural justice research found that Americans tend to prefer the adversarial system, mainly because they felt it was more fair and unbiased compared to inquisitorial systems (Lind & Tyler, 1988).

Unlike the laboratory based research of the 1970s and 80s, more recent studies have sampled defendant populations and asked about their experiences with legal actors and authorities (Barragan et al., 2016; Beijersbergen et al., 2016; Raaijmakers et al., 2015). Of the more recent studies reviewed, most focused on defendant belief in legitimacy as the outcome of interest, and its mediating effects on offending behavior (Beijersbergen et al., 2016; Tyler, 2003). Police-offender interactions were the most often examined, but in general the empirical research has shown that procedural justice improves compliance, with some of that relationship mediated by belief in the legitimacy of criminal justice actors or the larger system (e.g., Beijersbergen et al., 2016; Sunshine & Tyler, 2003; Tyler, 2003; 2009). The impact of older research can be felt in the continued use of theories originally developed using non-defendant samples, and in the widespread use of legitimacy as the dependent variable of interest (Holtfreter, 2016; Lind & Tyler, 1988; Tyler, 1990; 2003; 2009).

Indeed, the perceived legitimacy of criminal justice authorities and agencies has long been used as the main justification for procedural and distributive justice research (Beijersbergen et al., 2016; Leventhal, 1980; Lind & Tyler, 1988; Tyler, 1990). People who believe in the
legitimacy of a system or legal authorities are hypothesized as more likely to obey the law (Beijersbergen et al., 2016; Tyler, 1990; 2003; 2009). And proceedings perceived as fair have been shown in multiple studies to positively affect perceptions of legitimacy (Sunshine & Tyler, 2003; Tyler, 2009). While the focus of the current study is not on legitimacy per se, it is important to note the importance the concept has played in the development of procedural justice literature and as one of the main arguments for continuing research into these matters.

The legitimacy of agencies and criminal justice actors has been studied in conjunction with procedural justice by multiple scholars, most of whom found that perceived unfairness in sanctions and processes has negative effects on defendant views of legitimacy (Lind & Tyler, 1988; Paternoster, Brame, Bachman, & Sherman, 1997; Piquero, Gomez-Smith, & Langton, 2004; Sprott & Greene, 2010; Tyler, 2003). Defendants who are ultimately convicted of a crime and have sanctions imposed on them may feel less responsibility to obey rules and accept decisions made by judges and other legal authorities as legitimate when those defendants feel that procedures were unfair and their concerns unheeded (Sprott & Greene, 2010; Tyler, 2003).

The studies described below do not represent the entirety of research on procedural justice, but instead are those studies which focused on defendant perceptions of procedural and distributive justice during their time in criminal court (Barragan et al., 2016; Beijersbergen et al., 2016; Raaijmakers et al., 2015; Rottman, 2007; Tyler, 1990). The consensus of findings has been that the perceived fairness of procedures positively impacts defendant satisfaction with case outcomes (Casper, et al., 1988; Lind & Tyler, 1988; Peterson-Badali, Care, & Broeking, 2007; Raaijmakers et al., 2015; Sprott & Greene, 2010; Tyler, 1984; 1990; 2003; 2009; Tyler & Huo, 2002). The one exception to this has been for those defendants facing rather severe sentences, in
which case researchers found that procedural justice still influenced outcome satisfaction, but was less predictive the more severe the sentence received (Lind & Tyler, 1988).

Some procedural justice research focused on youth experiences and perceptions, which may arguably be different than those of adults who have had more experiences with the criminal justice system (Peterson-Badali et al., 2007; Sprott & Greene, 2010). Recent psychological research has focused on the development of the adolescent brain, arguing that youth lack long term decision making skills that develop in adult brains, meaning that many juvenile delinquents age out of offending (Moffitt, 1993; Farrington, 1986). That said, some participants in my sample were involved in the juvenile justice system as youth, and those experiences were discussed as part of the summary of their involvement in the criminal justice system. Thus, it is worth taking some space to discuss research on youth perceptions of procedural justice, not only for the reason stated above, but also to provide methodological background for the current study.

In one Canadian study, youth were interviewed at their first appearance and again at sentencing, to be sure that any changes to their feelings on legitimacy were due to the youths’ experiences during their case (Sprott & Greene, 2010). The researchers found that youths’ perceptions of their treatment in court, especially by their lawyer and the judge, had effects on views of system legitimacy, even once outcome satisfaction was controlled. Another Canadian study interviewed youth about their relationships with their attorneys and found that perceived fairness, as well as interpersonal factors, were related to youth satisfaction with their attorney

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7 Moffitt specifically compares what she calls adolescent-limited (engage in anti-social behavior only during adolescence) and life-course-persistent offenders (engage in antisocial behavior at all life stages), noting that the majority of offenders fall into the first category.
8 Participants will be asked about the age of first arrest as well as general questions about criminal history.
9 Even though both Canadian studies reviewed here use the term interview to describe their methods, both actually employed surveys with close-ended questions.
10 The authors did not address the issue of maturation in the article, which suggests it was not considered in the study design.
Youth satisfaction with case outcome was again controlled for and found to not mediate the relationship between fairness of treatment and satisfaction with attorney.

In the Netherlands, researchers interviewed a group of prison inmates about their treatment within the prison in an attempt to predict reoffending upon release based on procedural justice from prison employees (Beijersbergen et al., 2016). Legitimacy was hypothesized to play a mediating role, as has been shown in prior research, with the general idea being that being treated fairly would lead inmates to view the system as more legitimate and thus to comply with laws upon release (Beijersbergen et al., 2016; Leventhal, 1980; Tyler 1990; Tyler, 2003). Interestingly, no effect was found for legitimacy, mediating or otherwise, but procedural justice did have a small direct effect by predicting reduced offending among the sample.

One of the few studies to utilize a sample of felony offenders involved interviewing a sample of 628 defendants before and after the resolution of their case (Tyler, Caspi, & Fisher, 1989). Defendants were more likely to accept the court’s decision on their case if they felt that they were treated fairly. The study also found that the specific experience in this one case had broader impacts on defendants’ overall views of the legitimacy of the court system, wherein defendants who had a procedurally just experience were more likely to view the court as legitimate. This single study is important because of the lack of procedural justice research with defendants charged with felonies, and because it suggested that even defendants facing more severe sentences will more often respect the legitimacy of courts when they are treated fairly (Sprott & Greene, 2010; Tyler, Caspi, & Fisher, 1989).

Unfortunately, this study did not address offender perceptions of distributive justice, which would have provided information relevant to the question of how much outcome matters compared to process.
Researchers have preferred to employ quantitative approaches in their study of procedural justice, often involving participant-completed questionnaires and both in-person and phone surveys, all of which used only limited-response option questions (Holtfreter, 2016; Lind & Tyler, 1988). Only recently have scholars begun examining the issues of procedural and distributive justice with non-quantitative methods. Prior justice research has been almost entirely focused on comparing responses to close-ended questions about how respondents felt about the procedures and outcomes of their cases, with the assumption that these answers would be related to level of respondent satisfaction with case outcomes (Lind & Tyler, 1988). And in most studies the results did show a relationship between perceived procedural justice and case satisfaction (Lind & Tyler, 1988; Rottman, 2007; Tyler, 2004). But what is not addressed is the fact that other factors not included in these studies, and thus excluded from regression models, may account for the variation in defendant case satisfaction. For example, issues such as prior attitudes towards legal authority and the legitimacy of the criminal justice system may have significant impacts on defendant views of their current court involvement, yet are completely ignored in justice research. And in one study, respondents were asked if procedures were “just and fair” without the chance to explain how they would define and/or apply those terms to their experiences (Lind & Tyler, 1988).

Below I examine those few recent studies that did not rely solely on survey methods to study issues of procedural justice. One study relied on systematic social observations of police interactions, two used in-depth interviews with offenders, and the fourth utilized interviews, surveys, and systematic social observations (Barragan, Sherman, Reiter, & Tita, 2016; De Mesmaecker, 2014; Mastrofski, Jonathan-Zamir, Moyal, & Willis, 2016; Worden & McLean, 2017). It is important to highlight these four studies (even though two address slightly different
aspects of procedural justice than the current study) because the methodological monopoly of survey methodology, and before that laboratory experiments, has meant that our knowledge about defendants’ perceptions of procedural justice lacks the depth that can be provided only by investigations into why or how exactly fairness of procedures matters to defendants (Weiss, 1994). Without research that delves into the how and why of the relationship between procedural justice and defendant satisfaction, our knowledge on the importance of this issue is incomplete. There is a lack of explanation in the justice literature on why procedural justice matters from defendant perspectives, and answering this question may provide a better understanding of the role process plays in how defendants formulate opinions.

The use of non-quantitative methodologies in these three recent studies did largely confirm the findings discussed above in the review of survey based research (Barragan et al., 2016; De Mesmaecker, 2014; Mastrofski et al., 2016). Two studies examined the perceived legitimacy of laws and police officers, and found it was directly affected by the perceived fairness of respondent experiences with law enforcement (Barragan et al., 2016; Mastrofski et al., 2016). In the interviews done by Barragan and colleagues, respondents indicated that they felt unsafe in their communities, and were more likely to be harassed by police than protected by them, thus they were willing to illegally obtain and own guns for self-protection (2016).

This can be related to the findings from Mastrofski and colleagues that police officers were more likely to employ procedural justice when the citizens are perceived as more deserving, such as victims or the requester of police assistance (2016). The study done by Barragan and colleagues is also notable for including a sample of serious offenders, who have been largely absent from prior research on procedural justice (2016; Lind & Tyler, 1988). Indeed, much of the research on procedural justice has used non-offender samples entirely or
only those charged with traffic tickets or other violations, likely because those populations are easier to access (Barragan et al., 2016; Beijersbergen et al., 2016; Tyler, 1984; Lind & Tyler, 1988). The limited research into this matter has shown that defendants who place a high value on outcomes are still more likely to be satisfied with those outcomes when they perceive procedural justice in their case (Tyler, 1986). Although this would suggest that seriousness of offense and possible outcomes may not matter for procedural justice effects, further research with defendants charged with felonies should be conducted.

Related to these two studies, a third study was recently completed in two cities comparable to my research site in population demographics and crime rates on the relationship between procedurally just policing and public perceptions of police (Worden and McLean, 2017). The authors found that public opinion was not much changed when a policy was implemented to provide more procedurally just policing. Specifically, implementation involved having police officers consider people’s needs and concerns in the decision-making process, which some scholars have considered part of the respect component of procedural justice (De Mesmaecker, 2014). Officers were trained and instructed to take time to listen to each person’s story and to be thorough in their explanations of the actions they were going to take in response. They interviewed citizens (not just defendants) who had police contact throughout the study and found no significant changes in citizens’ perceptions of or attitudes towards police in either city.12

The authors conclude that assertions by other scholars that police-citizen interactions are what define procedural justice, and in turn create police legitimacy are perhaps misplaced. Based

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12 Citizen satisfaction with police was relatively high at the start of the study, so there was already little room for improvement. It might be that implementing procedurally just policing in a community with lower levels of citizen satisfaction would result in a larger change.
on their research, the authors conclude that two behaviors, the use of force and police searches, are responsible for generating friction with the community, which then creates challenges to perceptions of procedural justice and legitimacy (Worden & McLean, 2017). The findings from this study strongly suggest that further research utilizing a variety of methods is necessary in procedural justice.

While none of these studies directly addresses defendant experiences of procedural or distributive justice in court, they do highlight ways in which non-survey methods can be useful in examining this important issue. They help provide context and a deeper understanding of how procedural justice mediates people’s sense of police legitimacy and how police may choose to display procedural justice. The current study demonstrates that similar forays into non-survey methods may provide similar context and promote understanding of perceptions of procedural justice in courts. In summary, the research on procedural justice has consistently demonstrated that defendants who feel the procedures and their treatment was fair are more likely to be satisfied with the outcomes of their cases, regardless of the actual outcome. There is also a strong relationship between perceptions of high procedural justice and decreased offending, which is most often mediated by belief in the legitimacy of the criminal justice system and/or legal authorities. The third study is based on interviews with offenders and victims participating in mediation in the Belgian criminal justice system (De Mesmaecker, 2014). This book represents an important contribution to the justice literature because the author used open-ended interviews, both pre- and post-court processing, to ascertain how participants felt about the fairness of their case. The study found support for the importance of all four longstanding procedural justice concepts, while also suggesting that these concepts may have been defined too narrowly in the past, resulting in the failure to study issues of important to defendants.
One important example involves the focus of much research on issues of defendant agency, both voice and participation, an issue that has proven to be important in many studies. It may be because of this preoccupation that the need for information expressed by many participants in De Mesmaecker’s study has been ignored until now (2014). Another involves a more nuanced understanding of how trust in authorities is related to procedural justice. It was once assumed trust was an antecedent to perceiving fair procedures, but this study found that trust in authorities came about as a result of procedural justice. For example, participants who felt police treated them with respect and listened to their side of the story were more likely to trust police to be fair (De Mesmaecker, 2014). It is unfortunate that De Mesmaecker did not also include distributive justice in her study, but the contributions to a more nuanced understanding of defendant fairness perceptions are incredibly important. Despite the differences in the Belgian and American criminal justice systems, this study clearly demonstrates the importance of using qualitative methods to study procedural and distributive justice.

The importance of procedural justice in the criminal justice system has not always been apparent, and some would argue that dissatisfaction with criminal case outcomes is likely to be the norm among defendants, regardless of how fair and just the procedures appeared. The review of literatures (detailed above) has led to the conclusion that research into these matters is essential if we hope to understand how case processing is related to perceptions of fair outcomes, as well as defendant opinions of the criminal justice system.

First, several Amendments to the U.S. Constitution (e.g. 4th, 5th, 6th, and 14th) provide a variety of due process protections for those accused of a crime. Procedural justice is one way scholars have attempted to measure the fairness and justice of court processes, including defendant access to effective assistance of counsel and whether cases are presided over by
trustworthy and unbiased magistrates. It would seem that research into procedural justice may be one way scholars can better understand how well our criminal justice systems (and in the case of the current study, one local system) meet the Constitutional standards laid out for them.

Second, it has been suggested by prior research that defendants who believe in the legitimacy of the criminal justice system are less likely to recidivate (Lind & Tyler, 1988; Sprott & Greene, 2010; Tyler, 2006; Tyler, 2009). A few studies have found that defendants who felt that their treatment and/or sentence was unfair were more likely to be angry at the criminal justice system, and in some cases even led to outright defiance (Piquero, Gomez-Smith, & Langton, 2004; Sherman, 1993). But there is also evidence that perceptions of the legitimacy of legal authorities are formed over time, becoming more negative or positive with each successive interaction (Tyler, 2003). It may be that defendants have developed such strong opinions of legitimacy and legal authorities in general that their most recent court experience does little to alter those opinions.

Certain types of people have been shown to harbor more negative views of authority overall. One study found this to be true for gun offenders (Papachristos et al., 2012), while another examined the mostly negative views of Hispanic and Black residents of an entire system they felt was against them (Rios, 2011). It may be that some people retain those negative views regardless of their perceptions of recent criminal cases regarding procedural and distributive justice (Papachristos et al., 2012; Rios, 2011). Given the potential for negative outcomes post-sentencing, it is important to further research defendant perceptions of procedural justice and satisfaction with case outcomes.

Research on Attorney-Client Relationships
It should be noted that the dependent variable in practically all procedural and
distributive justice research is satisfaction of the involved party or parties, including research
focused on defendants (Lind & Tyler, 1988). Much of the research on attorney-client
relationships also identified client satisfaction as a main outcome of interest, as well as using
some of the same concepts often employed in procedural justice research as measurements of
that relationship (Boccaccini & Brodsky, 2002; Boccaccini, Boothby, & Brodsky, 2002; 2004;
Casper, 1978). Client (or defendant) participation, trust in the defense attorney, and respect for
the client/defendant are all indicators of procedural justice, as well as measures of the type of
attorney-client relationship (Boccaccini & Brodsky, 2002; Rottman, 2007).

The literature on attorney-client relationships is limited, mainly due to the difficulty in
obtaining quality data because of confidentiality concerns, difficulty in accessing defendant
populations, and the lack of funding provided for such research (Boccaccini & Brodsky, 2001;
2002). Prior research has pointed out that the importance of the attorney-client relationship has
often been overlooked, and given that much of the research on this topic was published in the
1970s and 1980s, it would seem the importance of this issue is still overlooked (Boccaccini &
Brodsky, 2002; See also Casper, 1978; Feldman & Wilson, 1981; Saxe & Kuvin, 1974). The
research conducted has generally demonstrated that clients want attorneys who are
communicative, responsive to client questions and requests, strong advocates for client’s best
interests, and willing to fight for their client’s rights and for the best-case outcome (Boccaccini,
Boothby, & Brodsky, 2002; Boccaccini & Brodsky, 2001)\textsuperscript{13}.

Many authors make the case for the importance of researching client perceptions by first
discussing the value of a “meaningful” relationship between client and attorney, while

\textsuperscript{13} There has also been research on how attorneys view their clients, but since the focus of the current study
is on defendant perceptions that research will not be discussed here.
simultaneously acknowledging the Supreme Court has stopped short of guaranteeing such a relationship as a measure of effective assistance of counsel (Boccaccini & Brodsky, 2001; Morris v. Slappy, 1983). But in their dissent, Justices Brennan and Marshall, argued that effective assistance of counsel requires communication and shared decision making, neither of which can exist without “a meaningful relationship characterized by trust and confidence” (Boccaccini & Brodsky, 2001, pg. 2; Morris v. Slappy, 1983). Indeed, one of the issues the current study will explore is the development, or lack thereof, of a relationship between the defendant and his or her attorney, from the defendant’s perspective.

The majority of studies on client perceptions of criminal attorneys have utilized prison inmates as subjects, likely because non-incarcerated defendants are difficult to find, while prison inmates are a captive audience who may appreciate the distraction represented by participation in a research study (Alpert & Hicks, 1977; Boccaccini et al., 2001; Boccaccini & Brodsky, 2001; 2002; Casper, 1978)\(^\text{14}\). The major critique of this research is that prisoners, by default having received a prison sentence, are more likely to have negative views of their attorney (Boccaccini & Brodsky, 2001). Despite the focus on prison inmates, prior research has consistently found a high level of satisfaction with defense counsel (Atkins & Boyle, 1976; Boccaccini et al., 2002; Boccaccini & Brodsky, 2002). Experienced criminal defendants, defined as those defendants who have been through the justice system multiple times, particularly value the quality of their relationships with their attorneys (Boccaccini & Brodsky, 2001).

The current state of research on client perceptions of their attorneys is descriptive in nature, but still informative for the purposes of the current study (Boccaccini et al., 2002). While

\(^{14}\) It should also be noted that the vast majority of this research was conducted in the 1970s, with more recent studies more focused on issues of procedural justice than solely on client perceptions of their attorneys. It is possible that with the passage of such an extensive period of time, findings from current research may be different.
most clients cite traditional legal skills (e.g. work ethic and legal ability) as important in their
defense attorney, just as many placed high value on client-relations skills such as clear and
consistent communication and concern for the client’s well-being (Boccaccini & Brodsky, 2001;

Prior research on both procedural justice and client-attorney relationships has
demonstrated that when defendants have more trust in their attorneys, they are more likely to
cooperate with counsel, which in turn may allow for more effective representation by defense
counsel (Boccaccini & Brodsky, 2002; Nelson, 1996). A more effective working environment is
one in which the defendant and their attorney can work together to raise the best defense, but this
can only happen when both parties feel they are getting what they want (Boccaccini & Brodsky,
2001). And perhaps most importantly, defendants are more likely to be satisfied with their case
outcome when they perceive the case proceedings were just and fair, including their relationship
with their attorney (Boccaccini & Brodsky, 2002; Lind & Tyler, 1988). Yet, with the limited
scholarship on client perceptions of their attorneys, there is need for further research to support
these conclusions.

The American Bar Association has stated that effective representation cannot be had by
defendants without a meaningful client-attorney relationship, and indeed many scholars have
made much of this point. Yet relatively little research has been done with non-prison inmates on
what that entails (Boccaccini & Brodsky, 2001; 2002). It may be that defendants who received
non-incarceration sentences, or who had their charges dismissed, value different aspects of that
relationship and/or were less concerned with the relationship in general given that the outcome of
their case was more favorable. Research that varies on site and client population type (e.g.
sentencing outcomes, race/ethnicity, sex, etc.) should be conducted before the current state of knowledge can be accepted as generalizable.
Chapter 3: Research Design & Methods

Current Study

The current study adds to the extensive literature on procedural and distributive justice, as well as the more limited research on attorney-client relationships. Interviews with a sample of jail sentenced defendants with recently disposed cases in either Central County or Centre City courts were used to gather data on defendant perceptions of these justice issues, their thoughts on their defense attorneys, and satisfaction with case outcomes. I also conducted shorter interviews with local judges and defense attorneys, as well as court observations, to provide contextual information about the local criminal justice system. While not utilized in data analyses, these informal interviews and observations provided information about norms and policies in the local criminal justice system that were then used to inform the defendant interview instrument.

The primary contribution of this study to the field of criminal justice comes in the use of open-ended interviews to provide a more thorough and nuanced understanding of defendant perceptions of a local court system, an issue far more often examined using surveys and close-ended questions. The study also examines the relationship between procedural and distributive justice, an issue that has exclusively been examined in quantitative research, and rarely at that. Participants were provided the opportunity via open-ended questions to discuss the issues most important to them in the context of a recent case for which they were currently serving a sentence. The use exclusively of a jail sample was also advantageous, as it allowed for the application of previously tested concepts and theories to a sample that included felony offenders, an under-examined group in justice research.
The Research Design and Study section states my research questions before moving into an in-depth look at the study site, providing local context that informs interview questions and sets up a foundation for the study. Population and crime statistics are provided for both county and city, followed by a brief overview of the criminal justice agencies in my research site that will be the focus of my defendant interviews.

Sampling strategies and parameters are discussed in some detail, with a focus on how I obtained my sample of defendants. The interview instruments for attorneys and judges are discussed next, as well as court observations. Finally, there is a detailed discussion of the defendant interview instrument, followed by a synopsis of the human subject protections afforded all participants. All corresponding materials for these sections can be found in the Appendices.

Research Questions

Based on my review of and the literatures on procedural justice and client-attorney relationships I developed a series of research questions. These questions guided the development of the interview instrument, as did questions used in prior justice research:

- Prior quantitative research has shown procedural and distributive justice to be related. Does this hold true in my sample?
- Are defendant perceptions of procedural justice related to satisfaction with absolute case outcomes? Are these perceptions related to satisfaction with the defendant’s defense attorney?
- Are defendant perceptions of distributive justice related to satisfaction with absolute case outcomes, procedures, and/or with the defense attorney?
Study Site

The current study was done in Central County,\textsuperscript{15} which is a midsize county in the northeastern United States with one main city (Centre City) surrounded by smaller towns and suburbs. Centre City is a mid-size city, with a population under 100,000, which represents approximately one third of the entire population of Central County\textsuperscript{16} (quickfacts.census.gov). Within Centre City approximately one half of residents identify as White (non-Hispanic), one third as Black, and the remaining amount as another race or ethnicity. The poverty rate has remained stable for approximately the past ten years at around 25%.

Arrests of adults in Central County have been steadily dropping over the last ten years, which is in line with crime trends seen in cities across the country. In 2006 the County reported over 10,000 adult arrests, compared to fewer than 8,000 in 2015. These numbers can be compared to similar counties in the northeast, each with one larger city surrounded by smaller towns and suburbs. A county with a higher population than Central had just over 11,000 adult arrests in 2015, while another county with a smaller population (which borders the study site) had only just over 4,000 adult arrests. The most salient comparison is rates per 100,000 population in the county though, and those show that Central County had a rate of over 2,660, with the larger county having a rate of just about 2,500, and the smaller county a rate of around 2,700. It would seem, upon this simple comparison, that arrest rates in Central County are not so different from those in similar counties.

\textsuperscript{15}Central County and Centre City are both pseudonyms meant to protect the identities of participants as well as local criminal justice agencies that provided support for this research.
\textsuperscript{16}All statistics for Centre City and Central County were taken from either the federal census data or data provided by the state in which both are located.
There are multiple criminal justice agencies within Central County and Centre City that are the focus of interview questions about defendant perceptions: public defenders, conflict defenders, prosecutors, and city and county judges. Interviewed defendants mostly had past interactions with local police (particularly the Centre City Police Department), the Centre City Court and/or the Central County Court, the Central County District Attorney’s Office, and the Central County Public Defender’s Office.

Prior research on procedural and distributive justice has all but ignored local context at practically every stage of research design, yet the importance of local context in understanding how local systems function, and their unique and specific effects on participants’ perceptions should not be underestimated (Yin, 2014). Without a foundational understanding of local issues and criminal justice agencies, one would be poorly equipped to design an interview instrument that captures the nuances of defendant experiences. Knowledge of jurisdiction specific practices and norms can inform the researcher of issue and questions to address that would otherwise have been left out of the interview. While all people and agencies involved in criminal justice within the county can potentially have some effect on defendant perceptions of criminal justice, there are just a few that I focus on in this section that appeared to have the largest impact on participant perceptions of the criminal justice system and their recent cases.

Criminal justice in the United States is, for the most part, administered at the local level, thus an examination of local context to inform defendant interviews and provide support for specific interview questions is required so that a more nuanced understanding of decision-making processes and outcomes can be gained. Criminal justice agencies are often defined by the

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17 Scholars have given minimal attention to contextual issues, and usually only to insure their sample was part of the target population. They give little to no attention to how local court and criminal justice agency norms, for example, may affect the experiences and thus responses of research participants.
decision-making powers they hold over defendants, which makes them uniquely situated to impact defendant perceptions of process and outcomes. Regardless of the similarity of laws across jurisdictions, decisions at every stage of a case are made by people, each of whom may have very different ideas about how the criminal justice system should function. The District Attorney in one county may have a different policy regarding probation violations, for example, compared to his/her counterpart in the adjoining county. And even within localities, there are often multiple judges with different personalities and beliefs about appropriate case outcomes. Centre City Court, for example, has three judges, each with his or her own assigned Assistant Public Defenders and District Attorneys. Thus, the outcome of a defendant’s case often depends heavily not only on the policies of the county District Attorney and Public Defender, but also on the specific people working on each case.

With all this in mind, it is essential that the basic history and background of multiple Central County and Centre City agencies involved in the criminal justice system are examined to provide foundational knowledge for data collection and analysis. The information below is not meant to provide an exhaustive account of each agency, but is simply meant to provide a foundational knowledge to assist in the interpretation of defendant interviews.

**Criminal Courts in Central County**

All participants in this study were recently sentenced in either Centre City or Central County courts, both of which have multiple lawyer judges and are located in Centre City. Some participants had past experiences in town and village courts, but given that they were not the

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18 There are many social service and private non-profits in Centre City and Central County, as well as in adjoining counties that may have contact with defendants. It would take far too long to list, let alone discuss each of these groups, so I have chosen to address only those official criminal justice agencies that were discussed by participants in this study.
focus of the interviews I include here a brief description only of Centre City and Central County Courts\textsuperscript{19}.

Central County court has “exclusive authority” over felony trials in the county and can preside over any other matters involving either felony or misdemeanor charges. A little over half of participants had their most recent case in the local county court, and a total of 22 (51\%) had at least one prior felony. The court currently has three presiding judges, two of whom have been serving multiple terms and one of whom was a Centre City Court judge until recently when he was elected to serve in county court.

The City Court has three presiding Judges and is divided into three Parts, each of which is assigned to its own courtroom. The Judges rotate through the different courts on a monthly schedule, as does the ADA assigned to them.

Arrest data, court actor interviews, and court observations all suggest that both Central County and Centre City courts are relatively busy, a perception which I found to be shared by most defendants I interviewed. There was no publicly available source of case counts for either court, but Centre City court in particular seemed to focus on processing cases as quickly as possible. One judge told me that their dockets are often so full, they have to keep things moving quickly or they will not get through every case before the end of the day.

\textbf{Indigent Defense and Prosecution in Central County}

In the state in which I conducted this study, indigent defense services are provided by counties both structurally and financially. The state provides very little in the way of funding for defense services, but can impose mandates on counties in terms of how those services are

\textsuperscript{19} Most participants with felony charges were arraigned in Centre City Court, but even for those arraigned in one of the town or village courts in Central County, their case was waived up to county court immediately following arraignment. Centre City Court only handles misdemeanors for Centre City, and any felonies arraigned there were also waived up to County Court.
provided. Each county can choose from a combination of several different types of providers to fulfill their responsibility to provide defense services to indigent defendants: public defender office, assigned counsel program, legal aid society contract, and conflict defender office. Public defender and conflict defender offices are county agencies, just like the district attorney’s office, and as such all the attorneys are county employees. These offices may have support staff such as investigators and social workers, as well as administrative employees. Legal aid offices are contracted by the county government to provide criminal defense services, and so their employees are not county employees. They may hire support staff, but there is no legal requirement that they do so. Assigned counsel programs are not centralized offices and instead rely on private criminal defense attorneys to willing accept indigent clients by court assignment. These attorneys are paid an hourly or flat fee, set by the county, rather than receiving a salary as do most attorneys who work in centralized provider offices.

Each county usually designates one provider as the primary (conflict defender offices by definition are secondary providers), sending all eligible or potentially eligible defendants to that provider first. Any cases that conflict with other clients of the primary provider are sent to the secondary provider. Central County has both a Public Defender Office and a Conflict Defender Office, as well as an assigned counsel attorney list for any conflicts that cannot be resolved by the two offices.

The Central County Public Defender’s Office is the first stop for any defendant that may be eligible for counsel. As of 2015, the Office of the Public Defender had almost 30 attorneys, with one of those attorneys being added in recent years due to grant money from a state agency.

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20 Eligibility of each defendant for county provided counsel must be determined prior to case assignment. Who verifies eligibility varies by jurisdiction, but is usually done by the judge presiding over the case, or the primary provider office or assigned counsel administrator.
The support staff include criminal investigators, legal secretaries, and paralegals. Meetings with the current Chief Defender provided information about the ongoing restructuring of the office in terms of how attorneys are assigned cases and/or courts to cover. The Chief had also hired a well-known private criminal defense attorney (who had served as the interim Chief) as the new training chief for the agency. I met with the Chief Defender and the Conflict Defender in the later months of 2016, and shortly after began conducting interviews with the attorneys in their respective offices\textsuperscript{21}.

As of 2015 the Conflict Defender Office had a much smaller staff of less than ten attorneys and only a few support staff. There is no investigator on staff for this office, which means any investigations are being conducted either by attorneys or contracted investigators. The Office of the District Attorney is divided into bureaus, each specializing in a different type of crime (e.g. financial, street, and vehicular) or special tasks such as assisting crime victims or improving community relations by proactively addressing public safety concerns. The Office employs almost forty attorneys, and more than twenty support staff, including investigators and legal secretaries.

\textbf{Data Collection Methods}

\textit{Preliminary Exploration of Local Context}

The current study is based on interviews with sentenced defendants, but prior to commencing those interviews some foundational knowledge of local court and criminal justice

\footnote{\textsuperscript{21} It was made clear that no information on specific defendants or attorneys referenced would be provided to any agencies working with me. I did offer to ask questions and/or attempt analyses to answer questions that were of interest to the Public Defender’s Office.}
agency practices and norms was necessary to obtain. This contextual information was gathered via interviews with defense attorneys and judges, as well as through criminal court observations. Fourteen defense attorneys and one judge were interviewed, and thirty hours of court observations were conducted. This provided a general understanding of case processing norms from the point of view of court actors, as well as defendants sitting in court to wait for their case to be called. I took care to spend approximately half of the court observation hours seated in the galley, and half seated in the jury box, to approximate what defendants experience during case processing. I benefitted from the different views and experiences of the court, as I could see and hear what defendants often do while they wait and once their case is called.

Information gathered through interviews with practitioners, as well as court observations, was useful both in the design of the interview instrument and in analysis of completed interviews. As I describe below, I was able to utilize this information to add several questions to the instrument that addressed issues defendants often raise to their defense attorneys. Certain themes and patterns in the defendant interviews were also more apparent upon consideration of the contextual data.

**Defense Attorney and Judge Interviews**

The instruments for these interviews were purposefully designed to be open and informal in nature, allowing attorneys and judges to discuss the issues they most find important in relation to the main topics broached (See Appendix A for the complete instruments). These interviews were not audio recorded. Instead I took brief notes throughout and wrote up more detailed notes immediately after each interview. I completed interviews with ten attorneys in the Public Defender’s Office, including the newly appointed Chief, and did a group interview with three
attorneys and the Conflict Defender in the Conflict Defender’s Office. Unfortunately, only one judge, from Centre City Court, agreed to be interviewed, but this judge had been on the bench for some time.22

Interviews focused on how attorneys and judges do their jobs, specifically in relation to decision-making and process. Attorneys were asked about relationships with clients, what they thought was most important to clients, and their general thoughts on the other criminal justice actors and agencies they work with. The judge was asked about the process of decision-making at important case points (e.g. arraignment and sentencing) and what they see as the role of the defense and prosecution in their court, as well as what they felt most defendants wanted to come out of their cases. Both types of participants were asked what they think defendants believe is the most important issue during case processing and if they think defendants are concerned with fair processes in court.

Each attorney and judge was given a study information sheet (See Appendix C) which provides a brief overview of the purpose of this research, contact information for myself and a faculty advisor, and lists their rights as a research participant. The judge I interviewed contacted me after being sent a letter regarding the study, and the Conflict Defender invited some of her attorneys in to meet with me while I was in the office, but I was responsible for personally emailing attorneys in the Public Defender’s Office to obtain interviews. The Chief had sent around an email with the study information sheet giving the attorneys permission to speak with me, but of the sixteen attorneys I emailed, only ten replied. Verbal consent was obtained before each attorney or judge interview and no one refused after initially agreeing to meet with me.

22 Letters were sent to all City Court judges explaining my intention to observe their courts, and providing a study information sheet.
The results of these interviews and court observations provided some additions to the interview instrument prior to beginning data collection. First, I added questions to address the universal belief among public defenders that all defendants believe private attorneys are better (see Section C.5). Second, both the judge and most public defenders I spoke with felt it was very important for defendants to not be in jail pretrial. I added questions about the fairness of the bail and release decision at arraignment (see Section C.3), as well as probing about pretrial detention experiences throughout the interview. Third, I observed some court norms during my observations, such as defense attorneys meeting with defendants in the hallways of the court building, and acting very friendly with prosecutors in full view of defendants waiting for their cases to be called. While I did not add any specific question regarding these observations so as not to bias participant responses about what they remember from their case, these observations did make me more sensitive to discussion of privacy issues or of perceptions that the public defenders actually work with the prosecutor rather than for the defendant.

**Defendant Interviews**

Most research methods books or articles repeat the same thing – the random sample is the golden standard regardless of the type of research question. Many researchers dispute this and instead argue that different types of methods and sampling techniques are necessary to fully uncover the answers to our research questions (Lofland, Snow, Anderson, & Lofland, 2006; Weiss, 1994; Yin, 2014). And in field research one may not know the extent of the population, thus making random sampling practically impossible (Lind & Tyler, 1988; Yin, 2014). Experimental methods have also been favored, particularly in psychology, due to the ability to control for confounding variables (Lind & Tyler, 1988).
The current study relied on convenience sampling to obtain participants, which involves creating a sample in whatever way is most convenient, often by obtaining participants from who is available and willing to participate. There are no controls for selection bias or other potential sampling issues – the sample is one of convenience. This is often done when a participant is difficult to locate in a general population and/or the researcher is looking for participants who meet specific parameters (e.g. sentenced defendants).

Some examples from the literature discussed in Chapter 2 include procedural justice researchers stopping defendants leaving traffic court or calling defendants with cases that closed in a certain month in one court (Lind & Tyler, 1988; Tyler, 1990; 2003; 2009; Weiss, 1994). This is a common method used not only in justice research, but in qualitative research more generally. And indeed, these sampling strategies have resulted in some foundational and well-done research that furthers our knowledge in many areas, likely because field research still holds some advantages over experiments and randomized trials (Weiss, 1994). These researchers were able to observe and understand how people behave and phenomena change in real world setting and situations, not attempting to control for confounding variables, but instead utilizing them in the interpretation of data and outcomes (Yin, 2014).

I contacted the Central County Sheriff’s Department and was given permission by the department to interview inmates housed in the county jail. A senior administrative official from the jail worked with me to recruit inmates, as due to safety and security issues I could not conduct recruitment on my own. A flyer with a brief summary of the study was posted throughout the jail and inmates were given two weeks to sign up as interested (See Appendix E).23 To be eligible, inmates must have been sentenced on county time from either Central

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23 There was no obligation for inmates to participate upon signing up. This was simply a way to get me a list of interested inmates that I could ask about participating – verbal consent was still required from each participant.
County or Centre City Court, and must have been 18 years of age or older at the time of
interview. Participation was limited to adults to avoid the need to obtain legal guardian consent
for minors, which would likely prove impractical.24 This also allows me to focus in on the
perceptions participants have of their recent case in the criminal justice system and avoid any
confusion among defendants with the juvenile justice system. Seventy-five inmates signed up
and I began interviewing them in the order of their release, which was done out of necessity
since some inmates were being released within a matter of days from when I began interviews.25

I visited the Central County Jail on eight different days over two weeks. Interviews were
conducted during consultation hours,26 which were 8:00am to 11:00am, 12:15pm to 2:30pm,
3:15pm to 5:00pm, and 6:00pm to 9:00pm seven days a week. Visits to conduct interviews were
planned around other commitments and to not coincide with regular visitation hours, which
varied by day and were based on inmate last name. Within the main visitation room, four private
consultation rooms were located, separated from the main room by a heavy door and a small
window. There were cameras in the consultation rooms, but they did not record audio, thus the
rooms qualified as a private location to conduct interviews and assure participant confidentiality.
I was allowed to bring in a handheld audio recording device and a notebook to take notes,
although all participants did allow me to record the interview.

After getting set up in a consultation room, I would ask the correctional officer on staff to
call an inmate from my list of interested inmates. The time for inmates to travel through the jail

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24 Juveniles were excluded from participation in this study to allow for a focus on the adult criminal courts in the
county and the court actors within that system. As with many states, some juveniles under the age of 18 are
processed in criminal court. Even so, no one under the age of 18 was interviewed on the assumption that they may
have been treated differently (either formally or informally) due to their youth.
25 The issue of how proximity of release date may impact defendant perceptions of their sentence and case
processing is discussed further in Chapters 4 and 8.
26 Consultation hours are for attorneys, probation, and other official visits. The jail administrator I worked with was
kind enough to put me in the system to allow for visits during consultation hours, not just visiting hours which are
for family and friends visiting inmates.
and security meant that on average ten minutes elapsed from the time staff called for the inmate to be sent down and the inmate arrived at the consultation room. Upon meeting the inmate, I would give him or her a copy of the study information sheet and obtain verbal consent as well as permission to record the interview. I called for 45 inmates to be brought down for consultation, and of those 43 agreed to participate; of the two refusals, one was a Black male and the other was a Hispanic female. No participants declined to have the interview audio recorded, likely because, as several told me, “I’ll tell anyone the same” (Respondent D015, Black male, 31).

The main source of data for my dissertation came from these semi-structured interviews with jail sentenced inmates who have recently been through the criminal courts in Centre City and/or Central County. Specifically, I engaged in what Lofland and colleagues call intensive interviewing (2006). This qualitative methodology involves “…both ordinary conversation and listening as it occurs naturally during the course of social interaction and semi-structured interviewing involving the use of an interview guide consisting of a list of open-ended questions that direct conversation without forcing the interviewee… to select pre-established responses” (Lofland, et al., 2006, pg. 17). Most of my interaction with defendants was defined by the interview guide I designed (See Appendix A), but as with most interviews, there are topics brought up or discussions that happen which fall outside the purview of the interview guide, and which are also enlightening on the issues under study.

As previously discussed, prior procedural and distributive justice research has almost exclusively relied on close-ended surveys, the advantages of which lie in the ability to compare sub-groups within the sample (i.e. sex, age, race, etc.) on item responses and to create statistical comparisons based on how respondent answers (Lofland et al, 2006; Lind & Tyler, 1988; Holtfreter, 2016; Weiss, 1994). But these types of studies “pay a price for their standardized
precision” because the data they gather is fragmentary and does not include a full report of each respondents’ experiences with the phenomenon of interest (Weiss, 1994, pg. 2). Thus, many scholars argue for the inclusion of other methods, including ethnography and open-ended interviews, particularly when depth of understanding and/or exploration of a phenomenon or program is needed (Lofland et al., 2006; Weiss, 1994; Yin, 2014). Rather than requiring all respondents to answer the same set of questions, one can design interview protocols that start with a set of general questions, while allowing for individualized follow-ups based on each respondents’ unique situation and answers (Weiss, 1994). This method was ideal for the current study because it allowed me to address questions surrounding participant definitions of researcher-defined concepts and to explore the relationship between procedural and distributive justice within those participant definitions. My choice of interviews for primary data collection was made with the intent to contribute to the justice literature highlighted earlier, and to hopefully afford new insight into how defendants define and relate the scholar-defined concepts of procedural and distributive justice.

It is important that research be done to discover how important the issues of procedural and distributive justice are to defendants when they are given the opportunity to not only define the components for themselves, but to identify other reasons for their satisfaction, or lack thereof, with their case outcome and proceedings (De Mesmaecker, 2014). This is precisely the goal of intensive interview methods – to find out what actually exists in relation to a specific topic, without imposing response restrictions on interviewees (Lofland, et al., 2006). Thus, while I included some probes designed to elicit responses that may be comparable to measures used in prior research, the majority of the instrument employed open-ended questions meant to allow participants to discuss any issues they deem relevant to the concepts of fairness and justice.
Defendant Interview Instrument

A complete copy of the final interview instrument is included in Appendix A. The goal was to capture the issues, themes, and contexts that seemed most important to participants, yet also address the above stated research questions, all in relation to each participant’s most recent case in Centre City or Centre County courts. I decided to focus on participants’ most recent experience based on the assumption that they would better remember events and concerns they had at that time (Weiss, 1994). That said, Weiss also cautions against assuming that one is receiving the whole or precise truth from respondents when using self-report methods (1994). Respondents who wish to conceal a particular event or behavior from interviewers can undoubtedly do so, without changing the major tone or point of their narrative. Prior research on the validity and reliability of responses to sensitive topic surveys and interviews suggests that the truthfulness of responses partially depends on the perceived social desirability and the recency of the behavior or event (Ball, 1967; Harrison, 1995). Participants are also less likely to have precise memories of distant events, thus asking about recent experiences may improve the validity and reliability of interview responses (Weiss, 1994).

The method and structure of the interview and questions also plays some part in the reliability and validity of participant response (Lofland et al., 2006; Weiss, 1994). Asking about concrete events, such as a recent court case, can result in more reliable information for several reasons (Weiss, 1994). First, it is more difficult for participants to maintain a cohesive narrative if they are attempting to lie about the specifics of an event. Second, participants are more likely to have reliable memories of concrete events, as well as opinions they associate with those events. Thus, the interview instrument for the current study was designed so that participants
could walk the interviewer through what happened at case events such as arrest, arraignment, disposition, and sentencing.

While the focus of the interviews was on recent experiences, all participants either had prior experiences in the criminal justice system or had heard about what to expect from family or friends. Thus, included in the instrument were general questions about attitudes towards the criminal justice system and actors. Invariably, participants tied those general opinions and prior experiences into their most recent experience, holding it up as an example of how things were the same or different this time around. Yet, none said their overall opinions about the system had been changed by this one experience, suggesting that the focus of the interviews on one recent experience did not net significantly different results than if the focus had been on participants’ entire criminal histories.

The flow of questions was designed to allow participants to discuss events in a way that approximates chronological order as much as possible, with general questions as main bullet points and potential follow ups as sub-points. It was also designed to make it easy to jump around based on the order of topics brought up by participants (a feature which proved exceedingly helpful as very few participants followed the line of questions in the instrument). For example, some participants jumped straight to talking about their defense attorney, while others wanted to talk about the sentence first. Yet the only real change to the instrument was the addition of a single question asked immediately following Section A.1: What is your general impression of the criminal justice system? This proved to be an effective way to get participants to start talking and allowed them to bring up the things most important to them when thinking about criminal justice. In any qualitative study, there can be themes, patterns, and ideas that emerge during interviews or data analysis, but that were not foreseen by the researcher (Weiss,
Although the instrument was designed specifically with my research questions and each participant’s most recent case in mind, I remained open to participants bringing up unexpected issues during interviews and followed up with further questions as necessary.

I would begin each interview with the intent to work through the interview instrument in the order it was designed, but about half of participants jumped very quickly to other topics, forcing me to reorder my line of questioning to allow the interview to flow naturally. Fortunately, this was made fairly easy by the sectioning of the instrument into topics and issues, an intentional design decision.

The intro questions meant to discern the respondents’ current living situation and put them at ease seemed to work as expected and took up less than two minutes in most interviews. Section B.2 on the group violence intervention currently being implemented by Centre City was dropped after twenty participants professed having no idea about any efforts by local law enforcement to address street gangs or violence. They only knew that police tend to spend more time in certain neighborhoods and will stop people who are outside in those neighborhoods (i.e. high crime areas where drug sales are common).

Sections B.1 and B.3 were often asked consecutively, but sometimes I would first ask about the participant’s arrest experience in the most recent case (Section C.2) if he or she had already started to talk about the recent case. From there I would come back to discuss general impressions of the local courts before moving on to discuss arraignment. This series of questions was meant to elicit a brief recounting of the criminal history of each defendant and their general

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27 The Centre City group violence intervention (GVI) is based on the Operation Ceasefire strategy implemented in Boston in the 1990s and designed by Dr. David Kennedy and colleagues to reduce street group-involved homicide and gun violence (Braga & Weisburd, 2012). Centre City adopted a GVI strategy recently in response to an increase in shootings and gang violence during 2014 in neighboring cities (personal communication, Alissa Pollitz Worden, August 2015).
opinions about courts and court actors, since prior research has indicated that prior experiences with legal actors have long term effects on how future experiences are perceived (Lind & Tyler, 1988). And while the questions did elicit responses about prior experiences, I found that most participants would eventually come back to discuss their most recent case, thus suggesting that organization by parts of the criminal justice system rather than temporally was preferred.

The purpose of the questions in Section B was to provide a general sense of how participants feel about the criminal justice agencies and system in Central County. Participants were encouraged to discuss experiences in other jurisdictions, and how those contributed to their perceptions of criminal justice in general. But because participants often moved from talking about general impressions of law enforcement to discussing their recent arrest, after only a few interviews I began working through Section C.1 before anything in Section B. Section C.1 asks about general perceptions of the recent case, and these questions were most often asked after discussing participant’s arrest, but before Section C.3 which asks about experiences at arraignment. From there, most interviews generally progressed in the originally planned order.

Section C is the heart of the instrument, and addresses the main topics of procedural and distributive justice, as well as defendant satisfaction with their attorney and case outcomes. As discussed in Chapter 2, procedural justice has been defined to involved four main components: respectful treatment of the defendant, neutral decision-makers, procedural participation (or agency) of the defendant, and trustworthy decision-makers. The interview instrument includes multiple questions designed to elicit responses from participants that focus on these four components. There were many participants who answered these questions in response to the more general questions, precluding the need to ask some specific prompts in Section C.4. I made
a point to always ask about the fairness of the judge, along with an explanation, due to the widespread use of the term “fair” in prior justice research.

At this point in the interview, I transition to discussing the participant’s experiences with their defense attorneys. Some of the questions on the defendant experience with their defense attorney are also about procedures, thus this section allows for a smooth transition from discussing matters of procedure to issues of outcome expectations. Most participants brought up their defense attorney throughout the interview, which makes sense given that this is the person they likely had the most interaction with during the case. As with prior sections, many of the questions in Section C.5 were answered in response to general questions posed earlier in the interview. I did always ask about the relationship with the attorney, as well as specific questions about communication and advocating for the participant. The final four questions in the section were also always asked, as I felt they provided important and clear points of comparison across interviews.

Various components of distributive justice (defined as the fairness of case outcomes) are addressed in the second to last section of the interview instrument (Section C.6), with a focus on two components: expectancy (case outcome compared to what was expected) and comparison (case outcome compared to perceptions of what others received). Again, the instrument includes multiple questions on each component to allow for nuanced measurement of distributive justice. The goal was to provide some measures that are comparable to prior research, while simultaneously employing open-ended questions to allow participants to freely share their opinions and thoughts about the issues of interest without imposing any potentially artificial boundaries. While issues of distributive justice came up frequently throughout most interviews, all general questions in this section were asked.
The final section (C.6) is comprised of only three questions about outcome satisfaction, but provided some very interesting responses from participants about their satisfaction, or lack thereof, with case outcomes and proceedings. Most participants did not have anything to add in response to the last question, saying that they felt we had covered everything during the interview.

**Human Subjects Protection**

Certain steps were taken throughout data collection and data analysis to provide for the confidentiality and protection of all research subjects. While defendant demographic information such as race, ethnicity, and sex were collected for comparison purposes, no names or birthdates were associated with any interviews. Instead, each set of interview notes was given a unique identifier (e.g. D001) and any records of identifying information were destroyed. The IRB approved using only verbal consent since any signed consent forms would provide the only record able to link participants to the study. All data is stored on my personal laptop and an external hard drive, both of which are password protected. Audio files were transcribed as quickly as possible following each interview and the audio recordings deleted immediately following the completion of each transcription.

**Sample Characteristics**

The final sample consisted of 43 adults who were currently serving jail sentences of 18 months or less from either Central County or Centre City Court. Although the original goal was

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28 There was originally a Section D with demographic questions, but the list of inmates given to me by the jail included all the information required. This sheet was shredded and disposed of in a secure location as soon as interviews were completed.
to interview 50 defendants, after completing 43 interviews I concluded that I had reached saturation, which is defined as no new themes or patterns emerging for a set number of interviews. For this study, I defined that as no new themes being coded for the most recent batch of ten interviews. The average interview length was 45 minutes, which was less than originally expected given the length of the interview instrument. The shortest interview was 32 minutes and the longest was 78 minutes, with the difference due to some participants being more discursive than others. I found that most inmates were quite keen to discuss their experiences in court and much less probing than anticipated was needed on my part to get participants to address the issues of interest. In most interviews, I did not have to ask many of the follow-up questions that ask about specific components of procedural or distributive justice because participants had already discussed those issues when asked more open-ended questions about their recent case or the criminal justice system. Most of the probes I used were short, and consisted of asking the participant to further explain an issue or to tell me the specifics of an event, which has been identified as an effective method for gaining a better understanding of the participant’s response to each question (Lofland et al., 2006). This cut down significantly on the amount of talking I did during any interview, and means that the majority of time in each interview was devoted to participant responses.

Table 1 provides a participant breakdown by demographic characteristics including sex, race, ethnicity, and average age; and by case characteristics including charge level, original and final charge type, defense attorney type, and original sentence. Only four participants were female, which is not surprising since more men are incarcerated than women. There were also only three participants who identified as Hispanic, which given the demographics of the general

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29 All participants were jailed at the time of the interview on a jail sentence imposed by either county or city court, but some were originally given probation sentences.
population is also not unexpected. Black participants comprised a little over half the sample, with White participants making up 35% of the sample. The average age of participants sentenced in county court was 31, and was slightly higher at 36 for city court sentenced participants.

Table 1: Sample Characteristics (N = 43)

<table>
<thead>
<tr>
<th>Demographics</th>
<th>Case Characteristics</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Sex</strong></td>
<td><strong>Defense Attorney Type</strong></td>
</tr>
<tr>
<td>Female</td>
<td>Public Defender</td>
</tr>
<tr>
<td>Male</td>
<td>Private Attorney</td>
</tr>
<tr>
<td><strong>Race/Ethnicity</strong></td>
<td><strong>Original Sentence</strong></td>
</tr>
<tr>
<td>Black</td>
<td>Probation*</td>
</tr>
<tr>
<td>White</td>
<td>Jail</td>
</tr>
<tr>
<td>Hispanic</td>
<td>Split (jail + probation)</td>
</tr>
<tr>
<td><strong>Age (mean)</strong></td>
<td><strong>Final Charge Level</strong>**</td>
</tr>
<tr>
<td>County court</td>
<td>Felony</td>
</tr>
<tr>
<td>City court</td>
<td>Misdemeanor</td>
</tr>
</tbody>
</table>

*Includes one person who had drug court and probation  **Final charge level also denotes which court sentenced a defendant to jail. Felonies can only be heard in county court, while all participants with misdemeanors in this sample were heard in Centre City Court.

Most defendants had a public defender, which included any attorney provided by the court as opposed to a private hired attorney.30 While most had attorneys from the public defender, three said their attorney was from the conflict defender, and one had an assigned counsel attorney. Only ten participants had hired a private attorney, although more claimed to have considered doing so. There were various reasons given for using a public defender, the most common being a lack of funds to hire a private attorney.

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30 Attorney type rarely changed during a case, but in the few instances it did it was immediately after arraignment. For example, most defendants with private attorneys had a public defender at arraignment, but immediately hired a private attorney following that appearance.
At the time of the interview, all participants were currently serving jail sentences, but 35% of those defendants had originally been sentenced to probation only and were resentenced to jail time after violating probation. Additionally, two people given split sentences (jail followed by probation) had already served their original jail sentence, violated on probation, and were back to complete a secondary jail term. Upon release, none of the participants would be on probation again, having served the entirety of their new sentence in jail.

All participants had pled in their current case, most never coming close to taking the case to trial. Slightly over half pled to a felony charge, with 42% having pled to a misdemeanor charge. Of those, only three had originally been charged with a felony and pled down to a misdemeanor. In most cases the original charge level remained the same from arrest through plea.

**Data Analysis**

The analysis process was inductive and based on methodology commonly used for understanding and analyzing in-depth interview data (Lofland et al., 2006; Weiss, 1994). While some scholars have suggested that data analysis must begin with the first interview, the reality of data collection often precludes any detailed analysis until data collection is complete (Weiss, 1994). Researchers find themselves caught up in the demands of data collection: recruiting participants, conducting and transcribing interviews, and assessing if the information of interest is being obtained. This too was my experience on this project, although I describe below certain steps I took to keep abreast of how interviews were going.

I was able to complete all interviews in a two-week period, which left little time for transcribing. Knowing this ahead of time, I wrote notes after each interview on the main themes.
and issues I had noticed during the interview. And after completing approximately ten interviews
I would write a memo about the patterns emerging across the interviews. This insured that the
topics of interest were being addressed, and to improve the quality and depth of information
 gained in later interviews through the addition or adjustment of questions or probes.31  Based on
this practice, I felt I had reached saturation after 40 interviews, and after finishing the final
interview shift I had scheduled at the jail (at which time I had completed 43 interviews), I
proceeded to begin transcribing and coding interviews.32  I worked in batches of ten interviews,
writing memos describing the themes and patterns that emerged as I coded the data. This initial
round of coding confirmed what I had suspected; the final thirteen interviews did not present any
new themes, which is the definition of saturation. From there I proceeded to analyze the data in
full.

**Inductive Coding**

Most qualitative researchers will profess to have their own unique method or quirks when
analyzing data, and indeed there is no one method for analyzing qualitative interviews (Weiss,
1994). That said, analysis that is well done leads to a coherent story, or a well-developed
argument that fully utilizes the data collected (Weiss, 1994). And that was my goal with these
interviews – to conduct analyses in such a way to tell a coherent, and interesting, story about
defendant perceptions of procedural and distributive justice, their relationship with their attorney,
and their views on the criminal justice system in general.

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31 See the discussion above of the interview instrument on what was changed.
32 Before suspending interviews I spoke with the administrator about coming back to complete the final seven
interviews if necessary and was given permission to return whenever was convenient for me.
The inductive process involves “an open-ended and open-minded desire to understand the social situation or setting on its own terms” (Lofland et al., 2006, pg. 199). For the current study, this involved meticulously reading through each transcription to identify themes and patterns related to the research questions, as well as any other arising issues more generally related to the phenomena under study, a process called open-coding (Weiss, 1994). Multiple periods of coding, sorting, and organizing information based on the identified themes and patterns are the norm for this type of analysis. The goal of this approach is to start with observations of the data, and work up to a general theory (or several) or story as opposed to imposing a theory or construct on the data (Lofland et al., 2006).

The first round of coding discussed above allowed me to not only gauge saturation, but to make an initial pass at deconstructing interviews into general themes. Interview excerpts were coded into general themes using the comments feature in Microsoft Word. The excerpts and comments were then copied into new documents, organized by theme. After the first round of coding, themes included: procedural justice (respect, neutrality, agency, and trust), distributive justice (expectancy and comparison), perceived system legitimacy, perceived system corruption (money, court actors working together), defense attorneys (relationship with, advocacy, decision-making, communication, legal knowledge, and vertical representation), private versus public lawyers, and outcome satisfaction.

After organizing the excerpts from this initial round of coding, a second round of coding commenced that was more focused on extracting detailed themes and patterns from within larger themes. Within each document of themed excerpts, I went through and further interpreted those excerpts to identify subthemes, such as some components of procedural justice: respect, neutrality, and agency. I also created new themes (e.g. process confusion) from closer reading of
excerpts and interviews, or from extracting pieces of excerpts that seemed to fit better under a new theme. Once I felt confident that there were no further themes to be coded from the data, I moved into what has been called local integration (Weiss, 1994). I summarized the excerpts from each file to develop a main story that participants had shared on that particular theme, while also summarizing any variants from that story. At this point, if too many variants became apparent and the main story seemed to be only a variant itself, I would step back and recode the theme into further subthemes. This only happened once, in which the subtheme of money and the criminal justice system was further dissected into two subthemes: defendant class and self-sustaining system. The final part of this phase of analysis involved re-reading each summary memo and adding thoughts or hypotheses about the meaning of material now grouped together, and about how some issues or themes might connect.

There were times in writing the various chapters on my findings that I moved back to the local integration stage of analysis, particularly as I worked to integrate all themes into a larger story. The goal is to be sure no data that may either support or refute my conclusions was ignored. This is also part of what Weiss calls inclusive integration – the process of coercing the separate themes and excerpts into a coherent story (1994). To assist with this task, I created several visual aids. Brief summaries of each theme’s main points on index cards and an Excel spreadsheet of defining quotes for each theme and subtheme. Using the index cards as an organizing tool, I explored the various ways the themes might be connected, always referring back to quotes to make sure I was still relying on the data to tell the story.

Inductive coding is also advantageous in that it allows themes and patterns not anticipated by the researcher to emerge during coding. Several themes, most related to process issues and larger concerns over the legitimacy of the criminal justice system, did show up in
many interviews, and thus are included in the discussion of findings. The key to inductive
analysis is to allow the data to speak for itself, with as little imposition of narratives from the
researcher as possible. That is what I have tried to do in the remaining chapters – present the
stories of those who were kind enough to be interviewed and share their, often frustrating,
experiences in the criminal justice system.
Chapter 4: The Importance of Perceived Outcome Fairness

As defined in prior chapters, distributive justice refers to the perceived fairness of outcomes. The two main components examined by the current study were expectancy, which is the fairness of the outcome compared to what was expected, and comparison, which is the fairness of the outcome compared to what others receive and/or what the defendant has received in prior experiences. Participants were also given the opportunity to define and discuss other issues related to fair outcomes throughout the interview, but only one further issue arose during coding. Defendants were concerned with the lack of help on the part of the criminal justice system as a whole for convicted persons, particularly those with addiction problems.

Almost every participant brought up either expectancy or comparison issues during the interview in response to general questions about the criminal justice system and their recent case. Concern over the lack of help for people in the system came up frequently as well, but less often than the researcher defined components of distributive justice, including in response to general questions about perceptions of the criminal justice system. It became clear early on during data analysis that the perceived fairness of outcomes, specifically sentencing, was very important to participants in this sample. The final section of this chapter adds to the evidence for that through a discussion of the relationship between distributive justice and outcome satisfaction from participant perspectives.

Comparison

I start by examining participant thoughts on the concept of comparison because of its relation to expectancy perceptions. Twenty-five participants discussed their expectations about
sentencing based on comparison, thus it makes sense to start by defining what comparisons participants were making. All either compared their outcome to the outcomes of others or to their own prior outcomes, using that information to make a case for the fairness, or lack of fairness, of their recent sentence.

Comparisons were based on multiple sources of information, some arguably more reliable than others. Participants described cases they had watched while in court, the sentences of their bunk and tier-mates in jail, and cases they had heard about second-hand from others in the system. And while it would be easy to make the case that the first category is far more reliable than information gained via gossip, what matters here is the perception of defendants about their outcome. The issues discussed here arose in response to questions about general thoughts on the criminal justice system as well as more specific probes about how each participant’s case and outcomes compared to those of other defendants.

In discussing the experiences of others, participants highlighted three main areas on which they compared their outcomes: similarity of sentence based on charge, similarity of sentence based on non-legal factors, and crimes too minor to be charged as felonies. The majority of participants focused on comparing their sentence to others based on the perceived charge severity, sometimes in quite colorful terms as they demonstrated their disbelief. Four participants felt that the courts gave jail time for almost anything, as illustrated by one defendant’s statement

_They give people jail for not picking some dog shit up, you know what I’m sayin’, dog shit right. For a couple months they do that or give you weekends. I seen people get weekends._

D04, Black male, 54
A common comparison was to crimes the defendant perceived as far worse than what they were charged with, with the most frequent being to sex crimes and murder. Participants often used examples of those charges resulting in less severe sentences as evidence that their own sentence was not fair.

So, it seems like it’s unfair, like certain people get away with stuff, and not go to jail, and other people go to jail for stupid shit. I mean, for example like, pedophiles. They touch little kids, get 4 or 5 months, go home and do it again. You know, like that makes no sense to me. Why are they letting them go home? And then you get somebody that hit someone, or you know their girlfriend, and they put ‘em in jail for a year. That makes, it don’t make no sense to me.

D14, White male, 33

So that goes back to the judge, um, in court system of why people are being sent to jail for smaller charges. Um, or certain charges are more years or less years than something that is, like say a sex offender has less time than someone who did something you know, or someone that did something more serious has less time. Like it just doesn’t make sense, you know, from my perspective.

D24, White male, 31

More often, participants compared their sentence to the sentences of other defendants to illustrate how their outcome could have been better or worse. These comments followed a similar pattern for most participants, in which they stated what their sentence was, and then told a story about another person who had it worse or better than them, then stating the fairness of their outcome currently. A few, like D06, used this comparison to rationalize their acceptance of a sentence that might otherwise seem unfair to them.
Still 2 days over this, I got 90 days, do 60 days, so they got me doing 62 days. It's just one big cluster, but you know I'm trying to get it worked out right now. I mean either way I'm okay, cause you know there's dudes up here that are never gonna see the streets again, so I don't complaining, but hey if I can get out 28 days earlier, 2 days, then I'm going to.

D06, Hispanic male, 31

But mine is just marijuana, so he gave me a fair deal versus like some people that are even that in the county that had the same drugs and like he gave them like five ten years [north], like further [north]. They just went in and they get sentenced, so I felt that the judge was fair.

D26, Black male, 29

Point being, I was scared I was gonna do a lot longer than I really was going to do. When I learned I only had 3 months to do, I was like, oh, this is good. On top of this I won't be on probation or nothing. A lot of people don't get away with that. They don't, so I was very lucky.

D29, White female, 30

A total of seven participants described their sentences as better than what others got, either based on direct observation or what they heard from other defendants. As seen in the quote from participant D29 above, five of these participants felt the reason for their favorable outcome was simply luck – perhaps the judge or prosecutor had been in a good mood that day. A few participants, like D26 above, did give credit to the judge, claiming that the judge was fair based on this more favorable outcome.

The more common sentiment among participants was that the outcome was not fair and was in fact worse compared to what others received. Twenty participants made such a comparison, most either focusing on people with charges similar to their own, or on people with worse charges, getting lighter sentences. Most (fifteen) did not directly address this issue with
the judge as one defendant below tried to, instead saying they addressed concerns only to their defense attorney(s) or not at all during case processing. Regardless, the frustration about this issue was made clear multiple times throughout each interview where the participant identified their outcome as unfair.

One time I was in court, guy had the same exact charges I had, but his criminal history, um, was worse than mine. They gave him 30 days, they wanted to give me two 90-day sentences. Consecutive. That’s like eight months. And when the DA said that, I asked what the fuck was up with the guy before me. The judge told me, you need to watch your tongue. I said no, no, no, no disrespect, but this guy is being an asshole. I was really pissed.

D07, Black male, 52

But when you have somebody come in, come around you and he talk about well this is my 8th, um DWI, or my 10th DWI, or, and I just got arrested and I only got like 3 months, 90 days and I'm like: For real? For real?

D20, Black male, 53

Some participants tried to explain why their outcome might have been worse compared to others, but regardless of their conclusions, all twenty still felt the sentence had been unwarranted. One woman who stated she did not know for sure why she was violated in drug court, listed off a litany of reasons that were often cited by other participants who felt their outcomes were unfair.

I have friends in drug court. I've made friends, you know. And I've seen them get 5, 6 chances, you know and I don't know if it is because of my age, or because of past history, or because of the affiliations that I have or because of lack of family members that are involved, or. I don't know what it is, but I know that I was given 2 chances and I worked my ass, excuse me, my ass
off. I worked my ass off. I was in phase 3, ready to graduate. I had a friend overdose and I admitted to smoking marijuana, and I didn't even give a dirty urine analysis for drugs and they violated me on drug court. Just on my verbal admittance.

D43, White female, 43

The other common reason given for a worse outcome was the lack of good representation, specifically not having a private attorney. Belief in the superiority of private attorneys over public defenders was practically universal among participants, leading to much of the blame for poor outcomes or faulty processes being laid on a defendant’s public defender. The three quotes below are representative of the sentiments of thirty-six participants who claimed that disparate outcomes can often be at least partially explained by whether or not one has a private attorney.

There's two people in my fucking bay who are on their third DWI. Um, I would say that my outcome was worse, but that because, just because of the inexperience. That and, because I didn't know what the fuck was going on and I just took whatever I could. Cause when they, because I didn't buy a lawyer, I would say my outcome was much worse than others.

D30, White male, 27

K: Yeah, what do you think would have happened if you had a private attorney?
R: I wouldn't have been sitting here, I woulda guess, petty a, like community service or probation. I know other people that have had good lawyers and did have the exact same charges as me. And it was like their second or third time getting those charges. And they were released with like time served for like 30 days or 60 days.

D29, White female, 30

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33 When reading quotes, if no speaker is noted, it is always the participant. When speakers are noted, ‘K’ denotes the interviewer and ‘R’ denotes the participant.
From like speaking to several different people that have public defenders versus like several different people that don’t have public defenders, like this one guy was telling like he had, he had a public defender and umm he, he got like, like prior felonies and he got caught with a handgun and basically he had to do like five years [north]. And then there’s, uh another guy that had like a paid lawyer. He had prior felonies also and he got caught with two handguns and basically had to do like two years [north] versus the guy that had the public defender that had to do five years [north], and they both had like prior records you know.

D26, Black male, 29

Other participants talked about the influence of personal connections in the criminal justice system on outcomes. The general belief is that if you know people working in the system, or have important connections in the community, you will get a more favorable outcome. The average person is, to use a favorite term from participants, often “slayed” by the system, being given a much harsher sentence than defendants with connections may receive.

And, it just seems like a lot of times the people you hear about getting those deals are the people that know people. People that actually work in the courts. Like, a Judge, good it’s five days in jail or you know, DA’s son gets, so they give the deals they want to the people who they can. It's very, I don't know what the singular nepotism...

D27, White male, 40

Finally, three participants identified race as one of the factors leading to disparate outcomes, specifically claiming that White defendants often received more favorable sentences compared to Black defendants.
I seen, before I went, the guy before that was arrest, he got arrested with a whole bunch of cocaine or whatever, and he got the same charge I got. A white guy...and he got the same felony, Five-year felony probation I got and walked out of there. I got caught with a, you know what a gram is, it’s like [shows size of gram of crack using fingers], only a gram.

D01, Black male, 30

Two defendants described their outcomes as normal or average for the charge and the jurisdiction, while also noting that in other places the outcome would be different for their charge. A total of five defendants were either visiting or had moved to Central County at the time of their arrest, all from larger cities in the Northeast. For these participants, the differences in the criminal justice systems between Central County, an urban-suburban county with a midsize city, and the larger metropolis they had come from were relevant when discussing both fair process and outcomes. All felt that their current charge would have warranted a more lenient sentence in their original city, including a male defendant who was unprepared for the way the local courts functioned in Central County.

As I’m listening to other people cases up here, I believe that’s normal up here. Like, they, they try to scare, to everybody copping out. That’s what I’ve seen, there’s no like, this jurisdiction up here and everything it, the justice system is way different than [large northeast city].

D16, Black male, 30

Another defendant felt that his sentence fell in the middle, with some people getting more time and some getting less. The somewhat philosophical take on the outcome was echoed by four other participants, each of whom rationalized their sentence by saying it could have been worse and providing examples of others who had indeed received a worse sentence.
The judge had to do what he had to do. Because some people get a year to 3 years for violation probation. So, he hit me kinda in the middle, you know, but for a 10-month sentence. And I did get a lot of good time, so that wasn't too bad, you know. I got 101 days good time, so I had to do 6 months on a 10-month sentence. That's not too bad.

D11, White male, 45

Three participants were more worried about getting their first felony as opposed to the sentence length or type, particularly if they had little to no criminal history. All were upset because they had seen similar charges dropped down to a misdemeanor, and because all their prior offenses had been misdemeanors.

Because I never, I never really had a felony on my record, this is my first felony, which I felt like it shouldn’t have been a felony because once again, we’ve seen similar cases to this that was dropped down to a misdemeanor and I don’t like it, you know what I’m sayin’, now I have to live with a felony on my record.

D25, Black male, 27

Clearly the step up to a felony charge felt very serious to these defendants, likely because of the collateral consequences that are attached to a felony conviction. Concern over employment was an issue raised by all three participants. One defendant charged with felony DWI decried the process to get his life back on track now that he had a felony conviction.

…I ended up pleading exactly what I was charged with. There was no going down, the felony is on my record. I can’t get rid of that, you know...So that just pretty much messes up, you’re,
having a felony I mean, you can’t do certain things. A lot of places will judge you for having a felony. There’s ways around it...there’s a certificate of relief, um, there’s ways of doing that, but that takes 3-5 years to process if you want to get a decent job and go back into the work force and be contributing to society. But it takes that long, and for that time, a lot of people might not want to do that, and they might go into a different career and just say my life’s over with, I’m just gonna go back into the same old same old, and then they wind up in here.

D24, White male, 31

Overall, participants were very concerned about how their outcomes related to those received by other defendants, in both sentence and charge level. Forty participants, including all those quoted above, expressed some amount of responsibility for their crimes, with not one saying they should have received no punishment.

…I'm not saying I wasn't wrong. I'm not saying I didn't deserve a felony, deserve punishment. I did, I do and I did...

D27, White male, 40

Despite participants often admitting their guilt, the quotes above illustrate that many were still very adamant that their outcomes must be like others with similar charges and criminal histories in order to be considered fair. This directly influenced defendant expectations about their sentence and other case outcomes.

For those participants who did not mention comparing their outcomes, they would often say that they didn’t know what other people got. This was most often due to them keeping to themselves and not talking to others in the jail. A few participants who had originally been
sentenced to probation also didn’t have any basis for comparison with other defendants simply due to the lack of opportunities to chat with others on probation. The jail provides a place where often inmate have little to do other than talk to each other, and as one participant explained, many people know each other which increases the rate of gossip and information sharing.

**Expectancy**

The concept of expectancy was also frequently brought up by participants, many of whom related it directly to outcome satisfaction. Twenty-seven participants claimed they went into their case with some expectations about the eventual charge and sentencing outcome, while six said they developed those expectations during the course of their case. Similar to how they thought about the issue of comparison, if defendants felt their outcome was worse than expected, they were more likely to express displeasure, and more likely to discuss their expectations in general.

As stated at the beginning of this chapter, twenty-five participants at least partially based their outcome expectations on comparisons, either with other defendants, their past experiences, or with other judges or jurisdictions. Participant D01, charged with a felony drug sale, had been warned about a particular judge[^34] in Central County Court and so expected the worst.

> I knew, I heard stories about like judges like you don’t want to get [Judge Streng]. Even though I got [Judge Streng] [laughs]. But then the story wasn’t true like I said, cause he, he ended up not doing, not hurting me, so, I heard stories about him, but I just didn’t want to go to jail really. I’m like nah, nah I wasn’t prepared to go to jail for two years so. That’s where I was at.

[^34]: All judge names are pseudonyms to protect the identity of the participants and the research site.
Three other defendants claimed they had expected a harsh outcome based on the jurisdiction, stating it was known that Central County and Centre City courts were especially harsh when handing out sentences. Most of these participants were local to the region, if not Central County itself.

[D01, Black male, 30]

[Explaining how things would have been if his case was in the adjoining county where participant lives] I feel like I would have gotten four months for my violation of probation, they gave me a lot more than I thought they was supposed to give me, so.

[D15, Black male, 31]

[Talking about Central County] I just know that they said...they don't play around. You know what I'm saying. So, that's how I knew that they were going to make an example out of me, cause [around here] they don't, they're really tough. And that's what I heard.

[D22, Black male, 30]

For these defendants, their expectations were for a harsher outcome, which for the participants above was an expectation that was met. But for three participants, like one defendant charged with a violent felony, their expectations changed once they saw what sentences other defendants with similar charges were getting in the same court.

[Yeah, a little bit and then after I talked to a few people that I know. They was actually, you got off pretty good for what the charge says that I have. You got off pretty good. So, that made me think a little. It could have been worse. I could have been doing three to five or whatever.

[D37, Black male, 20]
During coding, several other factors participants related to their expectation were identified: perceived seriousness of the charge, criminal history, prior personal experiences, and information from a court actor. The ten participants who did not identify one or more of these factors fell into two categories – either they had no idea what to expect because of a lack of criminal history or they simply expected the worst, but even with probing claimed they could not explain why.

Eight participants thought their sentence should have involved fewer jail days, or been downgraded to probation, based on the nature of their charge. Specifically, they felt their charge was not serious enough to warrant the sentence they received and that the judge or prosecutor should have offered them something different.

*I was supposed to get less time for that. One misdemeanor, nah. I shouldn’t a got 120 for one misdemeanor.*

D04, Black male, 54

*And I just don’t feel what they gave me was right, because it’s like, alright what I did, what they says was the crime, it was $500, it wasn’t even grand, like grand larceny. So it was like, you give me five years, a felony, and I gotta do six months jail time for this, like?*

D16, Black male, 30

One participant expressed disbelief that his crime of driving without a license (multiple times) had resulted in a jail sentence, and said that if he had known the penalty would be so harsh he would never have committed the offense. Another participant expressed concern over a
violation of probation charge that he said was incorrect because he had never officially been put on probation, but that led to an increased amount of jail time.

In seven interviews, participants explained that they had expected their sentence to be worse based on a lengthy criminal history, or that they expected the sentence to be more favorable based on the lack of a criminal history. Defendants with prior felonies in particular sometimes expected prison sentences, and were pleasantly surprised when they only received jail time.

*I was happy, I was shocked, because I was preparing myself, honestly, for at least, at the least, to do a year county time. Cause I thought that the D felony, being that I had the 2 priors, was sticking like glue. So I was, first I was saying I, I got to go [north] for 18 months, like a one and a half to three. Then I was saying, at the least hopefully I can like get a year county time, which is 8 months good time. And it all boiled down to 60 days, 40 days good time, like damn. I was like, God is good man.*

D10, Black male, 36

One major pattern that emerged throughout the interviews, and across themes, was that participants seemed more willing to discuss issues they perceived as negative as opposed to positive topics. This may explain why more participants expressed concern over their sentence being too severe given either their complete lack of a criminal history or a significant period without criminal justice system involvement.

*I feel that I don't deserve the jail time, you know what I'm saying. 30 days, I mean 90 days. Why did you even give me that? Like, you know, it's my first offense. I feel that I should have gotten a slap on the wrist, some probation and called it a day. But I got everything all at once... I'm 30*
years old, and my rap sheet is blank, like the whole paper is blank except for that one thing I have, so.

D22, Black male, 30

Um, I didn’t think I was gonna be here for a county year, I thought I was gonna get like, like weekends or something. First time ever [arrested] in fourteen years.

D18, White male, 39

One participant, charged with his first DWI and having been out of the system for over ten years, was concerned that the court gave no consideration to how jail time would impact his ability to get his life back together. Indeed, many other defendants expressed this same concern about the system not helping people avoid reoffending, an issue that is discussed in the next section.

My, um, perception was like, this is my first time ever getting a DWI and considering that I haven't been in trouble in so long. I thought they would take that into consideration. I thought he would like run my record and boy, you don't even have a record... So, I feel like that he would have seen that and seen past this and been like well, we're gonna give you a chance to get your life together.

D20, Black male, 53

Only a few participants gave reasons for the harsher sentences beyond simply saying that the system is not fair and it “slays” people. Those reasons included one complaint about a defense attorney not advocating enough and one allegation of the judge and prosecutor colluding to get the defendant into jail no matter the charge.
Three participants claimed they had known what to expect based on their past experiences either in the local criminal justice system or in other jurisdictions. Generally, these defendants seemed the most blasé about their outcomes, possibly because they expected the sentence they received.

*I kinda figured that I would, uh, you know, once I found out that my charges were misdemeanors then I kinda figured that I would get misdemeanor probation. I kinda know how the system works, so.*

D23, Black male, 40

The sentiment expressed by participant D23 sums up how all three participants felt about their outcomes, making them some of the few defendants for whom distributive justice did not seem to influence their outcome perceptions.

Six defendants developed expectations about their sentence based on what they were told to expect by a criminal justice actor. One person talked of promises made by their private defense attorney that were never fulfilled. Another defendant asked the arresting officer how much time he should expect, to which the officer told him not more than six months. That defendant ended up with a county year.35 The most unique case of expectations being shattered involved a last minute change in the sentence by a judge, which pleased the defendant.

*While I was being sentenced, I had my hand up, the little spiel with the, um, you know, with my comment and making a point to, I hereby say that I am who I am and said that I am guilty of this crime and, you know, and my rights and everything like that. He [the judge] actually, right after

35 A county year is the phrase used to describe a jail sentence of one year, which amounts to eight months good time. That is, if an inmate does not get into more trouble while in jail they will be released after eight months on a twelve-month sentence.
I spoke, he lessened the sentence right then and there. So, I actually was ultimately happy by what happened.

D33, White male, 40

Finally, two participants said they expected the worst from their sentence. One said it was simply because “that’s the world we live in right now” (D22, Black male, 30), while the other gave no explanation for why they expected the worst. Neither had extensive criminal histories, only having had violation and misdemeanor charges prior to their current felony charges. It may be that a first felony charge was enough to make both defendants believe they would receive the worst in a sentence.

Help versus Punishment

The third component of distributive justice brought up by participants involves their concern over the lack of help provided to defendants, both during and post case processing. The comments can be organized into two categories – belief that the system is a revolving door because it does nothing to help people build a lawful life and a belief that the system punishes drug addicts rather than providing them treatment. Despite the slightly different focus of these two categories, all eight participants who discussed this issue held the same belief that the criminal justice system sets people up to fail.

Participants expressed this in terms of distributive justice, often talking about the lack of help in terms of the sentence they or others had received, or comparing their harsh sentence to the treatment focused sentences they perceived others had received. They complained that if given some help, more people would succeed at staying out of the criminal justice system in the
future. Five participants spoke about this generally, referring to the overall focus on punishment rather than helping people in the system. One defendant who had originally been sentenced to probation, but ended up in jail after violating, spoke about his neighborhood and the harm being done there by criminal justice practices.

So, yeah they come and take 30 kids away from uptown, 30 kids, 18 year olds that, you don’t, that don’t help anything, that don’t help them and now they come home, and they missed ten years of their life and now they back out there, and now what it is? Only thing they know is the prison and in a federal penitentiary you have to really survive. You play the survival game. And now you’re telling somebody who’s been in jail ten years to come home and survive again? Nah, there ain’t any help or anything.

D01, Black male, 30

Another person compared the American justice system to those in Europe, which he perceived to be more enlightened and focused on rehabilitation. No participant professed having been through a European criminal court, or even having spoken to someone who had, they simply claimed they knew this to be true. They believed that the American justice system was not focused on helping most people.

They just put you in the county jail for a year and then let you go. I'm no different than when I came in. Nobody wants to do that, they're just there going through the paces to try to get home. It's not, it's not a very enlightened system here in the United States... And it's not some place like Europe where they thought ahead to, let's treat these people like human beings and what kind of programming and what do they really need to help them overcome this and get better.

D27, White male, 40
Eight participants explained that their sentences, and those for many others, were designed to make people fail and end up back in the criminal justice system. They were very disillusioned with the system overall, contending that their attempts to improve themselves would always be met with punishment instead of support. One man lamented the lack of help, saying he wished things were different.

So it’s a lot of this whole system is just a cycle, it’s just cycling people back. It’s unfortunate because I wish that there was more help to help more people in here, uh to not get caught in that cycle.

D24, White male, 31

Conversely, two participants claimed that the system provided at least some help to defendants, but that it was up to each person to take advantage of that help. They talked about programs in jail that inmates could sign up for to better themselves and improve their chances of staying out of the system upon their release. These two defendants were adamant that not only was change the job of individuals rather than the system, but that “if it wasn’t for the criminal justice system society as a whole would be scary” (D06, Hispanic male, 31). They thought that many people come into jail with no desire to change, thus it doesn’t matter what programs the system offers – without personal motivation, nothing will change.

A lot of people that will come in here will use this time, um, to sleep, to get a place to eat, to get 3 meals a day, and to meet their friends that they know here... Like they don’t learn anything from it, they’re gonna keep continuing to do what they’re doing, um because they have no motivation to change... I had that prior motivation while I’m in here to be better. To come out better than what I came in as. So, the programs actually help in that, but all the programs here
are self-willing, so you have to sign up and be willing to do the work. Some people will do a
program, they sign up because they just want to get off their bay, their tier, just to get out, and
they don’t care what the programs are. So it’s not beneficial to them at all.

D24, White male, 31

The other topic brought up by participants concerning the perceived lack of help from the
criminal justice system was about programs for drug addiction. Six defendants self-identified as
drug addicts, and perhaps because of this one of the topics on their mind was the addiction help
they felt they should be receiving. Most specifically related this to the fairness of outcomes,
claiming that without addiction treatment they would just reoffend, and that made the outcome
unfair.

...But they have a drug program, and I was very interested in that, but I remember they said I’m
not eligible, and I said why. They said cause your criminal history. I was like okay, so pretty
much you just want me to do my time and go back out and fall for the same shit. It’s just, it’s not
fair, I don’t think at all.

D17, Hispanic male, 40

I feel more so for drug addicts, there should be more support out there. You know, I mean,
especially with, uh, the heroin epidemic right now. You're seeing a lot of it, you know. I feel like
a lot of times, it's just, throw people in jail. You know, and then let them serve the time. That's it.
They don't always, you know, I mean, like I said, the drug program here is great cause they're
actually attempting to help people with addictions, you know.

D09, White male, 30
Every person who discussed the need for more help for drug addiction admitted their
guilt, and expressed a belief in the need for some punishment, even for themselves. However,
they felt that punishment should be tempered with treatment and that the ultimate goal should be
to keep people out of the system moving forward. The revolving door theme was prevalent in
these comments again, suggesting that some defendants associate outcome fairness with the level
of assistance provided by the criminal justice system.

...a few people getting locked up, they go to jail, they get back out, they not gone be in jail
forever. It’s just uh, a justice system is, uh is a revolving door, they not doing anything.

D04, Black male, 54

In Chapter 7, I discuss in more detail the concerns participants shared about the fairness
and legitimacy of the criminal justice system. Yet, even in discussing the narrower issue of
outcome fairness, one can see that many defendants perceive the justice system to be inherently
unfair, at least in part due to the lack of support it provides to those wanting to avoid being
captured up in the system again.

**Outcome Satisfaction**

One of the main research questions for this study was how defendant perceptions of
procedural and distributive justice during their case influenced their perceptions of outcome
satisfaction. Thirty-three defendants identified their perceptions of outcome fairness as a
significant reason why they were or were not satisfied with that outcome. This conclusion is
based upon the fact that outcome fairness was the first issue brought up by these participants
when asked about why they were or were not satisfied with their case. Many directly connected the issues of comparison or expectancy to their outcome satisfaction, while others simply said the sentence should have been lighter.

Eighteen of those thirty-three participants claimed they were or were not satisfied with the outcome based on how it matched up with their expectations about what the outcome should be. Most were not satisfied with the sentence they received, having expected either less time or a different sentence altogether. In response to a question about why he felt he shouldn’t have been sentenced to so much jail time, one defendant with a 6-5 split\textsuperscript{36} explained he had expected to do less time because of his perception of his charge as not serious and his lack of a criminal history.

\textit{Because it's not like a serious crime. I'm not a violent person. It's my first offense. Not to say I didn't deserve a slap on the wrist, but I thought that was gonna be a slap on the wrist and I would have been, and go home from there. I'm not satisfied. I'm very unhappy. Very unhappy.}

D31, Black male, 27

Other defendants simply stated they expected to do less time and that lowering their sentence would not have been unfair because they would still get punished. Three participants gave examples of the sentence they thought would have been fair, and that they had been expecting based on the charge. For some this involved less time in jail, but others wanted no jail time at all.

\textit{I just thought they'd make me do restitution. Um, maybe probation, community service if, you know, um, I didn't think I'd be doing a year.}

D39, White male, 24

\textsuperscript{36} A 6-5 split refers to a sentence that is split between 6 months jail time and 5 years’ probation, with the jail time being served first.
K: Do you think that your sentence was fair in this case?

R: Um, now that I think about it, I still say no. I still say no. It could have been like seven months, I would have took that. But, nine is, I mean, I'm still doing my, I'm doing six and like a week.

D40, Black male, 38

Six participants said they were mostly or completely satisfied with their case outcome because it was better than they had been expecting. Most made general statements about how it could have been worse, so they felt very lucky with their sentence. One defendant told a story about his judge in Central County Court. At the final court appearance for the case, the defendant plead guilty only to have the judge immediately take several months off the jail sentence, which he claimed was the reason for his satisfaction with the outcome.

...Um, you know, he's a good judge, a fair judge, a tough judge. So, I, I was, it was totally unexpected. My wife was, um, happy but not happy. My lawyer was dumbfounded a little. He was taken aback by it a little. And, um, I was, I had instant relief of gratification. I knew I was going to jail anyway. I already knew that and accepted it. Everything was already planned for it. But to have a lesser sentence is like a godsend.

D33, White male, 40

Another defendant also expressed satisfaction with his outcome based on the fact that his jail sentence was much shorter than he expected (he was sentenced to 60 days).
I am very satisfied. I only got 60 days. Had you asked me this question two months ago, I’d’ve had a different outlook. I was like oh, you could have gotten less time. No one’s ever satisfied. I’m happy, I don’t have to pay any money. But I had to sit up for four months.

D06, Hispanic male, 31

Interestingly, he also mentioned that no one is ever satisfied, a sentiment echoed by several other participants. They would have preferred to not be in jail or on probation at all, which on the surface makes sense. People would rather not be in the criminal justice system. Yet, interview participants were able to differentiate being satisfied with their life overall from satisfaction with the case outcome given relevant issues such as charge level, criminal history, and expectations.

Fifteen participants cited comparison as the main reason behind their thoughts on outcome satisfaction when asked why or why not they were satisfied with their case outcome. Eight of them said they were not satisfied with the outcome because they perceived their sentence to be less favorable than what others receive. One defendant who plead to a felony aggravated unlicensed operation charge explained that he knew someone with a felony DWI who had only done 90 days in jail, whereas this defendant had received a 6-5 split. These defendants expressed less concern with how process may have impacted their sentence, as they did with the perceived fairness of the sentence itself.

Three participants expressed at least minimal satisfaction with the sentence because it seemed fair when compared to what they perceived others were receiving. They did not seem overjoyed at the sentence, just more accepting because it was not as terrible as it could have been. Finally, there were three participants that seemed more philosophical about their situation.

37 Multiple participants used the phrase “sit up” to refer to time they spent in jail pre-trial, awaiting the outcome of their case.
Whether they were satisfied or not, they claimed that things just were the way they were and now they had to deal with it. One even went so far as to say he made himself be satisfied after violating probation and being sentenced to four months jail time.

_I made myself be satisfied [laughs]. Um, I’m not, um no, I’m not satisfied, but I mentally made myself think that it’s the best outcome, it is what it is. And it’s a learning experience, you turn negative into an experience and you learn from it. So, um, that’s just the way you have to think about things. You can’t just think of it like it’s a bad experience, a negative experience. Um, I just kind of turn to how can I learn from it._

D24, White male, 31

Most participants were concerned about the fairness of their outcomes and expressed this often in response to open-ended questions about their opinion of the criminal justice system or their recent case. And they directly related their comparison and expectancy concerns to the perceived fairness of their sentence. Of the thirty-three participants who cited outcome fairness issues as the reason for their satisfaction judgement, only three also cited a process issue as contributing to that judgement, suggesting that the other thirty participants based their outcome satisfaction mostly on perceptions of outcome fairness. In fact, when probed about outcome satisfaction, ten defendants claimed the only basis for their opinion on the outcome was outcome fairness. The majority of participants were more concerned with fair outcomes in weighing their satisfaction than fair processes, as only twelve defendants in total discussed process issues when asked about outcome satisfaction. Process concerns related to outcome satisfaction are discussed in Chapter 5, and conclusions on this issue are discussed in Chapter 8.

It is also worth noting that eight defendants also talked about the timing of the interview in regard to how they would likely answer about satisfaction. This was a topic I had not expected
defendants to bring up, and one that has only been briefly mentioned in prior justice research. All but one did also mention reasons related to fair process or outcomes in addition to their statements about the temporal relationship between the interview and the end of their sentence. Defendants claimed that had they been interviewed nearer the start or end of their sentence they would have responded differently about their satisfaction with the outcome.

They were more likely to take the attitude that no one is ever truly satisfied when they are in jail, and that people simply became more accepting of their situation the closer their release date was. One young defendant, in on his third misdemeanor charge, explained the progression of feelings about the outcome that some defendants went through.

_I'm just satisfied that I'm about to get out of here. But at first I wasn't, I was mad. I just had to do a county year. But I had two months in, so I'm like yeah, I'm doing six months, I'm gonna get out in July._

D44, Black male, 19

Another defendant, charged with failure to register as a sex offender, predicted that if I asked him the same question in a month he would be more accepting of the sentence, but currently was not satisfied with the outcome.

_Um, you know I’ve been here for eight months next month. And my out date was May 17, but with this violation of probation, now it’s October 18, so I think that’s a load of BS. But, next month you ask me this question, it is what it is, I got a county year. But now I’m fucking pissed._

D18, White male, 39
The comments from these eight participants about the timing of interviews regarding their perceptions about their case, and in particular their outcome satisfaction, raise an important and as yet unexamined issue. The majority of prior justice research has utilized cross-sectional data, including the current study, mainly due to the added cost and work needed to obtain data at multiple time points, particularly from hard to locate populations such as defendants. The admissions by multiple people in the current study suggests that further exploration of how attitudes change throughout case processing and the sentence is warranted.
Chapter 5: Procedural Justice from Arrest to Sentencing

Interview participants brought up issues of process in relationship to every stage of case processing, from arrest through post-sentence issues. This chapter breaks down each component of procedural justice into the issues identified by defendants as important to fair processes. Defendants brought up both traditional components of procedural justice, such as respect, agency, and neutrality, while also identifying components more recently identified in the procedural justice literature such as case processing time and access to information.

The components of procedural justice that have been identified and measured in prior research are respect, agency, neutrality, and trustworthiness. Part of the contribution of the current study is in providing defendants with an opportunity to define for themselves what process issues matter most, rather than only being asked about the above predefined components. Unsurprisingly, several process issues arose that are not part of traditional procedural justice studies, including concerns about plea bargaining, the length of case processing, and frustration over a lack of understanding about the case process. All but one, concern over case processing time, has been found in recent procedural justice research to matter to defendants. Below, I discuss each component in turn, taking care to identify which court actors or processes defendants mentioned in relation to each component.

**Respect: Being Treated Like a Human Being**

Almost every participant expressed a wish for respect, or to be treated like a human being, at some point during their interview. There was a universal belief that regardless of anything else going on, defendants were entitled to be treated with a minimum of respect by all
criminal justice actors, from police to judges and prosecutors. Participant thoughts on matters of respect can be categorized into two categories, how legal actors speak to defendants and how legal actors physically behave towards defendants, with the latter applying only to law enforcement.

**Law Enforcement**

Law enforcement seemed of particular importance when participants brought up issues of respect, suggesting that this component of procedural justice was particularly important for perceptions of police interactions. Each of the forty-three participants discussed their general perceptions, based either on prior experiences or secondhand information, which they then compared to their recent experience. Most of the responses discussed below reference those general perceptions. When participants were discussing their recent arrest, I note as much. For nine people, respect at least partially meant the officers were calm and polite, perhaps even bending the rules a bit for defendants that were being respectful in return, as two defendants explained when discussing their recent arrest.

*They let me drink water. They, um, let me sit with a friend coming here, um, when I asked if they could, um, un-handcuff me, they did.*

D08, White female, 25

*Oh, they were great. They were friendly, they were nice. I mean, while they were searching the car, they didn't detain us or anything. They just had us standing outside of the road talking, you know. They had multiple law officers there, um, you know. They were friendly and nice, you know.*

D09, White male, 30
Three participants explained police respect in more simple terms, stating that gaining respect from police was all about how you treated the officers. They made it clear that you would likely still go to jail, but that because police have a job to do it is best to treat them with respect if you want respect in return. One defendant used particularly colorful language to make this point.

*My general impression of police is like they've got a job to do. And if you, if you don't act like a butthole they will, they, they pretty fair.*

D20, Black male, 53

But another participant disagreed with this assessment, claiming that law enforcement does not always return the respect given to them. He still felt it was important to always treat officers respectfully “because obviously they deserve it” (D39, White male, 24). And four simply felt that all law enforcement were disrespectful while demanding the utmost respect from civilians, which struck defendants as a very unfair relationship.

*They're disrespectful and they expect you to kiss their ass. They want: Yes sir, yes ma’am, like they don't any of them deserve it.*

D29, White female, 30

Still other participants recognized that police had a job to do, but then set the standards for respectful treatment by law enforcement rather low. Five said that officers were respectful because they didn’t use force, or because they didn’t “bullshit” the defendant.

*They actually were fairly nice, they weren’t, you know, throwing me up against the car, like you see on a lot of cop shows and everything like that. They were just like, you know you have this*
warrant or whatever, put your hands behind your back, put me in the back of the car, and brought me on my way.

D03, White male, 25

They, the officer treated me pretty well, you know. He didn't, like, take it to an extreme. He just did his job. He gave me the breathalyzer and he gave me the test. Asked if I needed the restroom.

D41, Black male, 36

Conversely, some participants talked about the negative experiences they had had with law enforcement. Ten participants raised the issue of officer use of force. They felt that officers they had interacted with used force unnecessarily, or were too quick to pull their weapons on them. This is in line with more recent research into procedural justice in policing which suggests that perceptions of police are most affected by use of force and search behaviors (Worden and McLean, 2017). Most participants relayed this sentiment when discussing their general perceptions of law enforcement, but a couple defendants described specific instances where they felt the police used excessive force, like the man below who was charged with felony DWI.

Um, when I got arrested for the weed, they really did rough me up. They, they threw me down in the back of the knees and the back of my back. I wasn't resisting. I was like giving up [to police]. I was like totally submissive cause I knew what they was chasing me for and... So I ran and they caught me and when they caught me, I just gave up completely. But, the police punched me in the ribs and stuff like that. I'm not like, I'm not fighting, you know what I'm saying. They said, get down. I got down, put my hands behind my back and they started punching me in the ribs... But, I was like. Um, it wasn't, it wasn't called for all of that. Once I went down and hit the ground and surrendered, I figured it was over.

D20, Black male, 53
Other defendants spoke in more general terms about police being too aggressive, or about what they perceived as unwarranted searches. One defendant arrested on felony drug charges described a situation where police had their guns drawn on him when he felt it was unnecessary, while another charged with felony DWI spoke about what he felt was an overly aggressive search during the arrest.

... It's several cops with their guns drawn at me for a traffic stop, it just didn't make sense to me, you know what I'm sayin, because I don't have nothing violent on my record for them to even pull me over with their guns drawn at me... Cause if if you look at my rap sheet, you don't see nothing violent in there...so I'm like why is guns bein’ pointed at me.

D25, Black male, 27

But as far as like following the law itself, they don't do that. They, they're very aggressive around here I've noticed. Um, whether it's the K9 units or, er, just pulling you over and tearing your car apart with no warrant.

D27, White male, 40

The final issue that could be categorized under respect is the widespread and unspoken rule about not snitching. For an officer to try to get an arrestee to snitch was described as shameful by two participants, and a demonstration of disrespect to assume that that person would snitch on others. As one defendant put it, “you was already in trouble” so just deal with your own problems rather than tell on someone else (D01, Black male, 32). Another defendant in jail on a felony probation violation couldn’t comprehend snitching on someone when asked if police had ever asked him to snitch.
Yeah, they did, like two of em did to me when I was growing up. I never did it though. I’m not telling on nobody, man. They didn’t nothing to me, why I’m telling on them for?

D12, Black male, 40

Perceived respect was associated with the perceived fairness of interactions with officers, in that participants felt that disrespectful officers were also likely to be unfair officers. The quotes above demonstrate this through participants’ statements about practices they felt were both unfair and disrespectful. And indeed, those defendants with negative views on the respectfulness of police were also likely to have negative views of police in regards to other process issues, like neutrality or agency, discussed later in this chapter.

Judges and Prosecutors

Participants were particularly concerned with judges, and to a lesser extent prosecutors, treating them with respect. None mentioned any other court personnel such as clerks or court officers, nor did any mention prosecutors individually without also discussing the court in general. There were far fewer comments made about respect during the post-arrest case processing, suggesting that defendants were more concerned with respect from police than court actors. Seven participants talked about their wish to be treated like human beings as opposed to “trash” or “cattle” (D03/D22). When asked what it looks like when a judge shows someone respect, several participants gave similar responses, although from different points of view.

She just sat there, treated me like a human being, got my case all done and got my back in a reasonable time for me to be able to eat my dinner.

D03, White male, 23
I just mean, some of the people here are phenomenal. Like, they totally treat you like you're a human being. You show them respect, they show you respect. But some people are just vindictive pricks.

D30, White male, 27

Another group of five participants expressed similar sentiments about their preferred treatment and the definition of respect, but did so from a more negative angle. They talked about feeling like no more than a number during case processing in both their recent case and past experiences, with multiple defendants specifically using the word number to describe the lack of respect they received in court. Each quote below refers either to the judge specifically, or to the court in general.

Because, a lot of times, in my personal experience, um, you know they deal with so many people coming in that I think a lot of times they view everybody the same. Like, ok, here's another black guy, here's another charge. You're just a number.

D23, Black male, 40

The judge didn’t care, it was just the personality of you’re just another number and your committed the crime.

D24, White male, 31

At this point, we're just numbers on a fucking sheet of paper. And they're just pushing us through on a fucking conveyor belt.

D30, White male, 27

Most participants, when asked directly about the respectfulness of prosecutors would shrug their shoulders and reply with something along the lines of “sure” or “I guess they were.” This is likely due to the fact that many defendants had very few, if any, interactions with the
Many described court appearances that were rushed, providing little opportunity for interaction with any court actor, including the judge or defense attorneys sometimes. Nine defendants said that since defense attorneys are responsible for communicating with the prosecutor, they didn’t see a need to interact in any way with the prosecutor.

**Agency and Process Control**

Another issue commonly measured, and relatively well-developed, in the justice literature is agency, which encompasses several subcomponents. The general definition is of the perception of involvement and control by a defendant during case processing. One subcomponent is voice, which refers to the ability of defendants to tell their story and to have that information taken into account when decisions are made. Recent research has also identified another component, which I also found important to my sample – need for information (De Mesmaecker, 2014). A third subcomponent of concern for case processing time was also identified in the current study, the only one which to date has not been discussed in procedural justice literature. None of these issues were discussed by participants in relation to law enforcement, thus I cover them only regarding perceptions of the courts.

**Voice**

Fifteen participants talked about their experiences in court telling, or wanting to tell, their stories. Most times that meant wanting to explain either why they had committed the crime or why their sentence should involve something different than the plea deal they were being offered. All talked about the impact they hoped to have on the judge, with the prosecutor apparently being a non-issue when it comes to voice. Several defendants expressed frustration...
about not being given the opportunity to speak up in court, often times because their lawyer silenced them. When asked if she felt the judge had listened to her in court, one defendant showed her anger over the situation.

*No, my public defender wouldn't even let me talk. Like, he kept cutting me off… he was cutting me off at the, at my arraignment and then my second public defender kept cutting me off when I was there. Like, I didn't even get to speak for myself.*

D29, White female, 30

Those participants that did have the opportunity to speak in court based their assessments of judge fairness partially on whether or not the judge took the defendant’s statement into account at sentencing. Five people said they felt the judge had listened to them and adjusted his or her decision accordingly, but ten said the judge did not even consider their comments or those made on their behalf. Specifically, one defendant told of his health problems, while another spoke of a glowing letter his probation officer had written, but in neither case did those issues seem to impact the judge.

*They could have put me on an ankle bracelet, house arrest, given that I got a critical lung condition and I got diabetic. He wasn’t fair, he didn’t take my health into any kind of consideration.*

D19, Black male, 29

*… She wrote a nice letter for me. My lawyer told the judge that. And probation officers don't do that. They don't just write nice letters about people that say, hey this guy doesn't deserve to be in jail. Hey, he's like, oh yeah she said that. Well, whatever. 90 days in jail still. Doesn't matter.*

D22, Black male, 30
Eleven participants’ comments on the issue of voice reflected their concerns about being treated like a human being, something they also tied to being treated respectfully. They wanted the judge to see them as a person, not just an offender, and to mete out punishment with compassion.

Finally, two defendants said they never tried to speak up because they knew it wouldn’t do any good for them. They both had extensive criminal histories by their own admissions, which likely affected their perceptions of the usefulness of speaking out in court.

Need for information

This proved to be a very important issue for many participants, both seasoned offenders and first timers, all of whom expressed frustration with the lack of information provided to them during their recent case. Others were simply confused about what was happening, and felt no one was explaining things to them properly. Prior research has categorized this concept under the umbrella of agency, but more specifically I believe it falls under process control. In criminal proceedings, defendants have practically zero control over the process, so obtaining accurate and timely information about what is happening may provide the only sense of process control they can get.

A total of twenty-five participants brought up issues of confusion or a need for more information than was being provided in their recent case, with a few also relating this to prior experiences. Of those, eight with limited or no criminal history talked about how overwhelming the whole process was. One defendant, arrested for the first time and charged with a felony, had to wait almost two months before hearing from his public defender about what was going to happen. He described the turmoil he felt due to the lack of information provided during that time.
... at this point I'm, I've been sitting around for months, just kind of like, I don't know going crazy in my own head because, uh, like I lost my job. And I was going through all this crazy, like I just committed a felony. Probably going to jail or whatever they sent me.

D30, White male, 27

Another defendant, who had been convicted only of misdemeanors prior to the current felony case, spoke about feeling overwhelmed. Other defendants had similar thoughts, all saying they just wanted to know what was going to happen to them, by which they meant what their sentence would be.

... Like the whole process is kind of overwhelming you know? And then not knowing what’s going to happen. You know, your lawyer comes to visit you here and says oh maybe this or maybe that, you know. Um, and it's kind of like nervous.

D13, White male, 21

There were also some participants that spoke more about confusion with the process than being overwhelmed, specifically expressing confusion over what certain decisions meant for their case. This confusion usually revolved around legal issues, such as whether or not the defendant should attend the grand jury hearing or how a case was waived up to county court (two defendants falsely believed they had to waive their rights before a case could move from city to county court). Five defendants were concerned about waiving their preliminary hearing, having done so on their attorney’s advice, but then being told by fellow inmates that they should not have waived the hearing. They each believed waiving the prelim had negatively impacted their outcome, and claimed that they would not have waived the hearing if more information had been provided to them.
There’s something about a preliminary hearing that you have to do and, I mean I didn’t know to take that and a lot of people like in jail was telling me I shouldn’t have let them waive mine... So I waived it and that’s, after I waived it, it was over, after that day, they hit me with a whole bunch of, like a 6-5.

D16, Black male, 30

Finally, several participants seemed to have been so overwhelmed that it negatively affected the reliability of their memories of the case. One defendant said he had been so terrified that it was affecting his ability to remember what happened to him, while another made nonsensical statements about charges in their case, claiming they had a “misdemeanor felony” (D22, Black male, 30). Overall, the twenty-five participants claimed that case processing would have been less stressful on them if they had more information about the processing decisions, what to expect, and how each event would impact them. The blame for this lack of information was laid on the defense attorney in every case, as defendants saw it as the attorney’s job to keep their clients updated on all matters related to the case. This issue of attorney-client communication is discussed in more detail in Chapter 6.

**Case Processing Time**

The length of time it took to process the case was also of concern to seventeen participants. Most of those wanted the case settled quickly, because they hated not knowing what was going to happen to them, while four were concerned their cases had been rushed. This relates to participants’ concerns about a lack of information and demonstrates just how much people dislike not knowing what to expect. Thirteen people said they just wanted to get
“everything over and done with” and start their sentence, rather than wait around for months for the case to settle (D03, White male, 25). When asked if he was concerned about only having two court appearances, including arraignment, one defendant explained the stress he would have felt allowing the case to continue past that.

I would have been so discontent if I had to wonder and wait, oh what’s going to happen. I got it out of the way, so then I just know what I got and just have to wait for the day. Had I been fighting the case, I would have been uneasy.

D06, Hispanic male, 31

Thirty-two participants\(^{38}\) were held in pretrial detention on bail or remand, and perhaps because of that some of them felt that time moved more slowly than if they had been released. One defendant explained that if you are stuck in jail while your case is processing you will likely lose your job, while another said “It’s the not knowing that gets you,” referring to the lack of information often provided jailed defendants while they wait for court dates (D08, White female, 25). For one defendant held in jail, each court appearance left him with little to no new information from his attorney, leaving him feeling hopeless.

And they [his defense attorney] even didn't talk to me or nothing. They're just like, oh, yeah, come back another week. And sometimes I'd come back and I'd cry, oh man, I'm never getting out again.

D40, Black male, 38

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\(^{38}\) This represents the total number of participants who were held for at least some time in jail pretrial, not all of which discussed issues of case processing time.
Speeding up case processing was also important to some defendants who believed that plea offers got worse the longer one waited to accept. One defendant, in on a misdemeanor weapons charge, was pleased with how he had pled at arraignment and been able to “get everything wrapped up that day” (D23, Black male, 40). Most defense attorneys will advise their clients against doing just that, but it seems for at least this defendant, having the case closed as quickly as possible was a positive.

And that happened a lot with people here, where the more that you wait and the more that you keep turning things down, the worse it gets for you in the end.

D24, White male, 31

Conversely, four participants were unhappy with the way they felt their cases were rushed through the court. Each felt that if they had waited longer before accepting a plea deal, they would have gotten a better offer. In one case, the defendant felt a longer case processing time would have allowed for a better investigation into the facts of the case (which he claimed favored him), which would have netted him a more lenient sentence (D37, Black male, 20). Interestingly, two participants related the rushed nature of their cases to problems related to the neutrality of the judge and prosecutor, claiming that they refused to look at evidence that might mitigate the charge.

**Perceived Neutrality**

Perhaps the most important process issue brought up by participants, neutrality refers to the perception that court actors are unbiased and make fact-based decisions. This gets at the crux
of the legitimacy of the criminal justice system, which is supposed to be fair and just to all parties, even those charged with a crime. As the discussion below demonstrates, many participants felt the criminal justice actors they encountered were not unbiased and fair, both in their recent case and prior experiences. Participants talked about a variety of issues related to the lack of neutrality they felt was exhibited by law enforcement, judges, and prosecutors.

These issues were: attention to facts, profiling and stereotyping, looking for convictions, and the judge as unbiased magistrate. There was some overlap in these categories, particularly between the first and third, as a lack of fact-based decision making was cited as a reason for concern in both categories. Profiling and stereotyping has not been discussed as an aspect of procedural justice before, but it was one of the most frequent issues brought up where defendants expressed negative views of the neutrality of legal authorities. The final section on judges is short, but highlights the impact of a judge going against the prosecutor on defendant perceptions of judge neutrality.

**Attention to Facts**

Fourteen participants felt that the legal authorities in their recent case had ignored the facts or information surrounding the case. None could explain exactly why this was, just that they believed the person was not fully considering all the information available to them. Defendants brought this up only when they felt facts that might help them were being ignored. None complained that information that might make the outcome worse was being excluded.

Speaking about law enforcement, four participants felt that officers never listened to their side of things, and only wanted to listen to information from the person that made the call.
It’s seems like whoever calls, like the law enforcement, and tell the law enforcement whatever they wanna tell them, no matter if it’s a lie, they make up stuff. It just seems like, like me when I try to defend myself, they don’t wanna listen to anything you gotta say.

D14, White male, 33

When talking about judges and prosecutors, four defendants described situations where they had tried to provide mitigating or even exculpatory evidence to one or both court actors, only to have it ignored. The consensus among these few participants was that this behavior challenged the legitimacy of the sentence, as the defendants felt they should have received less time with the introduction of favorable evidence.

Three defendants specifically identified contradictory witness or victim statements as evidence that was ignored by the judge and prosecutor. Only one defendant said they felt the judge looked at all the facts before making a fair and unbiased decision.

Both times they called the cops and lied, said they got robbed for something that didn't even, that didn't happen. And, that's what. They, they're there to, they don't get trouble, but, it sticks it all on us. Like, on their, um, testimonies or whatever, one said something different than the other.

D37, Black male, 20

He looked at the case real well and he read everything... So, I think he really looked at the facts, you know what I mean. Cause, like I said, he could have gave me more than he'd done.

D21, Black male, 51

In three interviews, defendants expressed appreciation for police attention to facts, saying they had taken the time to make sure everything written down was factual. Interestingly, each of these
people claimed this perceived neutrality and attention to facts is what made the officer fair, using that exact word.

…some police will listen to you, right, and try to find out the details before they quick to put some handcuffs on you or arrest you and all of that. They, they like listed to both sides of the stories and then they will take it from there. You know, so, they pretty, they pretty fair to me.

D20, Black male, 53

This concern over attention to facts also ties into issues of agency, particularly voice, as discussed above. Participants demonstrated throughout most interviews that fair processes must involve legal authorities hearing all sides of a situation, and taking all information into account when deciding outcomes. For the defendants above, that meant focusing on the legal facts of the case, particularly those that were in their favor. But a separate group of four defendants actually wanted the judge to take a personal interest in them, focusing on how contrite the defendant was, their family obligations, or health issues.

The next morning I went back and the judge, I was there with my baby mama and my child, and she didn’t care about nothing. She just lock me up.

D17, Hispanic male, 40

The above defendant was unable to fathom how a judge could lock him up after he demonstrated the family support, and obligations, in his life. These four participants mentioned wanting the judge to take more of a personal interest in what was best for them, which they related back to the need to be treated like a human being, discussed under the component of
respect. The concern about being treated like a human transcended components of procedural justice, coming up (unprompted by myself) in defendant discussions of respect, agency, and neutrality. It appeared that many defendants were concerned with being treated in a way that emphasized their humanity over their offender status.

**Profiling and Stereotyping**

An important issue for thirty-six participants was their perception that all legal authorities engaged in profiling and stereotyping, usually with negative connotations for the defendant. The most common reason given for profiling was race, followed by criminal history and neighborhood. Defendants of all races (Black, White, and Hispanic) felt that race plays a role in how people are treated in the criminal justice system. Not all agreed how large that role was, but they believed that Black and Hispanic defendants generally receive worse outcomes compared to White defendants.

Black defendants were more likely than White defendants to believe that race played a large role in the treatment people received in the system. Of the twenty-five Black participants, twenty-three said they felt race was an important factor in understanding how outcomes are allocated in the study site. One defendant, on his first ever charge for felony drug sales, put it rather bluntly.

*I just feel like in this city the whole purpose is to give a black man a felony, cause now if you give him a felony, you put a stop on what he can accomplish in this community, you know what I mean?*

D01, Black male, 32
Other Black defendants were less forceful in their comments, but still made it clear that they believed their race played a role in how they were treated. Many of them focused particularly on how law enforcement profiled them when they were out in their neighborhood, not engaging in criminal behavior. Five defendants, like the one below, described repeated scenarios of being stopped by police simply for being Black in the wrong place, at the wrong time.

They look to stop black individuals because some black individuals sell drugs and don’t wear their pants over their butt. It can be two o’clock in the morning and I can be walking down [local] Street and they’d be like: Hey, were are you going? Do you see what time it is? I’m like, you see my license, you see how old I am. I’m an old man, I can be out any time I want.

D15, Black male, 31

While White participants had less to say on issues of perceived racism in the system, four of them talked about the racism they saw towards their Black friends. They described police stops where the Black people would be searched extensively, while White people received a minimal pat down.

Perceptions of racism in the courts were common as well, again with mostly Black defendants discussing the issue in detail during the interviews. The comments were less extensive overall, perhaps because most defendants felt they could sum up the effects of race in simple terms, like the defendant below charged with a misdemeanor property offense.

The color of my skin, the world we live in and the justice society. With the color of my skin and the justice society, it's not, it's not a good mix. So, I was expecting the worst because of the color of my skin.

D22, Black male, 30
Not one person claimed a particular judge or prosecutor was racist, instead focusing their ire on the courts in general, claiming that all parties involved were biased against Black people. Interestingly, White defendants perceived less racism in the courts than they did from law enforcement. It’s not clear from the data why this was the case, but perhaps they were more clearly able to witness racism on the streets where it is more visible. For example, this White defendant explained their thoughts on racism in law enforcement.

*I think they’re racist to an extent too. Because I have black friends and stuff, and they are very quick to point the finger at the black person before they assume a white persons’ doing something.*

D13, White male, 21

Throughout the interviews, race was one of the most pervasive issues, being brought up by almost every participant to at least partially explain both process and outcomes, sometimes as result of direct racism by legal actors, other times as just an inherent part of the system. The message was clear – if you are Black, the police and the courts will treat you worse for the same crime than if you were White. And law enforcement will stop and search you more often simply because of the color of your skin. Perceptions of racism in the criminal justice system are not surprising given the extensive research showing the effects of race on defendant outcomes in both the juvenile and adult systems (For examples see Fader et al., 2013 and Walker, Spohn, and DeLone, 2011).

Another way that defendants claimed to be profiled was based on the neighborhoods they lived in or frequented. This applied to law enforcement only, since judges and prosecutors did
not interact with defendants in their neighborhoods. Eleven decried this type of profiling as unfair and an example of police exhibiting bias in which neighborhoods they policed the most. Neither Black nor White defendants were immune from this type of profiling, with several people of each race describing multiple incidents where they had claim to have been stopped while on legitimate business.

Either pulling somebody over because of a suspicion of something or profiling, you know. That's, that's a tough thing. You're walking down the street. Oh, hey, you look like a person that mugged somebody or robbed a store. No, I'm just going to pick up my daughter from school. I'm actually walking because it's a nice day. I end up in jail. That's a tough thing to, to get over.

D33, White male, 40

One defendant scoffed at the idea that police profiling based on neighborhood was unfair or biased. He pointed out that crime is higher in some neighborhoods, so people should accept more police interaction if they frequent those areas.

I feel like you can’t be in the streets when drugs are around or around criminals and expect not to get treated like criminals. Everybody’s selling crack, so what you think? The cops are gonna look at you and not think you’re doing the same thing? Come on, you put yourself in that situation, you gonna get treated that way.

D17, Hispanic male, 40

Finally, some participants felt that judging them based on their criminal history amounted to biased behavior on the part of judges and prosecutors, with none mentioning this as an issue for law enforcement. I heard from seven defendants who felt their criminal past should be left
there, and that the courts should focus on their current behaviors and charge. Most made similar
claims about the lack of seriousness of their prior charges or the length of time that had elapsed
since their last conviction. Two defendants, one charged with his first felony and the other with a
history of violent felonies, expressed disbelief about the role their criminal histories played in
how the court processed their cases.

So, being that I caught my first felony in what, in 2004, they said this makes you a um, a
predicate. Like, you serious? You trying to compare me to something that happened in 2004? I
was like oh man, I thought it was a joke. I thought they was gonna drop the charge there to like
misdemeanor something.

D38, Black male, 40

The police they let me out without a bail, so I showed up the next day in court, the judge is like,
what has this guy got? It was a misdemeanor. Oh, we need to lock him back up and put a bail on
him. I’m like are you serious? Why you gonna lock me up just cause of my criminal history?
That’s the type of crazy shit they do here.

D17, Hispanic male, 40

When asked why the courts should not consider a person’s criminal history when making
decisions, three defendants said they felt the courts could do so sometimes. If a person kept
coming back for the same charges, or if it hadn’t been very long since their last charge, then
those defendants felt it was fair of the judge and prosecutor to consider criminal history. But
most simply felt that it was biased behavior because, as one defendant put it, “Criminal history?
This is jail, everybody here has a criminal history…” (D35, Hispanic male, 33).

Five defendants with a criminal history felt stuck, and not allowed the opportunity to
change their lives because the courts kept bringing up their past problems. A young male who
pled to a violent felony, but only had misdemeanors in his history, explained how these defendants with criminal histories felt about the courts using that information when making decisions.

_They’re very prejudiced, stereotypical. Um, and, I mean, they hold grudges. They, they don’t think. But, um, you know, people change and they don’t really see that, you know what I mean? They just look at your past and. Very judgmental people…_  

D39, White male, 24

In the end, it seemed that most defendants felt they were being profiled or stereotyped in one way or another by at least some court actors. And they perceived the results of that stereotyping to ultimately be unfavorable for them in every instance. In discussing prejudice in the courts, most defendants addressed their comments towards the judge, but a few also included the prosecutors in their assessment. Others claimed it was the entire system that was biased, which encompassed law enforcement, judges, prosecutors, and defense attorneys.

_Looking for Convictions_

Another issue raised by some participants involved a belief that judges and prosecutors were simply looking for convictions, or at least jail time, and had no concern for facts or the defendant when making decisions. This has clear implications for perceptions of procedural justice and belief in the legitimacy of the system. Only six participants expressed such grim views of the process and court actors, but they did so in strong words, saying things like “The DAs are always out to get you” (D14, White male, 33).
This is the only topic that garnered more comments about prosecutors than judges, although these six defendants included the judges in their negative assessments because the judge had ultimately gone along with the prosecutor. One defendant charged with a felony DWI believed the prosecutor handling her case was just looking for a conviction, rather than at evidence that might mitigate the charge.

*She just wanted a conviction and didn't care if I even committed the crimes. Like, my public defender, like was hinting around like, you know. This is a little extreme, like, trying to talk about the jail time and they're like, oh well, pretty much didn't give a fuck. They already had it set in their mind what they wanted to do without even finding anybody who know, knew any details of the case.*

D29, White female, 30

While many other defendants had similar concerns about a lack of fact-based decision-making (as discussed under neutrality above), only these six claimed that prosecutors were looking for convictions and jail time regardless of other factors. Others certainly expressed negative views of court actors, but none dismissed those people as doing nothing more than working against the defendant as did these six participants.

**Judge as Unbiased Magistrate**

Four participants expressed approval of the judge presiding over their case mainly because the judge had not just agreed to the sentence requested by the prosecutor. While this was not an issue brought up often, it is important to discuss here given that judges are, in theory, supposed to be neutral and unbiased magistrates. The above discussions of how defendants’ perceived neutrality in the courts clearly demonstrates that most did not feel their judges were
neutral and unbiased. Yet a handful of participants did not agree, instead citing this singular issue as the reason they felt the judge to be fair and neutral in their case. One defendant, sentenced to probation before failing and being sentenced to jail, described a judge that he felt was unbiased and fair because the judge did not listen only to the prosecutor on issues of sentencing.

_I think he did a good job for me, on what was presented to him from the prosecutor and from my lawyer, I think he did a good job, of not letting me, cause the first time, the first thing they offered to him, the judge told em I’m not going to give him that. He told em no to it, so I think he did a good job, not just saying that cause I didn’t go to jail._

D01, Black male, 32

This sentiment was echoed by two other defendants, who felt that a judge should listen to both the prosecution and the defense before making a decision. To them, this meant the judge was truly acting as an unbiased magistrate rather than just working with the prosecutor. The fourth defendant in this group actually felt the judge was neutral because they went by what the defense attorney said rather than the prosecution.

It is worth noting here that when asked about the role of prosecutors, no defendant believed prosecutors should be unbiased in the same way that judges should. Prosecutors should look at the facts, but six participants noted that the whole job of the prosecutor is to prove the defendant guilty, thus they cannot be wholly unbiased. This does not mean that defendants did not still want the prosecutor to be fair, simply that they understood the prosecutorial role as one not designed to help the defendant.

_Trustworthiness_
I end this chapter with a discussion of how participants felt about the trustworthiness of court actors throughout the proceedings. Trustworthiness is perhaps the least defined concept of procedural justice to arise from traditional justice research, simply referring to the perceived fairness of court actors and the resulting trust felt by participants. At least one recent study of procedural justice found that rather than being an antecedent to perceived procedural justice, the relationship may actually be reversed. That is, perceptions of procedural justice may lead to increased trust in court actors and in the legitimacy of the criminal justice system overall (De Mesmaeckers, 2014).

This newer interpretation of trust was supported by the findings from the current study, albeit with some caution as the causal ordering of opinion development is beyond the scope and ability of this cross-sectional study. Defendants suggested they developed trust, or not, based on their perceptions of other procedural justice issues, such as perceived judge neutrality and police use of force, during both their recent case and prior experiences. This conclusion was reached through probing questions about why or why not specific legal actors were considered trustworthy. It was also related to participant perceptions of the fairness of the recent outcome, demonstrating the intertwined nature of various justice components from the perspective of defendants.

Overall, participants had very little to say on trust, with most expressing a lack of trust in judges, prosecutors, police, and the criminal justice system at large. I discuss the comments made about trust by participants in two sections which separate out defendants by whether they gauge trust based on process or outcome. The remaining participants did not clearly state whether or not they trusted people in the system, instead talking about the job those legal authorities are tasked with.
Related to Procedural Justice

Twenty participants brought up issues of fair process when talking about their trust, or lack thereof, in the criminal justice system and the actors they had interacted with. And in fact, comments about trust in law enforcement were made only in reference to process issues – not one defendant talked about trust in law enforcement in relation to outcomes. That is, participants were concerned with how they were treated by law enforcement, but not about the fact that they were being arrested. Only three defendants expressed trust in police, and each had the same reason. Officers had taken time to speak with them respectfully, explain the situation, and to offer further assistance if needed. One defendant in particular told a story about his disabled brother whom the police always treated with kindness and understanding, making the defendant feel that he could trust officers to do the right thing.

_They didn’t grab him and everything. They knew and understood his disability so what they did is they kinda they don’t, normally they’d like grab you by the arm if and kinda, they grab him by the shirt lightly, told him to sit down, told everybody to leave the room, sat down and explained to him, so they sat down and explained to him you can’t be hitting a kid, you’re 27 years old. And um they explained that you can be arrested for this but they didn’t go into being all assertive like they would me..._  

D03, White male, 25

It is this concern for needs and respect for defendants, even when they may have committed a crime, which impressed some defendants and made them trust in police.

More participants talked about their mistrust of police, mainly due to perceived dishonesty and unnecessary use of force. Two defendants explained their mistrust of all police in general terms, claiming that it wasn’t a matter of good versus bad apples. Rather that all police
were not to be trusted because, as one of them said, they are all “just cocky douchebags” (D28, While male, 20). The other explained their fear upon seeing police, which stemmed from a belief that officers are not actually there to protect and serve.

*I mean, my whole life I just. You see cops, it's almost like, not fear, but, like, your heart drops, even if I'm not doing anything wrong. Like well, what the hell, what are they going to get me for now? Always thinking that, not thinking that they're here to save me or something like protect. Not that. To me, they're going out of their way to try and get you for something.*

D37, Black male, 20

Participant thoughts about trust in judges and prosecutors were more varied, related to both procedural and outcome issues. Three participants discussed the perceived bias of the judge, with one saying that you could never trust any judges because everyone “has some type of bias” (D10, Black male, 36). Another summed up his thoughts about judge conduct by saying that judges will skillfully find ways around the law to indict a person.

*A lot of times they don’t really have what is necessary to indict you, but they can say they do. They don’t break the law, they bend the law, they fracture the law.*

D07, Black male, 52

Three other defendants said they could trust their judge because he or she was honest and did not “bullshit” them. Another spoke about being “comfortable with the judge” because he had asked the defendant’s opinion on the fairness of the case and the outcome, which made the defendant feel like the judge cared about him (D26, Black male, 29).
Finally, nine defendants spoke more about a lack of trust in the criminal justice system as opposed to discussing specific types of court actors or people. This may have been directly related to the main complaint from these participants – lack of consistency in judge and prosecutor. About half of all interviewed defendants said that the judge or prosecutor had changed at least once during their case, so the issue is a pertinent one. One defendant explained that she could not trust the system to do right by her and when asked why, she discussed the issues with changing judges and prosecutors in her case.

_I think it does impact your outcome because they [judges] don't know what's going on. I mean, it doesn't, they're just looking at a file. If you know someone that's sticking to the case, say, it's the whole case is ongoing, you find out week after week after week. And you have the same district attorney, then it comes down to sentencing and you see this district attorney over there, it's not even the same. Than what is this, it's a shit show. Excuse my language, but it really is. Because now we have somebody that we have never worked with before, we've never seen before and they're going on their word as opposed to. It's gonna impact your case a little bit differently as opposed to someone you've been working with all along._

D43, White female, 43

Two other defendants discussed what I call process failures, which refer to times when the process failed to work and the defendant suffered the consequences. One defendant had to correct the prosecutor regarding the number of times he had failed to appear in previous cases. The other defendant had issues getting paperwork sent over from court to provide the release date for his jail sentence, something he said was not fair at all.

While the above defendants all identified procedural reasons for their lack of trust, many of the quotes alluded to the continual concern with outcomes that pervaded every interview. The
next section highlights participants who explicitly tied their outcome fairness concerns to trust, but it is important to note that most defendants discuss outcomes even when their main focus is process. The interrelated nature of these two concepts in participant responses is strong enough to make one question to separation of procedural and distributive justice in the first place.

**Related to Outcome Fairness**

The relationship in some participant comments of perceptions of trust to perceptions of outcome fairness could suggest a more complicated and less linear relationship between procedural and distributive justice than has previously been established. For defendants, it may be that the nature of court proceedings, especially the lack of control, makes them perceive all processes and outcomes as related to one another, each feeding into the next.

However, only four defendants related their perceptions of trust to outcome fairness, suggesting that while trust may not be an antecedent of procedural justice, it is related to process issues for some defendants. Each spoke about the power of judges to use their discretion in sentencing, expressing trust when the sentence was favorable and distrust when it was not. One defendant who provided the bulk of the income for his family had offered to do weekends in jail instead of a straight sentence, but the judge turned him down.

...and he just didn’t want the weekends, the judge. Somebody who wakes up every morning to take care of his family and says he’ll do weekends, why wouldn’t you try to take those? Why would you not let him get that?

D32, Black male, 33
Another defendant with a felony drug charge explained that he had “copped out” to the charge on his defense attorney’s advice, with the understanding that the judge would decide the sentence at the next court date. The goal was to convince the judge to sentence the defendant to less than the jail time the prosecutor had originally offered, a strategy that worked as the defendant was sentenced to five years’ probation. This example demonstrates how the defendant had trust in their defense attorney, and to some extent in the judge’s decision-making.

**The Process of Plea Bargaining**

The process of plea bargaining is a very important issue in American courts research since most cases end in a plea, with fewer than 10% going to trial. Thus, it is no surprise that study participants had much to say on the plea bargains they were offered, or not offered in some cases. While it would have been possible to include a discussion of plea bargains under the various topics covered thus far in this chapter, given the importance of the process to the participants (all pled in the current sample), and the frequency of guilty pleas in the U.S., I felt it would be more informative to have a separate section on participant perceptions of plea bargaining.

Twenty-seven participants felt strongly enough about the plea bargaining process to specifically comment on it during the interview, although all participants commented on the fairness of their sentence. Two themes arose during coding regarding plea bargains: process of coercion and the fear of trial.

**Process of Coercion**
The most common issue raised by defendants was the coercion they perceived on the part of the prosecutor and/or judge, even their own defense attorney in a few cases. Sixteen people complained that they felt forced to take a plea offer they were not happy with, either based on threats of a worse offer next time or indictment in felony cases. As with many issues, defendants were quite passionate about plea bargaining, with one defendant summing up the general sentiments in forceful yet succinct terms.

*And then the police court, the city court, they treat you like shit down there. They don't give a fuck about you, they make sure you, um, tell you to cop out to this, if you don't cop out to this, you're gonna get more time.*

D15, Black male, 31

Five defendants used the word “threatened” to describe how they felt about the plea bargaining process. Each talked about scenarios where they felt they were threatened with more time or an indictment if they refused to accept the plea offer from the prosecutor. Most participants identified prosecutor as the one doing the threatening, but one defendant identified the judge as the person threatening more time. These experiences likely contributed to the perception of biased judges and the general lack of trust in both judges and prosecutors. One defendant described the coercive behavior by judges and prosecutors as “what they get paid for,” but still said it was unfair to defendants who do not understand the process and thus who will be easily scared into taking a bad deal (D16, Black male, 30).

The general perception among participants on this matter was that the plea bargaining process was not fair to defendants, and was mostly about giving out as much time as prosecutors and judges could. They spoke of prosecutors and judges trying to intimidate them by threatening
more time. When asked why the court did this, one defendant explained the purpose as getting people to feel like their plea was good, when in fact the sentence was comparatively harsh.

*Just so I would plea out, cause it takes time and money to go to trial. And they just wanted me to plea out and take their plea deal and think that I was winning when in fact I was getting screwed.*

D29, White female, 30

Other defendants explained the process similarly, with intimidation and threats serving to facilitate quicker plea acceptance as defendants often felt they had no choice but to accept the offer. It was obvious that participants did not approve of a process which they found deceptive and unfair, with one utilizing psychology to explain how it worked.

*To start out with the max, that's what they always start with. It's just like when you're, its psychology. When you're little when you want X amount of cookies, what do you ask for at first? More. And, you ask for more, and you get less, but you're really not getting less, you're getting. Because you used psychology and that's what they use on the average person going through there. It's a scare tactic. Scare 'em with the most that you can give 'em. So, that when you offer a plea that's less, it seems a lot better and they're a lot more willing to take it.*

D27, White male, 40

It can be argued that prosecutors do this to provide defendants with some process control, which has been shown to increase perceptions of fair outcomes. Defendants described at first feeling like they received a good deal, but upon getting to jail many learned that their sentence was comparatively worse than they had originally believed. Based on interviews with court actors
and court observations, a more likely reason for the process of threats may be to facilitate the movement of cases through the courts by obtaining quick pleas in as many cases as possible.

**Fear of Trial**

On top of discussing the perceived coercive nature of plea bargaining, nine defendants explained that they were particularly afraid of going to trial. More specifically, they were afraid of how much worse the sentence would be if they took the case to trial as opposed to accepting the plea offer. A defendant with a felony property charge explained that it was understood that if you don’t take the first or second plea you are risking trial, which comes with the maximum sentence.

*Um, and trial, nine out of ten times you're not gonna, you're not gonna make it and you're gonna get the max sentence and that's what you're forfeiting by taking the guilty plea of either copping out to the charge or the plea agreement, first or second one you get, or taking it to trial depending on how bad your circumstance is.*

D33, White male, 40

Based on defendant comments, it seemed that prosecutors took advantage of this fear of trial by threatening to go immediately to trial if the first plea offer was not accepted. Several people described situations where they had been displeased with an initial offer, only to have their defense attorney have a counter-offer refused by the prosecutor, who then threatened trial.

*They didn’t offer you deals. It’s a guarantee, [laughs] 6-5 and that’s it. No other offers, if you took it to trial you were facing one and a third to four.*

D32, Black male, 33
...but it’s like, like my lawyer was telling me either you take this 6-5 or they going to trial, which is gonna then, which is gonna get you a 2 to 7. Man, I’m like I don’t do trial, I never did trial, so I don’t, I’m not gonna blow it and get a 2 to 7 and then be in jail for 2 to 7 years.

D16, Black male, 30

In cases where the prosecutors made one plea offer before threatening trial, defendants felt they had no process control, a situation they did not like. Those defendants who received multiple offers usually had more positive perceptions of the process, likely due to the feeling of some control over the process and/or outcome. The exception to this was two defendants who claimed their offers actually got worse throughout the case, something that seemed to go against what they had learned in their prior criminal court experiences. Only one defendant felt the plea process had worked in his favor based on his perception of a lack of evidence against him and the money it would take to prove him guilty at trial.

Cause if I wanted to I could have just put in a motion for discovery. They’re not gonna waste more time keeping me here, they’re not gonna have this whole process of figuring out you gotta go to [city public transportation offices] today, you gotta look at the bus tapes, you gotta sit there and just like. Everything costs money, it’s not even worth it.

D10, Black male, 36

It is unclear why some defendants received only one plea offer while others had multiple offers based on the information participants were given and in turn provided during their interview. It may be that prosecutors had better evidence in some cases, or that certain prosecutors only make one offer as a matter of policy. What is clear is that over half (twenty-
seven) of the defendants interviewed felt the plea bargaining process to be unfair and heavily based on coercion by prosecutors and judges.

**Outcome Satisfaction**

As mentioned in the final section of Chapter 4, the relationship between defendant perceptions of procedural justice and outcome satisfaction is now to be discussed. Only twelve participants identified a process issue when asked about the reasons for their satisfaction, or lack thereof, with their recent case outcome. This includes three who also said that their satisfaction was based on perceptions of fair outcomes, but they represent the minority of participants, most of whom only gave one reason for their outcome satisfaction.

For those participants who cited a process concern when discussing outcome satisfaction, five were not satisfied with their outcomes based on what they felt were errors in the processing of their case. They identified two types of errors – lack of fact-based decisions and perceived lying by a court actor. Two defendants claimed that their cases had not been properly investigated, laying blame on everyone involved rather than just their defense attorneys. They both felt that if the facts had been examined properly their sentence would have been less, or in the case of the defendant below charged with a felony, that the case would have been dismissed.

*I feel disgusted, that that was allowed. And that the facts of the case weren't really gone over, because the statements were, they didn't match up at all, and now my co-defendant is doing three years in prison and I'm here for a year. You know what I mean, over a book pack!*

D39, White male, 24
Three defendants claimed that they had been lied to by either the judge or the prosecutor, or both, which had the result of increasing their jail time. One defendant was particularly incensed because he believed that the prosecutor, probation, and judge had colluded to make up a probation violation, despite claiming he had never been sentenced to probation on the prior charge. He was also upset about being charged with petit larcenies he says he never committed, all of which led him to cite a lack of fair process as the reason for his dissatisfaction with the outcome.

And they lied to me to, again. Tell me I violated probation, but I never was sentenced to probation, so how could I violate probation? And they gave me eight months for that. And I had a couple more petty larceny charges, but it wasn't even me. Like, even that wasn't even, like I be with people that was doing it, but I didn't even steal nothing, so I felt like I don't have the, I shouldn't even have to go through that.

D44, Black male, 19

A lack of quality representation was on the mind of some defendants, with three citing poor defense by their attorneys as the reason for their poor outcome. The allegation was the same in each interview, with defendants claiming their defense attorney had not done his or her job, which these defendants felt was to advocate for the defendant and ultimately obtain a better sentence. One defendant claimed his defense attorney had actually given privileged information to the prosecutor, giving the defendant no chance at receiving a lighter sentence.

The lack of support, that my lawyers should have represented me better. And the evidence, they used what was never supposed to be told to the DA, you know? I was abused in this case totally. They abused me in this case.
Finally, four defendants who said they were mostly satisfied with the outcome of their case identified two process issues as reasons. Two of them stated the law has to be applied the same to everyone, thus their personal circumstances or wishes did not matter when it came to the sentence. While they would have preferred lighter sentences, both expressed satisfaction with their outcome and seemed unconcerned with what sentences others might be receiving.

_They basically have to go like by the law, you know, like they could maybe twisted it a little bit, but like, the law is the law, so it don’t matter if you have two kids, one kid, like it don’t matter, you still gotta, you do the crime, you gotta do the time._

D26, Black male, 29

The other two defendants cited the efficiency of case processing as the main reason they were satisfied with the outcome. Like the two defendants above, they believed the law should be applied equally to all people, thus making outcome expectations or comparison a non-issue. Instead, these defendants focused on the time from arraignment to sentencing, expressing satisfaction because that time was short. One woman sentenced on a felony drug charge said that she was satisfied because as soon as she was sent to jail pretrial her time started running. She was satisfied because she could already begin serving the jail sentence she expected was coming while the case was processing.

_Because it went by pretty fast. At least as soon as I was arraigned, my time was running. So, by the time I was sentenced, I only had three weeks left._

D08, White female, 25
The variety of process concerns and issues raised by defendants demonstrates just how much is contained in the concept of procedural justice. Some of those issues, such as voice and the perceived neutrality of legal actors have been shown to be important to defendants in the prior research summarized in Chapter 2. Other issues, such as the need for information, have only been addressed in more recent work. Finally, the issue of case processing time has not yet been examined through a procedural justice lenses.

The analysis of comments discussed in this chapter also suggest that defendants do not always equate outcome satisfaction with perceived process fairness. Only twelve out of forty-three participants said they were or were not satisfied with their recent case outcome due to process issues. This suggests that at least for outcomes, process does not influence satisfaction for some defendants. Perhaps more important is examining the specific types of process issues that defendants believed impacted their outcomes. Of the twelve who cited process issues, defendants were most likely to cite perceived misconduct by legal actors, including lack of quality representation, as the reason for their dissatisfaction. Further study is necessary to understand the specifics of the relationship of defendant process concerns with outcome satisfaction, as the data from the current study are limited in generalizability.
Chapter 6: Determinants of Quality Representation

There has been limited research that addresses attorney-client relationships and procedural justice together, yet upon examination of the concepts and measures in the two literatures there seem to be some similarities worth examining. Both are concerned with issues of processes and outcomes, in that researchers want to know how defendant (or client) perceptions of process impact satisfaction with outcomes or the defense attorney. The findings from the current study provide some support for studying these two issues together, showing that participant beliefs about the quality of their representation were related to their perceptions of the process being fair.

Every participant felt strongly about their attorney one way or the other, and about quality representation in general. In almost every interview, the subject of defense attorneys was broached by the defendant long before I specifically asked. I rarely had to probe very much about defendant experiences with their defense attorney(s) – asking one or two general questions would often be enough to get them talking for several minutes on the issue. Participants were keen to discuss the details of what they wanted from their attorney versus what they experienced in their recent case.

There was a noticeable difference in the general tenor of comments from defendants with public attorneys compared to those with private attorneys. While private attorneys only represented 23% (10 participants) of my sample on their recent case, those participants were generally more pleased with their representation. That said, it was by no means a perfect correlation – there were still negative comments made about private attorneys and positive comments about public attorneys.
Most comments could be coded into categories that have been defined in prior research, including communication, advocacy, decision-making, and legal knowledge. There were also some remarks about the lack of vertical representation and an understanding that public attorneys are overloaded with cases. The topic that garnered responses from almost every participant was the question of the best type of attorney – private or public. The chapter is organized around these themes, while relating them back to process and outcome issues from earlier chapters.

**Necessary Communication**

Forty participants felt that communication with their attorney was important not only for case processing purposes, but for the defendants’ peace of mind in knowing what was happening with their case. In Chapter 5, I discussed the concern and stress some defendants felt when they lacked up-to-date information on their case, a task that most of them assigned to their defense attorney. In their comments on attorney communication, many defendants discussed the lack of contact and information provided by their attorney as problematic and stressful. Defendant remarks were coded and divided up into two categories discussed below: communication breakdown and quality treatment.

**Communication Breakdown**

The comments on attorney communication were mostly negative among the twenty-seven participants that discussed the issue. And of those, thirteen declared the defense attorney(s) on their recent case to be unreachable by phone and to not have visited them in jail even once during the recent case, describing what I labeled as a communication breakdown. Ten had public
attorneys, while three hired a private attorney, and all disapproved of their attorneys’ lack of communication.

For those with public attorneys, the inability to reach their attorney by phone was a constant issue throughout their recent case, and during past cases for some defendants. Despite calling multiple times, they would never or rarely receive a call back, usually getting the attorney’s voicemail.

…I was like calling and leaving her messages and shit. She never answered any of my calls. Nobody at the public defender's office knew where she was or they'd tell me she was in her office and it goes to the lawyer’s voicemail. I call back and I'm like, is she there. They're like, oh, she's on the other line or she stepped out, or. I never got to talk to her before I went to court. At court is the first time I talked to her.

D29, White female, 30

That same group of defendants also said their attorneys never visited them in jail, as did one defendant with a private attorney. This information blackout was upsetting to defendants who were left sitting in jail with little to no information about the status of their case. One defendant hired a private attorney based on his belief that doing so would get him a better outcome, yet he sat in pretrial detention for two months without a single visit from his attorney.

No, he never came and seen me. Never told me nothing about what was going on with the case. Nothing. When I went to court, oh, this is what they wanna give me. He didn't even come to the jail. Oh, listen, you know what I'm saying, this is what the DA wants to give you, what do you wanna do? Do you want to try to see to get something else, you wanna see if you can prolong it? He didn't do none of that.

D15, Black male, 31
Although the above defendant had this experience with a private attorney, it was more common for defendants with public defenders. Defendants said they spoke to their attorney only in court, often in the hall or in front of the judge, and only for a few minutes at a time. When asked about communication with his public defender, one defendant claimed he “didn't have a full-fledged conversation with this person throughout the entire experience” (D30, White male, 27).

Another aspect of the communication breakdown involved defendants lacking adequate explanation about the process and legal aspects of the case. For example, one defendant with felony drug charges didn’t understand how his case moved from city to county court without his approval. He mistakenly believed he must waive his rights for the case to be waived up to county court, a misunderstanding that he said his attorney never properly cleared up despite him asking her multiple times.

Six defendants expressed frustration over the quality of communication, with several claiming that they only had brief interactions with their attorneys in which the plea currently being offered was conveyed. One man, out on bail and charged with a felony, said he had waited over a month to hear anything about his case before an attorney he had never met or spoken to before called him with a plea offer.

So, about forty days later, I get a call from my public defender. That was the first time I ever talked to her. And she said, ok in three days we're gonna have you plead down to a 6/5. I don't know her. It was the first time I ever talked to her. Didn't know her name, didn't know anything. I said, at this point I'm, I've been sitting around for months, just kind of like, I don't know going crazy in my own head because, um, like I lost my job... And I was just kinda going crazy and the first time, the thing I hear is, you're getting six months in prison or jail.

D30, White male, 27
It felt very jarring to this defendant to hear nothing for so long, only to suddenly be told that he must come to court in three days and plea to a sentence that includes jail time.

Three defendants claimed their attorneys outright lied to them, either about process or outcome issues. Two had public defenders, but one hired a private firm that he claimed made promises they either could not or did not keep. The defendant felt his attorneys had given him false information, which led to a sentence of jail time on his probation violation charge instead of being reinstated to probation like he had wanted. Another defendant told his public defender information about the crime in confidence, which he then says he heard the attorney tell the prosecutor in court.

Like, he said, he promised that whatever we talked about is confidential. So he told us that um, okay, this is confidential, did you take the wallet. I said yes, I took the wallet. He said okay, um did you take any money out of the wallet. I said yes, between me and you there was $300 in the wallet. But I was never charged with that $300. He went back to the district attorney, says [defendant’s name] did take some money out of the wallet. So now I’m being penalized even more harsh now that he told confidential information.

D19, Black male, 29

It is possible that some of these events were either misunderstood at the time or have been misremembered by participants. But even if that is so, the concern about a lack of clear and timely attorney-client communication was consistent among the twenty-seven participants who discussed the issue.

Quality Treatment
Not all participants had negative opinions on the communication with their defense attorney. Thirteen commented on what they liked about their attorney’s communication, which mostly amounted to doing the things that the defendants in the last subsection said their attorneys did not – return calls, explain issues and answer questions clearly and completely, and be honest with defendants. Five of these defendants described the communication they received as brief, but adequate, or as one person called it “average” (D27, White male, 40). Their attorneys did the minimum from the defendant perspective to get necessary information across and were available by phone at least some of the time.

*That [attorney communication] was good. I called her a couple of times. She picked up and answered, she said that the, um, judge is probably gonna run a concurrent and she let me know what was going on and she was right. Everything she said, so I was satisfied.*

D11, White male, 45

The remaining eight defendants were very happy with the communication from their attorney, with all saying that their attorney took the time to explain everything to them and walk them through the process. Some attorneys made a point to talk to their clients in a private setting, as opposed to chatting in the courthouse hallways, which seemed to be appreciated by defendants. One defendant was pleasantly surprised that after years of criminal justice system involvement, this was the first public defender he had that took the time to explain everything to him.

…*she um was kind enough to bring me to the back room, explain everything and even in front of the judge, she was the only public defender that after the judge spoke, cause there’s some crazy terminology the judge used, she literally just stood there and explained everything in terms that I*
would understand and then escorted me out. Versus the other public defender that the judge used a terminology and she just stood there and I’m like okay. All I know is no probation, four months done.

D03, Black male, 54

Four defendants focused on how their attorney’s communication efforts made the defendant feel like a person, as opposed to just another number in the system. Their comments made clear the appreciation they had for attorneys who were willing to take that extra time to address them like a person rather than a case.

Um, he was one of the better lawyers that I've had. And he was very down-to-earth. He talked to me like I was, you know, a really human being, you know. I'm not just another number in his docket. Um, yeah, so he was, he was very personable. You know, I appreciated that.

D39, White male, 24

**Attorneys as Client Advocates**

Although advocacy is often studied as just one aspect of the attorney-client relationship, participants in my sample said this was the whole point of having an attorney – to have someone versed in the criminal justice system to support and fight for you. Although not all participants made comments directly about their experiences with their attorney advocating for them, all forty-three made remarks that demonstrated they expected their defense attorney to work for them.

Twenty-four defendants made specific comments about how well, or how badly, they felt their attorney had advocated for them. Advocacy can take on many forms, and throughout
interviews defendants touched on multiple issues related to the advocacy efforts of their attorney, both positive and negative. The main topics discussed by defendants were: process concerns, attorneys as plea pushers, and the ideal advocate. In general, it was desired, if not expected, that defense attorneys would always fight for the defendant, making it clear they work for them and not the judge or the prosecutor.

**Process Concerns**

Advocating can involve more than fighting for a more favorable sentence for the defendant. Indeed, three participants talked about their attorneys failing to speak up when an issue arose during case processing. In one case, this involved the judge failing to realize the defendant had been in jail for several weeks already, and thus miscalculating the start date for the defendant’s jail sentence. The defense attorney never spoke up, despite knowing that the defendant had been in jail for some time. The situation was resolved by the judge realizing his error a few minutes later, but the defendant was still incensed by his attorney’s failure to advocate for him.

Another case involved a defendant who wanted his case moved back down to city court as a misdemeanor, wanting to avoid a felony on his record. He said he felt his attorney hadn’t done a very good job, and when asked why remarked that the public defender failed to get his charge lowered to a misdemeanor.

*Like he coulda fight for me in court like, coulda got the case back down to police court cause we all know that it wasn’t, it wasn’t that high to even be in police court.*

D25, Black male, 27
The third case involved a perceived procedural issue with the police stop that resulted in the defendant being arrested. The officer had used the smell of marijuana to justify a search, but the defendant claimed there was no pot in the car and accused the officer of lying. The defendant hired a private attorney for the case, but was unsuccessful in convincing his attorney to argue that the search was illegal. This also represents a lack of understanding on the part of the defendant, as officers are not legally required to find weed to justify the search after the fact.

**Plea Pushers**

The most common complaint about the lack of advocacy from defense attorneys was about attorneys who tried to push plea offers on defendants. Nine spoke about this issue, all of whom had public attorneys, suggesting that defendants who hire private attorneys may feel more trust in the plea offers their attorneys suggest they take. The general sentiment was that attorneys were simply communicating plea offers to the defendant without making any attempt to fight for a better deal. One defendant was particularly negative about defense attorneys in general, claiming that all attorneys, public and private, were only there to make money.

*Most of these lawyers don’t even wanna fight for you, really they just want you cop out and get it over with. I don’t care if they’re a public defender, or a paid attorney. It’s the same thing, if the paid attorney can plea bargain and not take the case to trial, he can get the most money out of you. That’s the goal, they’re trying to get rich, and they are getting rich.*

D17, Hispanic male, 40

Other defendants did not make such sweeping statements about the lack of advocacy they experienced from their recent attorney, but some did agree with the defendant above that defense
attorneys were just looking to get cases plead out. Simply having the attorney fight for a better outcome, even if they were unsuccessful, was important to defendants. One spoke about begging his public defender to go back to the prosecutor and ask for a better deal, even if he only got a small concession.

*It was all just take the offer, it’s a plea bargain. He didn’t try to fight for it, even when I said to him, when I went back to court, I asked him, can you go and talk to district attorney and ask for ten months, just ask for something. He’s like, no, I’m not gonna do that. I’m like no, you’re standing here with me and you’re not even trying. He didn’t even wanna try.*

D18, White male, 39

A sense of being rushed through the case, of being pressured to take a plea deal immediately, was prevalent throughout the comments made by these defendants. A few of them tried to advocate for themselves after despairing that their attorney would do anything to help. Five defendants talked about advocating for themselves, either by speaking up in court directly to the judge or by refusing to take a plea offer they felt was unfair. In one case, a woman with an extensive criminal history explained how she felt pressured by her public defender to plead guilty to a drug possession charge that the defendant said was false. She refused to accept the plea offer, and forced her attorney to request the case be taken to trial, after which the prosecution dropped the charge completely and offered her a better plea deal on the remaining charges. This experience solidified her belief that when defense attorneys advocate for their clients, they can often get better outcomes.
Some defendants said they tried to speak up in court, to directly address the judge when they felt their attorney was neglecting their duties. Most described it as a battle of wills, with them trying to speak while their attorney kept trying to shush them.

After a while I started to speak up because sometimes the public defender won't allow you to talk. Oh no, no, no. Don't say nothing. But then the public defender would be trying to make you cop out to something that you don't think is fair.

D40, Black male, 38

The end result for this defendant was that his public defender began speaking up more, which was not true for all defendants who tried this tactic. Two others mentioned they had also tried to speak up to the judge, but that their public defenders had successfully silenced them, but failed to increase their advocacy.

Finally, one defendant was most concerned that his public defender didn’t do enough to convince the court that he was worth taking a chance on with a probation only sentence. He felt his attorney had advocated for him in small ways, but he wanted her to make her arguments more personal in hopes that it would convince the judge or prosecutor to lower the sentence.

**The Ideal Advocate**

Twelve defendants spoke more favorably about the advocacy efforts of their recent attorneys, including three who had private attorneys. Six spoke in very favorable terms about the work they perceived their attorney to be doing to gain the defendant a better sentence. It should be noted that there was no singular definition of a better sentence among the sample. Prior sentencing research has often assumed probation to be a more favorable sentence than jail, but
this proved to not always be the case in the current study. Some defendants were adamant about obtaining a probation only sentence, particularly those who had never done jail time before. But others spoke of preferring a jail sentence, because once they had served their time they would be free from criminal justice supervision. None wanted a split sentence with both jail time and probation, with one defendant stating that “it should just be one or the other, not both” (D35, Hispanic male, 33).

For some defendants with substantial experience in the system, the work they were looking for from their attorney did not involve changes to the sentence type, but smaller issues such as having multiple jail sentences run concurrent or allowing the defendant to serve weekends so they could keep their job. A defendant with multiple criminal contempt charges said he knew there was no way out of getting jail time, but was pleased when his attorney convinced the judge to run two jail sentences concurrent.

*She actually did a good job because she got both charges ran concurrent and they gave me time served for the petty larceny after, let me see about 40-45 days they gave me time served. So she got her job done. She did a good job I believe.*

D14, White male, 33

The arguments used by attorneys to obtain better outcomes also varied by case, and defendants did not show a preference for one type of argument over another. Their only concern was with the argument working to get them the outcome they wanted. For two defendants (one had a private attorney) with stable employment records, this involved obtaining letters of recommendation from employers and community members of high standings, such as local church elders and charity organizations on the recommendation of their attorney. Another
defendant explained how his private attorney had taken time to meet with all involved parties, such as probation, the judge, and the prosecutor, in attempts to come to a more favorable plea bargain.

*He called personally and spoke to the supervisor of the probation department. He spoke to my probation officer. He had, um, a conference, hearings with, um, with the district attorney and the judge before my hearing and my sentencing...*

D33, White male, 40

It may be that public defenders engaged in similar conferences and meetings, but that their clients were unaware of the behind-the-scenes work being done on their behalf. Those defendants happiest with their defense counsel’s advocacy were those that could describe in some detail what the attorney had been doing to advocate for the defendant. It all came down to defendant perceptions, which is related to communication – attorneys that are too busy to convey to their clients the work they are doing may suffer in their client’s assessments.

One defendant expressed satisfaction with his public defender’s efforts, despite not getting his felony charge reduced to a misdemeanor as he had wanted. The man, charged with robbery, had said he was very pleased with his attorney and when asked what specifically he was pleased with had explained how the attorney had advocated for him.

*That, he, he advocate to, uh, get it dropped down to a misdemeanor. He wanted it to be at least a non-violent felony because there was no hospitalization, no form or grasp of any injuries, no. There was no harm done to anybody at all. There was just property taken, that's it. You know, and it was mistakenly taken, it wasn't taken on purpose, you know.*

D39, White male, 24
This was not the norm however, as most defendants whose attorneys, public or private, did not obtain a desired outcome for the defendant felt their attorney should have, and could have, worked harder. One defendant felt his private attorney should have worked harder for the money he was paid by doing more investigative work. The defendant felt there were significant mitigating circumstances in his case that would have allowed the robbery charge to be dropped to a petit larceny, and was displeased his attorney failed to secure that outcome. That said, the defendant explained how he was not entirely dissatisfied with the outcome.

_For the amount of money I paid for him, he should be doing a little more. And that's what I felt like the whole time, but then I feel like all through what happened for the charges that I got, robbery 2, a year I got for it. It dropped down to robbery 3, robbery in the 3rd, which is a D felony and not violent. So, for a year is pretty good, but I feel like he could have did more. It could have been more looked into._

D37, Black male, 20

Finally, there were two defendants, both with public defenders, who said their attorneys had advocated for them, but only after being pushed to do so by the defendant. They were unhappy with having to force their attorneys to do work they felt was simply part of a defense attorney’s job. One defendant described this issue as typical, demonstrating the belief held by many participants in this sample that public defenders do not work as hard for their clients.

_Um, typical. Typical. I mean, he was not very helpful. It took, much persuasion for me to get him to go in and just fight to try and get something less for me._

D27, White male, 40
To end, I provide a quote that best encapsulates defendant beliefs about what ideal representation should look like.

_They were fair. They listened to you. They, um, they had an open relationship. They will tell the judge they work for you. They're not against you._  

D43, White female, 43

**Minor Concern for Decision-Making**

Defendants had relatively little to say on how decision-making was done with their attorneys, being far more concerned with issues of communication and advocacy. The most noticeable pattern when coding for decision-making was that defendants with private attorneys generally felt this to be a non-issue. All ten said they trusted their privately retained attorney to make decisions, believing that it would always be the right decision.

_Uhmm, he kinda just made the decisions mostly, for the most part and then he would come see me and say this is what I, but the decision that he was making was obviously the right decision. So I was comfortable whatever he did. I knew because he was gonna get me the best deal he could._  

D13, White male, 21

Only one defendant with a public defender expressed the same level of trust in his attorney’s decision-making abilities.
Two defendants were frustrated by their public defenders’ attempts to make decisions without fully consulting the defendant first. Legally, the attorneys could not force their clients to accept pleas, but it was the language used to convey the plea offers that seemed most upsetting to defendants.

No, not even close. Like, I, there was no discussion of options, there was no discussion of anything. It was like, this is how it is. That's what it's going to be. And I'm so, like, terrified that, alright, I just kinda being brought through the process. Um, I don't know. That's what everyone says. Oh, they have so many cases. They're so busy, what the fuck do you expect. I don't know.

D30, White male, 27

Again, we see how other aspects of the attorney-client relationship relate back to defendant concerns about communication. Defendants wanted their attorneys to explain their options and allow the defendant to make the decision, even if there was only one option on the table.

Finally, six participants described satisfactory decision-making processes, in which the attorney would present the information and offers before asking the defendant how they wanted to proceed. Most of these defendants would ask the advice of their attorney after being presented with the available options, suggesting that when attorneys communicate in this way about decisions it increases trust between the two parties.

Yes, she did. She ran everything by me. She ran everything by me before you know, I'm practically the one that made the decision. She was like, well, we can go to trial if you want to... And I was like, is it really worth it, you know? Cause, then she was, like, maybe you get a year, maybe you get less, maybe you get two years. And then I got to thinking, what if I blow it and I get two years. I don't wanna do two years. I said, I'd rather do eight months and go home. So, she ran everything by me, so I appreciate that.
Attorney Legal Knowledge

Prior research has also identified defendant perceptions of attorney legal knowledge as a factor in attorney-client relationships. In the current study, this proved to be another area on which defendants had very little to say – even less than on decision-making. Only four defendants made comments regarding the legal knowledge they perceived their attorney to have, all of whom had public defenders. Two of them made general statements regarding the lack of legal knowledge they believed all public defenders to have, stating that it was not fair to those who could not afford a private attorney.

*Just the way they, like, how they go about. Like, say you if you didn't have enough money for a lawyer, they give you a public defender. And I got to have that back in, when I was sixteen, I had a public defender, and, she knew nothing about law or whatever. I was probably better off looking up stuff myself.*

D37, Black male, 20

Another defendant said he had a family court attorney represent him at arraignment. He felt the woman “didn’t know what she was talking about or nothing” (D19, Black male, 29). When asked why he felt his attorney didn’t know what she was doing, the defendant said the attorney wanted to waive the preliminary hearing, something the defendant had been told by other inmates to never allow. This suggests that at least for some defendants, they cannot accurately judge an attorney’s legal knowledge due to their own lack of legal knowledge.
Defendants who misunderstood the legal system or process were also likely to suggest the system was corrupt, an issue that is discussed in the next chapter.

**Vertical Representation**

Another issue that the defense attorneys I spoke with felt was important because it fosters better attorney-client relationship, as well as more attention to the details of a case, is vertical representation. The public defense agencies in the study site did not practice vertical representation due to practical needs based on caseload and court meeting times, but the attorneys said they would have preferred a vertical model if possible. To some extent, defendants I spoke with agreed with the defense attorneys that vertical representation was preferable. That said, only twelve participants mentioned anything about whether or not they had the same attorney or multiple attorneys represent them throughout the recent case.

Eight who commented on the issue did so to express frustration over having multiple public defenders represent them over the course of their case. For many of these defendants, their case involved only two or three court appearances total, including arraignment and sentencing. In practical terms, this meant defendants were seeing a different defense attorney at each court appearance. Defendants felt this prevented them from receiving quality representation, in so much that each attorney had no idea who the defendant was, nor had more than the bare minimum of information about the case.

_Not only that, I seen four different attorneys in this whole process. Four different attorneys on my case. So I never had time to speak to the same one, except about my charge. It was just terrible work. Terrible work._
The above defendant had four court appearances, and claimed he had a different public defender at each one.

Only one person with a private attorney complained about issues with vertical representation. He had hired a local firm, and they kept assigning new lawyers to his case, which involved a misdemeanor weapons charge. The defendant felt that the lack of consistency allowed misinformation to be given to him on multiple occasions, which he believed lead to a less favorable outcome.

Three defendants, one of whom had a private attorney, mentioned that they had the same attorney throughout their case. For the two with public defenders, one presented a unique situation in which the public defender had been a private attorney in the past and had represented the defendant’s family for many years. Thus, that defendant did not view this attorney, whom he knew rather well, as a public defender. The third person simply stated that he liked having the same attorney throughout his case because he felt “she was on my side” (D19, Black male, 29).

**Private versus Public Attorneys**

Each participant was asked directly about their views on public compared to private defense attorneys. This is the rare theme that emerged during coding where practically all the defendants made the same comments. During interviews with defense attorneys, I had been told that most of their clients assume private attorneys will get them a better deal, but that this was not true. The public defense attorneys felt that they were the ones able to get better deals in most cases simply because they knew the other parties (judges and prosecutors) better than any private
attorney. Once I began defendant interviews, it became clear very quickly that most defendants did not share this view with their attorneys.

The responses to questions on how private attorneys are different than public ones all focused on just two main points: private attorneys work for the defendant and will obtain better outcomes, and public attorneys are overloaded with cases and often work with the prosecutor. While the mechanism by which private attorneys apparently obtained better outcomes varied across defendants, the message was clear from all but a few people – private attorneys are always better. Only five defendants believed that good attorneys could be either private or public, and that it was all about getting an attorney who would fight for you.

Private Attorneys are Just Better

Thirty-eight participants claimed that it was better to hire a private attorney than use a public attorney as a defendant in criminal court. Of those, nine neglected to give any reason for this beyond claiming that private attorneys will always get you a more favorable sentence, even when probed for further explanation. The remaining defendants were quick to explain the reason they believed private attorneys were better, with some giving multiple reasons.

Eleven participants spoke about the power of money, explaining that the more you paid an attorney, the better your outcome was likely to be. When asked why money would make such a difference, one defendant put it quite simply, proclaiming “Money talks. You know? The world revolves around money” (D12, Black male, 40). Other defendants were more specific, claiming that it is because private attorneys make so much more money that they are willing to do more in the case. When asked how much they would expect to pay for a private attorney, defendants generally said it would depend on the charge and the case. Probing for more specifics
led to defendants referencing their current case to estimate the cost, which ran anywhere from $2,000 to $10,000.

*K: Why is it you think public defenders don’t fight as much then?*

*A: Because they’re not really getting paid as, like, as much as an attorney you hired. And, they’re there from my personal experience they’re there pretty much to get the better plea deal and to be done with it.*

D07, Black male, 54

Participant comments belied an unspoken belief that all attorneys had impressive abilities to influence outcomes on behalf of their clients, but only private attorneys employed those abilities. For some defendants, that simply meant spending more time working with other court actors, such as the prosecutor, to bargain for better outcomes. One defendant who had a public defender and was originally sentenced to five years of probation with jail weekends, spoke with certainty of the more lenient sentence he would have received with a private attorney working for him. Interestingly, he applied the same argument the public defenders had made to private attorneys – having a friendly relationship with the prosecutor can result in better deals for defendants.

*The only way I probably could have fought my case, seeing as how my public defender was no good, would have been to spend a lot of money. And unfortunately, that is the balance right there, is money. If you have the money, you get a better lawyer, he spends more time talking to the DA. The DA and him probably dealt with each other in the past. You know, etcetera, etcetera. Now you’ve got six months and no probation.*

D26, Black male, 29
Some defendants spoke about the higher quality of the relationship and representation they felt private attorneys could offer compared to public attorneys. Interestingly, four of the nine defendants who mentioned quality had private attorneys for the current case, and another two had used private attorneys in prior cases. It makes sense that those who had experience with a private attorney would be the most likely to comment on this issue, since the other defendants (who had never had a private attorney) were basing their beliefs on hearsay.

Nine defendants specifically mentioned the relationships they built with their private attorney. They spoke of constant and thorough communication, and the belief that their attorney had each defendant’s best interests in mind. Decisions the private attorney made were generally trusted as the best option. The two quotes below provide examples of attorney-client relationships defendants felt were of high quality and provide more support for the importance of aspects of this relationship discussed earlier in the chapter. The second quote also suggests how intertwined issues of lack of information and attorney communication are for many defendants.

*We talked about what would happen, worst case scenario, best case scenario. Um, he said which judge I would have a better chance if we got. We built a relationship, he went over everything, he always kept me on top of everything.*

D05, Black male, 29

*So, in the grand scheme of things, getting a paid lawyer and knowing my options ahead of time, being sentenced before I got here was extremely easy and mentally easy on myself, because I knew ahead of time I had four months. A lot of people come in here without a sentence, and they have no clue what’s going on and they have no idea what their public defender’s doing, or how they’re helping or not helping, and they’re just lost and clueless and just frustrated.*

D24, White male, 31
Another defendant boiled down his thoughts on what makes private attorneys better to simply state that “they fight harder” (D14, White male, 33). This particular defendant had an extensive criminal history, and had used both private and public attorneys in the past. Despite stating confidently that private attorneys will always obtain a better outcome, he had chosen not to hire one for the most recent case. When asked why, he said there’s no point in spending money on a private attorney for a petty case. Six other defendants shared similar views, saying they would rather keep their money if the charge is minor.

Yeah, she was okay. But just cause it was a petty crime, if it was a serious crime, I’d get my own lawyer.

D15, Black male, 31

The defendants who made these types of statement were charged with violating orders of protection, probation violation, and misdemeanor drug charges. When asked to define serious crimes all mentioned the big three – sex offenses, murder, and armed robbery.

Finally, one defendant who hired a private attorney felt that judges and prosecutors respect private attorneys more than public attorneys, with the end result being a better outcome for the defendant. When pushed to explain why this would be so, he said that private attorneys have more money because they have established themselves and earned the respect of the court.

The Dilemma of Public Defenders

Instead of only focusing on the benefits of a private attorney, some defendants chose to also talk about the problems they perceived with public defenders. Ten defendants, including two
who had private attorneys for the recent case, felt that the excessive caseloads faced by public defenders could explain much of the discrepancy in outcomes. As one defendant explained, he did not blame his public defender for doing the minimum amount of work on his case.

*I mean I don’t blame him, the public defenders aren’t very well paid and they got so many people. He was a nice guy. He looked a little off, you know. Um, maybe he was tired.*

D04, Black male, 54

Another gave a more detailed description of the caseload differences between private and public attorneys.

*There's more attention and time that goes into it with a private lawyer. I think he's not as, not as bombarded with work and cases like the public defender's offices are now. They, when those public defenders come through the door, they have either, crate boxes roll behind in court. They're holding stacks and stacks of files. A private lawyer is one-on-one. He brings one in, or if he's got a couple of guys or something like that, that's going through the same day he may have a couple files with him.*

D30, White male, 27

Three defendants were more explicit about the impact they believed caseloads had on case outcomes. They claimed that if public defenders had caseloads like private attorneys, you would get roughly the same outcome from either type of attorney.

*Honestly speaking I would believe, whatever you gonna get from the public defender, you would get from a paid lawyer. It’s just that a paid lawyer just doesn’t have that much cases on his desk as a public defender... public defender they just got too many cases.*
Those defendants that recognized caseloads as an important factor for the quality of work by defense attorneys did not noticeably differ from other defendants on demographics, case characteristics, or responses regarding other justice issues. And it may be that other defendants were aware of the caseload discrepancy, but found other issues more important to mention during the interview.

The final issue to discuss spans issues in this and the next chapter on perceived system legitimacy. Among nineteen defendants there was a belief that public defenders work with the prosecutor and judge, rather than for the defendant. The degree of this belief varied from defendants who claimed it was all public defenders, to those who said it was only some. But all alleged some level of skepticism about the legitimacy of the system in regards to the lack of independence public defenders may possess.

Two defendants explained that they would trust a public defender that had been personally recommended to them by someone they knew and trusted. But to otherwise use a public attorney is to take a great risk since they may work with the prosecutor rather than the defendant. The man quoted below had been assigned a public defender, but only accepted the attorney because one of the senior attorneys in the office (and formerly a private defense attorney) was a family friend and had recommended that specific public defender.

_Cause I don’t, cause the public defender also work for the county, and the county work with the district attorney’s office, so it’s right there. If I didn’t, I know [the family friend] wouldn’t burn me, I know that for a fact, so he won’t put me with somebody that he didn’t trust around me._

D01, Black male, 32
Other defendants expressed stronger sentiments on the subject, declaring public
defenders and prosecutors, both employed by the county, to always be working towards the same
goal of conviction. One defendant stated the purpose of this arrangement was because “the DA
has to have a certain number of convictions” (D29, White female, 30), while another described
public defenders and prosecutors as “soulmates” (D27, White male, 40). Another man voiced
his belief that defendants with public defenders are likely to get “railroaded,” on account of the
attorney working with the prosecutor (D03, White male, 25). The strongest words on the issue
came from a man on his first felony charge.

R: [in response to being asked to clarify which court actor he was speaking about] Yeah, you
know the attorney, the prosecutor, the public defender, whatever you wanna call it.
K: So you see no difference between the public defender and the DA?
R: Not really. It’s like they all work with the judge unless you got like a paid lawyer or
something like that.

D22, Black male, 30

During court observation, I often noticed public defenders and prosecutors chatting while
awaiting the judge. During that stage of data collection, it seemed that defendants waiting to be
called also took notice of the interactions. Unprompted by any specific question, two defendants
commented that they had noticed the exchanges, which made them feel a lack of trust in their
attorney to actually fight for their best interests.

The term “railroaded” was used by multiple defendants to describe the process of getting a very unfair outcome or
extremely harsh sentence. It represents the feeling that they are being hit by a train.
They all friends, so the public defender, the prosecutor they work together. When I come into court, my public defender is over there laughing and joking with them.

D34, Black male, 29

Two defendants thought it was all a game of favors, with prosecutors and public defenders trading cases and sentences. A favor called in by a public defender may benefit one client, but would result in worse outcomes for other clients with cases the attorney traded to the prosecutor. There was only one person who suspected that private attorneys are also involved in this game. Interestingly, this man was on his first ever charge and had hired a private attorney, despite believing they were just as likely to work with the prosecutor as a public defender. His reasoning, shared later in the interview, was that at least with a private attorney you had more rights to push him to do what you wanted because you were paying him.

But I know if you got money, money talks because I feel that when it’s lunch time, during court days, I know that the DA, the Judge, the public defenders, they all know each other. They, they go to lunch with one another. Whether you got a paid lawyer or public defender, they all sit there trading cases like they Tops baseball cards, like I’ll give you these two, cause I’m trying to make supreme justice, I’m trying to be a judge, if you give me that one cause I’m really itching to get this one to state. I mean like, I’m not saying I know this for a fact, I’m just saying like, there’s corruption all over.

D05, Black male, 29

In summary, most participants seemed to expect two things from their defense attorneys – consistent and clear communication and advocacy on behalf of the defendant (even if it failed to gain anything for the defendant). Relatively few participants mentioned issues of decision-
making or attorney legal knowledge, suggesting that for this sample those aspects of the attorney-client relationship played a smaller role in assessments of relationship quality.

The most consistent finding, not only for this chapter but in the entire study, was that the majority of defendants interviewed (88% to be exact) believed that retaining a private attorney would always get them a more favorable outcome compared to being assigned a public defender. This is in line with findings from prior research, as well as what the defense attorneys I interviewed told me I would hear from defendants. Interestingly, while the reason given for a preference for private attorneys was always about better outcomes, when asked to explain why, some participants instead focused on aspects of the attorney-client relationship. That is, they discussed better communication and advocacy as the specific reasons why private attorneys were better, which coincidentally were the two aspects of relationships discussed most often in the overall sample.
Chapter 7: Perceived Threats to System Legitimacy

The final chapter on findings is focused on the issues of perceived system legitimacy and corruption raised by participants. These are topics not related solely to the processes or outcomes in the participants’ recent cases, but that defendants raised when speaking about problems they believed plagued the criminal justice system in America. One of the first questions asked during the interview was about defendants’ general thoughts on the criminal justice system. While many of the comments below come from responses to that question, the themes identified ran throughout many interviews as issues defendants kept coming back to.

As discussed in Chapter 2, perceptions of fairness have been shown to influence beliefs in system legitimacy, which is likely why much prior justice research measures defendant perceptions of fair processes. However, those studies fail to establish a consistent definition of fair for defendants, instead simply asking people if they believed some outcome or process was fair. One rationale for the current study was to better examine how defendants may define and operationalize issues of justice, including the concept of fairness. Thus, below I offer a discussion of the various topics and concerns defendants raised when discussing what was fair and what was unfair, some of which they discussed as threats to the perceived legitimacy of the system.

The other legitimacy related pattern identified during coding was participants’ concerns over perceived corruption in the criminal justice system. Defendants were particularly concerned with three issues: law enforcement trumping up charges, the role of money and privilege in deciding outcomes, and the belief that the justice system was a too-big-to-fail business. Again, not everything that defendants perceived as corrupt was objectively so, but could be identified as
a practice that is unethical or illegal. Many of these relate to earlier topics covered in Chapters 4 through 6, and those connections are discussed throughout this chapter.

**The Definition of Fair**

I start by delving into a discussion of defendant interpretations of the word fair. Many used the word with no prompting to describe the criminal justice system and/or their recent case, to which I would probe further about what they meant by fair (or unfair in many cases). This is an important topic to cover, as the word fair is central to the concepts of procedural and distributive justice. Yet, in the current study not all participants operationalized the word fair in the same way, which could have serious implications for any conclusions drawn from studies asking about issues of fairness.

The current study further demonstrates the need to clarify defendant definitions of certain terms through the fact that most participants equated the word fair with outcomes rather than procedures. And those who did mention procedures related those concerns to the outcomes they believe were affected. Defendant comments from the twenty-nine who discussed this issue fell into three categories: fairness of the criminal justice system, fairness of the outcome in their recent case, fairness of process in their recent case. Some spoke about fairness issues in multiple categories, but all related their concerns back to the impact they had on perceived system legitimacy.

**A Fair System**

Fourteen participants discussed their general thoughts on what made the criminal justice system fair, or more accurately, unfair. The overall sentiments about the system were negative
and focused on both outcomes and process issues. Three defendants felt that the system was unfair because it sentences people to jail that they felt deserved a less harsh sentence, or who need treatment rather than punishment. One defendant who had moved to the study site from out of state said he felt the criminal justice system there to be fairer than others because it was more lenient in sentencing.

The issue of fair outcomes was important to seven defendants who talked about issues of comparison, complaining that sentences did not seem to match the crimes. Each told of how they had seen or heard about a sex offender or murderer getting a light jail sentence, while someone else with far less serious charges had received a much longer sentence. The belief was that long prison or jail sentences should be reserved for these more serious crimes.

Don’t get me wrong, some people need to be penalized for the harsh crimes that they do. Rapists, murderers, robbers, violent people. But for the non-violent petty crimes? They shouldn’t be doing a year.

D19, Black male, 29

...there's people that in here, that've done like really have committed serious crimes and they're getting released on like 30 or 60 days. And all I did was I wanted to go home from working all day.

D29, White female, 30

The above quoted defendants were charged with felony theft and DWI charges respectively, and both believed their crimes to be too minor to require a significant jail sentence. There were many other defendants, who did not use the word fair, but who had concerns about people convicted of serious charges not doing enough time for their crime.
Finally, there were five defendants who identified a single process issue as creating unfair and disparate outcomes for people in the criminal justice system. They felt that defendants who had the money to hire a private attorney would always receive better outcomes, which is no surprise given the number of participants that made this same point in the previous chapter. But these five defendants brought this issue up when asked what they meant about the system being unfair.

Each made the exact same point – every defendant should be treated equally, regardless of their financial status, which would lead to outcomes being distributed fairly based on charge rather than attorney type. One defendant who hired a private attorney for his recent case explained how that made his case fair compared to those where the person had a public defender.

…but I basically think that it was fair because like I had a paid lawyer and like some aren’t paid, like one of my friends got like the similar case and he like a public defender and he got like more time than me. Yeah, so I basically think it’s like it depends on the law the kind of lawyer you have that could help you out with your case.

D26, Black male, 29

Fair Outcomes

The fairness of outcomes was on the mind of some defendants when talking about their recent case or in response to questions about their use of the word fair. Twelve participants spoke about the outcome of their recent case to explain how the system was fair or unfair. The focus was twofold, with seven people talking about whether their recent sentence was warranted based on the severity of the charges, while only five spoke of comparison.
Two defendants said they considered themselves lucky because their sentences were not as harsh as those they knew others had received. One of them compared himself to his bunkmate in jail, explaining how that man had been caught with less drugs than the participant only to receive a worse sentence.

*I mean, I feel I got lucky. Um, I was initially charged with two B felonies and I pled out to a C felony and still make six months. Not everyone's always so lucky there, I mean, one of my bunkies. I got caught with 36 grams. My bunkie got caught with a gram, and he's serving a year. So, it's, it doesn't always follow the same guidelines for everyone I feel like.*

D09, White male, 30

Similar to those defendants in the prior subsection, these two felt that their recent case was fair simply because they received a better sentence due to perceived luck.

When asked to explain what they meant by fair, five participants provided their recent sentence as an example of a lenient sentence, which they claimed is what made the system fair during their recent case. Each claimed they knew, from either prior experience or talking with other defendants, that their sentence could have been worse. Yet, because they felt like they got a good deal, they described their recent experience as fair, suggesting that for some participants, fair simply means they got a good deal.

*K: What about it. Why do you think it was fair for what you were charged with?*
*A: Um, because it was less time. It was closer to me getting home to my family.*

D08, White female, 25
Another echoed these sentiments, but also added that the judge had listened to his defense attorney rather than the prosecutor.

_He was a fair a judge. He was cool. He wasn't, he wasn't bad, you know what I mean? He was a fair man, you know. Cause, he could've, he could have dealt with. He could've, I mean I skipped out on his court, you know what I mean. And he was the one who sentenced me to three years probation. Actually, he could have said, you know what, I don't care what your public defender said. I'm gonna give you a year. But he went all by what my public defender said and he ran my time concurrent with the year. So, he's a fair guy, because he could've said: No, we're not running them concurrent. We run, we're gonna run it, uh, what you call it, consecutive._

D21, Black male, 51

This defendant was more concerned that his two sentences run concurrent than with the actual length of either sentence, but still it was the favorable outcome that defined fairness for him.

Finally, five defendants also utilized examples of their recent case outcomes, but in this case it was to demonstrate how things were unfair. All felt that the system was generally too harsh, giving out lengthy sentences for minor crimes. For example, when one defendant was asked if the judge in his recent case was fair, he replied that the judge was not fair because he had given the defendant too much time.

_Nah, no, I don't think he was fair. Because, I mean, like I said, I felt I didn't warrant all that time and all that. I think it was too harsh, I think he was just not a fair judge in this on my behalf._

D20, Black male, 53
Another defendant claimed that every person I spoke with would likely claim they had been treated unfairly, but that he truly had been treated unfairly because his sentence was too long for his first offense.

…of course everybody's gonna feel that they're not get treated fairly. But me, I really think I didn't need the jail time. It's my first offense. Give me a fine, slap me on the wrist, some probation, you know. Give me a better offer than probation and the jail time. It feels like I've been a career criminal my whole life and I haven't been.

D22, Black male, 30

All forty-three people interviewed did indeed have something about their case they felt was unfair or that they were at least unhappy about. The number of defendants defining fair as related to outcomes was higher than the number relating it to process, which further suggests that the members of my sample were more concerned with their outcomes than the process.

**Fair Processes**

Eight defendants identified one or more process issues from their recent case when asked to explain what fair meant to them. Two mentioned how they felt they had been forced to take plea bargains by the judge and prosecutor, which they felt was not fair. For one, that involved an offer of drug court coupled with a threat of prison time if she did not accept the drug court, making her feel coerced into going to drug court. Another defendant said it was the short processing time that made things fair for him.

The arrest for the current case was on the mind of two defendants, both of whom identified police willingness to listen to a person and to treat them with respect as fair. One
defendant commented that she appreciated when police would make suggestions about how she could deal with the problems she was facing.

*And then, some of them, they even suggest, give you a suggestion on what you need to do, you know what I'm saying, to take care of that problem. You know, so, they pretty, they pretty fair to me.*

D42, Black female, 33

Lastly, five defendants identified the perceived neutrality of the judge in their case as the factor most affecting their judgement of whether the case was fair or not. The definition of neutrality for these defendants was slightly skewed however to mean that the judge made decisions in favor of the defendants. For example, one man had asked if he could remain out on bail post-plea, but pre-sentence, and despite the objections of the prosecutor was allowed to do so. Another defendant arrested on his first felony provided a brief, but blunt response when asked what made his judge fair.

*He was very fair. He was very fair. Anything my lawyer or public defender would say to help me, he was going to agree with it.*

D28, White male, 20

Although the defendant definitions of the word fair varied by their focus on outcome versus process, they did all have one thing in common – fair seemed to involve the defendant getting something they wanted out of the case. This suggests that the concept of fairness may have more to do with the favorability of outcomes and process decisions than it does with objective assessments of these things. The definitions of fair provided by Google are: “(1) in
accordance with the rules or standards; (2) legitimate; (3) without cheating or trying to achieve unjust advantage.” All three definitions are applicable to participant statements. They wanted processes and outcomes that were in accordance with defendant interpretations of the rules and standards, and no behavior defined as cheating or unethical. In turn, this may lead to perceptions of legitimacy.

**Perceptions of Legitimacy and Misconduct**

There were twenty-six participants who raised one or more issues related to perceived misconduct by legal actors in the criminal justice system. As with the prior section, some defendants spoke specifically about their recent or prior cases, while others focused more generally on how they believed the criminal justice system functioned in illegitimate or unethical ways. Three categories emerged during coding, each focused on a different type of perceived misconduct or the lack of system legitimacy: trumping up charges, defendant money and privilege, and the self-sustaining nature of the system.

**Trumping Up Charges**

Five participants raised an issue they felt was related to larger issues in the criminal justice system, but that specifically involved law enforcement. These defendants believed police would sometimes add extra charges, or increase the severity of existing charges, either to secure the arrest or to push for a jail sentence once the defendant was in court. One defendant described this practice as overkill, saying that by the time you get to court after an arrest there are many additional charges. Another said police often charge people with more to get the arrest and get that person off the street.
...they do this overkill thing, where they trump the charges, you come in with one charge, you get to court you got ten.

D26, Black male, 29

And then a lot police, the police do, they boost up charges, you know what I mean. Just so they can get an arrest, you know what I mean. And so, we got another one of the street, you know. You know...

D12, Black male, 40

Another two defendants felt the reasons for trumping up charges were more manipulative, with one claiming it was how police convinced people to snitch. This defendant, who had a long criminal history, spoke about past experiences where he was told that if he did not tell on someone else, the officers would put additional charges on him. He also claimed, as did another defendant, that officers will sometimes plant evidence (usually drugs) on people who do not cooperate, or just to get an arrest. As often happened during interviews, this defendant shared a story from a fellow inmate who had been caught up in behavior he considered unethical by law enforcement. Whether or not the story below is true, perceptions of police as willing to lie and manufacture evidence challenges beliefs in the legitimacy of law enforcement and the larger system, especially when those stories are shared among defendants.

Like right now, with, I got real close with one of the guys up there and he’s like, like he was innocent and police try to plant something on him, and it’s like, they had an informer say that he did something, twelve years ago. And it’s like they just lying. The police is lying, so they just wanted him to do time.

D04, Black male, 54
Money and Privilege

I have already discussed some participant perceptions about the role of money in the criminal justice system in the previous chapter in the section on private versus public attorneys. The focus here is on those defendant comments more directly addressing the effects of money on case outcomes, which was characterized as a result of an unfair advantage given to wealthier defendants and perceived as a threat to system legitimacy. Related to the issue of money is the issue of privilege, or more specifically nepotism. Several defendants felt that people with connections in the system, or the local political apparatus, were given more lenient sentences and more chances.

Sixteen participants believed that the financial resources available to defendants played the largest role in outcome distribution in the system. When asked why it mattered how much money a defendant had, one man put it quite simply, saying “Money talks. You know? The world revolves around money” (D13, White male, 21). Many defendants directly related financial status to the ability to hire a private attorney, while clarifying that it was not only due to the abilities or work of the private attorney that better outcomes were obtained for these defendants. One defendant, driving on a revoked license due to unpaid fines, explained how financial hardship can impact the lives of defendants beyond just the inability to hire a private attorney.

Like, they took my life away from me, I was just trying to get home from work...Yeah, I was driving without a license, but the only reason I didn't have a license is because I didn't have $3,000 to pay for my fines. It's not that I was like, oh, you know, let me go commit a crime. The
only reason I didn't have license is that I just couldn't afford it. It's all about money. I'm in here because I didn't have enough money, pretty much.

D29, White female, 30

No other defendants discussed financial hardships imposed by fines or fees they had been assessed, which may be due to their current incarcerated condition. Being jailed was more important to them at the moment than any money they may owe upon release.

Another defendant explained that it was the act of spending money on a private attorney that made the difference, rather than the attorney themselves. He claimed that judges take notice when a defendant pays for an expensive attorney, and will treat that person differently than the next defendant with a public attorney. It is worth noting that his estimation of how much an attorney might cost is very high for the charges most people face in Central County.

But I would put it as, you pay money for a lawyer so like the court's gonna see that you, say I paid $10,000, $20,000 for a lawyer, and then the next guy took a free public defender. That right there has like I feel that the judge looks at that. And then that has a better outcome just off of how much money you spend on a lawyer, that's how much better your deal can get off that.

D37, Black male, 20

Finally, seven defendants mentioned the effects of privilege and nepotism on case outcomes, claiming that defendants with connections in the system or local political circles would always receive better outcomes. Each assumed that money and connection went hand in hand, insomuch that a defendant could benefit from wealth without privilege, but that anyone
with privilege likely also had money. The quotes below show how similar defendant views on this issue were.

*I think the system revolves around two things: prejudice and money. Pretty much, you know? Prejudice and money.*

D20, Black male, 53

*...but a lot of it’s who you know and money will make things better for you.*

D24, White male, 31

*It's all who you know. It's who you know and how much money you got to spend.*

D29, White female, 30

Comments on the issue of privilege and connections were often very short, as defendants plainly stated their belief about what they saw as corruption inherent in the system that favors the wealthy, the connected, and in some cases White people. The issue of racism in processing was discussed in Chapter 5, but it also played a role in how many defendants defined privilege in the system. Three people claimed that non-White defendants would almost always get a worse outcome than White defendants, once you accounted for money and connections.

Finally, there was one person interviewed who claimed to have benefitted from these practices. He explained that his parents were important people in the local community of substantial financial means, and that their connections made all the difference. Throughout the interview he was quite blunt about the impact he felt this had on his case, and directly related it to his satisfaction with the outcome he received. Below are several quotes that suggest the drastically different treatment he received compared to the other participants, fully illustrating what other defendants had eluded to in discussing issues of privilege and wealth.
... So, he [the arresting officer] was very nice about it when he arrested me, you know. I didn't even need handcuffs. I, he let me sit in the front seat. We talked just like normal people. So, it was, he was very nice about it.

I'm a well-liked person. It's hard not to like me. Plus, when people like a lawyer or a judge or a DA or whoever, once they just look at my family and where I come from, it's hard not to say no.

Like I said, I got away with this. Um, I would say, um, not entirely because of my family, but they played a big part. So did my lawyer, so did, cause I was growing up, you know as a rich spoiled kid that got everything he wanted. So, I would say I got away with a lot of stuff in this whole process like I usually do in life, so. I would say I am very fortunate.

D28, White male, 20

**Self-Sustaining Nature of the System**

There was also some discussion among participants about what they claimed was the self-sustaining nature of the criminal justice system, specifically talking about it in terms of a business that could not be allowed to fail due to the money and jobs it provided to local communities. Sixteen defendants raised this as an example of corruption of the goals and functions of the system, often to explain why so many people were getting jail sentences for what defendants perceived as petty charges. Many comments were made in response to general questions about the fairness and role of the criminal justice system.

Again, the focus was on money, but instead of talking about defendant finances, fourteen participants spoke about the role of money in keeping the criminal justice system functioning as an employer and revenue generator. They talked about job security for people working for
criminal justice agencies, explaining that they had to find people to charge and lock up or risk having those jobs disappear.

*Everything is about money here. Incarceration is about money because of taxpayer dollars, because of budget that the state is required to fill out to the feds for your housing, because of the sustainability city courts require fines, court fees and all out. So everything is about cost you know.*

D04, Black male, 54

*You know, this is a business, I’m not gonna say it’s an organized conspiracy to possess inmates, but it is a business that has to keep going and I understand business. I don’t like to be here, but like if I wasn’t here, somebody else would be...*

D12, Black male, 40

*I really think there's a whole system built around using the people. Especially the less fortunate and lower class or lower income I should say, to feed the system that's, you know, designed for failure. Silly little laws and the fact that they're not using the format they're given to uphold those laws, to fill these jails up, fill up the court systems. At the end of the day, once they have that job, of course they're gonna be biased because it's their job security to keep doing that.*

D27, White male, 40

Two defendants brought up the issue of judges and prosecutors wanting to make themselves look good by upping their conviction numbers, or handing out more years of jail sentences. They both felt that the system was less concerned with fair outcomes and processes than it was with increasing the number of jail sentences they gave out. Finally, one defendant said he was forced to do drug court so that the program could be kept going, which in turn protects more criminal justice jobs.
...so then I find out they need people in drug court. They just need people to do the program or they going to shut the program down or whatever. So they trying to get people in there. I was like I’m not having any of that shit. I think that, that’s why people all working together, then they get kickbacks, now I’m getting to see what it’s really all about. That would keep me tied up in the system for a long while, I just want to do my time and be out.

D06, Hispanic male, 31

Overall, forty participants established that they believed the criminal justice system in America to be full of problems, of which it seemed many were related to money in one way or another.40 Even defendants who felt their recent case was processed fairly, or that their sentence was fair, brought up these larger issues of perceived unethical behavior and unfair outcomes in the system. This suggests that defendants were able to separate their general opinions of the criminal justice system from their perceptions of their recent case.

The findings presented above can also lead to questions about the ability of positive experiences with case processing or outcomes to change previously held negative attitudes towards criminal justice. It may be that fair processes experienced over multiple cases can change defendant attitudes. But the power of stories from other defendants, or friends and family, may continue to color those attitudes, making it very difficult to assess how defendants develop and maintain their general attitudes about the criminal justice system. While the issue of attitude development is an important one, it is beyond the scope of the current study. Future

40 The remaining three participants did not make any statements about the inherent fairness of the system or wholly ethical behavior of legal actors. Rather, even with probing, they did not have much to say on the state of the system as a whole, each claiming they didn’t know enough about the system to say anything and could only talk about their own experiences.
research should examine how offenders develop attitudes about criminal justice over time, and how those attitudes are impacted by each new interaction with the system and other offenders.
Chapter 8: New Directions for Justice Research

This final chapter presents the conclusions from the findings discussed thus far, including an examination of how the interview data answered the research questions. Concepts shown to be important in prior justice and attorney-client relationship research were examined from the perspective of forty-three jail sentenced defendants in an urban-suburban county in the northeast. The contribution of the study lies mainly in the use of open-ended interviews which allowed participants to define the procedural and outcome issues that most mattered to them during a recent case. Procedural justice research, and to a lesser extent research on attorney-client relationships, has utilized close-ended survey questions most often. For example, one study asked participants ‘Was the judge neutral in the process of the trial?’ while another asked ‘How fairly were you treated?’ with neither providing definitions of key concepts to respondents (Ohbuchi et al., 2005; Tyler, 1987). A multitude of other studies have asked some version of the question ‘Did you feel the procedures in your case were fair and just?’ each without providing more context than including the word ‘procedures’ in the question (Lind and Tyler, 1988; Tyler, 1994).

In the current study, each defendant was specifically asked about traditional justice concepts such as respect and agency, but were first given the opportunity to discuss those issues most important to them through open-ended questions about their experiences with and thoughts on various parts of the criminal justice system. There were many who interpreted the word ‘fair’ to apply to outcomes more than procedures. And even when asked procedure specific questions such as ‘Did you trust the judge to be unbiased in their decisions?’ many defendants responded by discussing their sentence rather than any process issues. The analysis of these interviews provided insight into both the issues most important to defendants and into how participants...
viewed their experiences when asked to relate them to commonly used words and phrases from prior justice research, such as ‘fair’, ‘unbiased’, and ‘respect’. 

This chapter addresses the traditional procedural and distributive justice concepts, examining the evidence from the current study for each of the four components identified earlier. Newer concepts, one identified for the first time as a procedural justice concept in the current study, are also discussed along with support from more recent justice research. Suggestions for future research are made as appropriate, with the main suggestion being to conduct more qualitative studies to improve our understanding of how defendants formulate perceptions of procedural and distributive justice.

I then discuss the evidence provided by the current study to support a more nuanced and complicated relationship between procedural and distributive justice than has been previously suggested. More recent procedural justice research has used distributive justice as a measure of fair processes, when this study would suggest it is a wholly separate, yet related, concept to defendants. Findings from the current study suggest that the importance of distributive justice to defendants may have been overlooked in the literature. Evidence from the interviews demonstrated that the perceived distribution of outcomes played a significant role in defendant perceptions of their recent case and the criminal justice system, an issue that is discussed in detail.

Next, I discuss the aspects of the attorney-client relationship found to be most important to defendants, as well as those they were less concerned with. Communication and advocacy were the main concerns for most defendants, and most suggested a private attorney would better address both than would a public defender. Finally, I discuss the important issue of the timing of
the interviews during each defendant’s sentence. I end by presenting the limitations of the study and providing closing remarks.

**Antecedents of Procedural and Distributive Justice**

The question here is: how do traditional justice measures measure up in the current study? There were four procedural justice and two distributive justice components identified in the literature review as related to defendant outcome satisfaction. For procedural justice I identified respect, agency, neutrality, and trustworthiness; and for distributive justice I identified expectancy and comparison. This section presents a discussion of how the current study’s findings match up with prior, mostly survey-based research. Perhaps the most interesting conclusion from this comparison is the degree to which the current study’s findings match up with the results of a similar study done in the Flemish speaking part of Belgium several years ago.

**Respect – Being Treated Like a Human Being**

Procedural justice research has generally defined respect to involve polite and courteous treatment by criminal justice authorities such as police, judges, and prosecutors. This was also true in the current study, particularly for perceptions of law enforcement. Defendants expected police to address them courteously, even when effecting an arrest of that defendant. As long as the person being dealt with was respectful, defendants saw no reason why police should do anything less. There was also concern over officers being attentive to the needs of people they dealt with, particularly since, as defendants pointed out, people being arrested are also human. Things like allowing the defendant to have some water or smoke a cigarette during the arrest
process were considered indicators of respect and counted as treating someone like a human rather than just a number.

Two other issues, examined before in research looking at perceptions of police, were considered important by some participants in assessing the respectfulness of law enforcement. Excessive or unwarranted use of force was considered disrespectful, and was an example used by multiple defendants when asked to discuss disrespectful officer behaviors. Unwarranted searches were also considered disrespectful, and were described by several participants as the result of simply walking in certain neighborhoods.

Yet, when comparing those specific beliefs about police behavior with more general thoughts on law enforcement, there was often disconnect within participants. Some would express very negative views of law enforcement in general, saying they used force too often or were always lying about charges. Yet those same people might describe a recent encounter that they felt was fair and where the police acted with procedural justice. It would seem then that overall impressions were not always the deciding factor in defendant development of perceptions of their recent case.

Prior research has suggested that two police behaviors discussed above, the use of force and searches, may be responsible for generating friction with the community, and thus creating challenges to perceptions of procedural justice and legitimacy (Worden & McLean, 2017). Indeed, looking at the current study, fourteen participants brought up the police use of force and engagement in illegal (in their minds) stops and searches, as main reasons why they do not trust law enforcement in general. In at least a few interviews, police actions identified by participants as illegal were in fact not (i.e. probable cause for a stop), thus suggesting for at least some
percentage of the offender population, improving perceptions of police will be difficult without further legal education for those citizens.

Respect did come up in discussions of defendant experiences in the local courts, but less so than when they spoke about law enforcement. The main sentiment expressed by participants was that they wanted the court to treat them like humans, as opposed to just another number in the system. This type of respect was less about how the judge or prosecutor spoke to them, likely because most verbal interactions with those two actors involved the defense attorney on the defendant’s behalf. What was important to defendants was having their unique needs and history considered by the court, particularly at sentencing.

Those needs could include physical and mental health issues, drug addiction, childcare responsibilities, and financial responsibilities. Traditionally, concern for needs has not been considered as part of procedural justice, under respect or any other component, but recent research has identified it as a part of procedural justice (De Mesmaecker, 2014). But defendants felt strongly enough about this to mention it when commenting on issues of respect and neutrality, which is the next topic of discussion.

**Neutrality in Action**

Neutrality has been defined as the ability of authorities to make fact-based and unbiased decisions, something that seemed to be at the heart of outcome fairness for some defendants. Participants in the current study identified attention to facts and level of bias as important issues in determining the fairness of court actors and law enforcement.

Thirty-nine participants said it was important that police listened to them and not just the other party or the victim. The idea that someone is immediately profiled as the victim or
offender, particularly if that assumption is based on race or neighborhood, upset most participants. Interestingly, it seemed that being profiled as nothing more than an offender by officers had the largest impact on perceptions of police neutrality, even though over half of the participants had criminal histories.

This relates to the issues of profiling and stereotyping in the courts, something a majority of defendants felt was rife there as well. There were claims of racial profiling that led to Black defendants being arrested more and given worse sentences compared to White defendants, an assertion that has a large amount of support in research on criminal court outcomes (see Walker et al., 2011). Others thought they were profiled based on their criminal history, which to them was only fair if that history was in the recent past. Defendants who had stayed out of the system for years felt that it was biased of the judge and prosecutor to treat them differently based on that history, another assertion that is not in line with the objective realities of criminal justice. More importantly, the bias perceived in court actors was believed to lead to worse sentences for defendants, making them further question the neutrality of the court.

Fact-based decision making was also mentioned as an important part of neutral decision-making in the courts. Judges and prosecutors should consider all the facts before making plea offers or setting bail, which in some cases defendants felt they had not. Several defendants specifically cited a lack of investigation by the court and their defense attorney as the reason their case was not fair. And six defendants believed the prosecutor’s goal was to get as many convictions as possible, meaning that any assessments of court neutrality were based entirely on the judge. And indeed, when the judge did not go along with the prosecutor, defendants were more likely to find that judge to be fair and unbiased.
In the current study, the concept of neutrality was operationalized by defendants much the same way it has been in survey-based justice research. The similarity of finding across methodologies, and when defendants were given the opportunity to define their own concept of fair, suggests that prior research was correct in identifying perceived neutrality as an important antecedent to perceptions of procedural justice.

**Agency and Process Control**

The participants in this study displayed a variety of concerns about agency and process control. Participants identified three aspects of agency - voice, need for information, and case processing time – each of which contributed to their feelings of process control and passive involvement. Process control, another component of procedural justice identified in experimental research, describes the defendant’s need for control over the process, whereas passive involvement refers to the need for engagement with the process.

Voice, or the need to be heard during the process, has most often been associated with process control and refers to the need of participants to feel heard during the process. Fifteen participants in the current study mentioned this issue in relation to wanting their stories heard by the court, or more accurately their mitigating explanations for either the charge or for a more desirable sentence. They felt that by making their case they could influence the judge and/or prosecutor and possibly obtain a favorable outcome. When defendants felt their story had not been truly listened to by the court, or when their defense attorney silenced them, they indeed were less likely to say the proceedings were fair, demonstrating the need for process control and support for another traditional component of procedural justice.
This was one of the few issues for which I noticed any patterns related to defendant criminal history. Several participants with criminal histories claimed they never spoke to the judge more than they absolutely had to, as they felt it never accomplished anything good for them. This stood out from the sentiments of most first-time defendants who felt they would receive a better outcome if only they could tell their story to the judge.

The need for information and concern with case processing time, neither part of traditional conceptualizations of procedural justice, played a more significant role than voice in defendant perceptions of procedural justice. Twenty-five of them discussed this issue, as compared to the fourteen who mentioned voice. The need for information has also been identified as an antecedent of procedural justice in another qualitative study, in which participants exhibited a need for passive involvement via access to information (De Mesmaecker, 2014). It proved to be important in the current study not only in relation to perceptions of fair process, but in defendant’s assessments of their defense attorneys.

Over half the participants expressed acute frustration with the lack of information provided them during case processing. Whether in jail or out in the community, defendants described a process that left them with little more information than the date and time of their next court appearance for months at a time, causing some to feel an extreme amount of stress over what might happen to them. This was shared by experienced and new defendants, although the people going through the system for the first time expressed the most stress when confronted with the situation, likely because they had the least idea of what to expect.

The blame for this dearth of up-to-date and helpful information was piled squarely on defense attorneys, whom defendants tasked with providing necessary updates about plea offers and possible case outcomes. Attorney-client communication factored heavily into defendant
assessments of the quality of their representation, which some defendants realized put public
defenders at a disadvantage due to their high caseload. Most importantly, this presents another
process concern that is related to assessments of attorney-client relationships.

Agency concerns relate back to the need of defendants to have passive involvement in the
process, which should come as no surprise given the potential loss of liberty all faced in the form
of a probation or jail sentence. Defendants who experienced passive involvement through the
provision of information by their defense attorney seemed to be less upset about the lack of
process control. And having an attorney that would speak on their behalf allowed defendants to
feel that their need for a voice was also satisfied.

**Trust in Criminal Justice Actors**

Traditionally, the perceived trustworthiness of criminal justice actors was studied as an
antecedent of procedural justice, but the current study suggests it may instead be a result of
perceived procedural justice. That is, defendants who felt other components, such as voice and
neutrality, of procedural justice were present during their case will exhibit higher levels of trust
in those actors.

Another recent qualitative procedural justice study that employed a before and after
interview methodology also found this to be true, with the participants expressing trust as
something that was earned by authorities through their engagement in respectful and neutral
behavior throughout the process (De Mesmaecker, 2014). This study also found levels of trust to
be variable throughout the case, and to impact the participants’ need for agency, particularly
voice, over time. It is beyond the current study to make any causal arguments about perception
development, but the defendants who did speak about trust phrased many of their comments to
suggest that they were forming trust (or not) based upon their assessment of other procedural justice components, particularly respect, voice, and neutrality. With that in mind, I cautiously conclude that the current study findings support those from the study discussed above.

In the current study, twenty-four participants related their trust, or lack thereof, in criminal justice actors they encountered to their perceptions of either fair outcomes or processes. Police officers who treated defendants with respect were more likely to be trusted by those defendants. A concern for defendant needs, such as physical or mental health issues, and respectful listening to their side of the story were both important factors in building trust in the officers. Some defendants also brought up officer use of force, claiming that police often use force when it is not necessary, which lowered their overall trust in law enforcement.

Prosecutors were more likely to be trusted when they offered sentences that defendants felt were fair in comparison with the perceived seriousness of the charges. And any prosecutor unwilling to actually bargain with the defendant or his or her defense attorney was not to be trusted. These attorneys were considered unfair by defendants, and believed to be after conviction numbers, jail sentences, money, prestige, or all of the above. Interestingly, one of the key factors for defendants who trusted their recent judge was that they did not always go along with the prosecutor’s sentence proposals, proving their role as an unbiased and neutral magistrate. Defendants were also more likely to trust judges that they knew or believed to be lenient at sentencing, likely because many defendants equated leniency (in comparison to others’ sentences) with fairness.

Issues of trust were most often commented on by defendants when talking about their defense attorneys, which is not surprising given the unique relationship that theoretically should exist between defense attorneys and their clients. If there were anyone in the criminal justice
system that defendants felt they should be able to trust, it was their defense attorney. However, public attorneys were at a disadvantage as a fair number of defendants believed them to be working with the prosecutor, or at the very least not working very hard for the defendant, which meant few defendants trusted their public defender. This was true even for some who had relatively positive experiences with their most recent public defender.

In the attorney-client relationship literature, trust is also identified as an important component of quality representation (Boccaccini & Brodsky, 2002; 2004). The antecedents of trust are not discussed as much as the importance of clients trusting their attorneys to work with them to obtain a fair and just outcome. The findings from the current study suggest that trust is developed when defendants have clear and consistent communication from their attorney, and when they believe their attorney is advocating for what they want. Advocacy can take different forms, such as requesting better plea bargains from the prosecutor or having conferences with various court actors to get treatment for the client. When asked about what advocacy should look like, it seemed that what was most important to defendants was not the type of advocacy, but that they had knowledge that the attorney was doing something on their behalf.

How the work of decision-making was shared between attorney and client was less important to defendants than other aspects of the relationship, and mattered very little when they expressed trust in their attorney. Defendants who trusted their attorneys said that they also trusted the decisions made by those attorneys as in their best interest, again suggesting the fluid nature of some components of attorney-client relationships. Those defendants who put less trust in their attorney were the only ones to mention decision-making as a point of contention, but not all defendants who lacked trust in their attorney brought up this issue.
Overall, it seemed that trust was not only dependent on the perceptions of other issues such as respect, neutrality, and attorney-client communication, but that it impacted perceptions of other components such as the need for process and decision-making control. Future research should continue to clarify the non-linear relationships between components of both procedural justice and attorney-client relationships. Within each body of literature there has been little examination of how certain issues might correlate with or affect one another, leaving us with only a surface understanding of the mechanisms behind the development of quality attorney-client relationships and perceptions of procedures as fair and just.

The current study represents the only attempt to date to explore the connections between the two literatures, and yet it is still beyond the scope of this study to ascertain the causal ordering of perception development. I can only suggest a causal relationship based upon how defendants discussed their formation of trust or lack of trust in various legal actors. Future research should focus on longitudinal research design as well as more specific questions designed to ascertain if any causal relationships exist.

Comparison and Expectancy

One of the research questions for this study was about the relationship of procedural and distributive justice to outcome satisfaction, an issue that can mostly be addressed in this discussion of distributive justice findings since the majority of participants cited distributive justice issues when discussing outcome satisfaction. Comparison refers to the effects of comparing your own outcomes to those received by others, or to your outcomes from prior experiences. Expectancy refers to the difference between the outcome you expect and the one you get. Participants discussed these issues together in many interviews, basing their
expectations of comparisons they made, suggesting that these two components of distributive justice are not necessarily separate in the minds of defendants.

Twenty-five defendants compared their outcomes to those received by others, taking into account differences in charge severity. Unsurprisingly, defendants based a large part of their outcome satisfaction on how their sentence compared to others with similar charges. Even some of those defendants who cited process concerns when discussing outcome satisfaction also cited distributive justice concerns.

Many of these defendants declared their sentence to be unfair because it was more than what other people with similar charges get or it was more than what someone with worse charges had received. A few felt that their sentences were fair, again basing this on comparisons to people with similar or worse charges. Almost every person interviewed for this study admitted they had personal responsibility for committing some crime, although not always the crime they were charged with. And each person said they deserved to have some punishment, yet most felt the sentence they received was too harsh based on their perception of the seriousness of their crimes.

When asked about reasons for the differences in sentence outcomes, participants provided a variety of reasons including attorney type, race, social capital and financial means, and criminal history. Defendants explained that if just one or more of these factors had been in their favor, their outcome would have been more favorable. For example, if they had been White and had money to buy a private attorney, or if they had no criminal history, perhaps the prosecutor or judge would have made them a better offer.

Based on each defendant’s prior experiences, what they had seen happen to others in court, and what they heard had happened to other defendants, each participant claimed to have
developed expectations about what their outcome was likely to be. For some, these developed early in the case, while others discussed how those expectations had changed after talking to someone partway through their case. More importantly, they developed a sense of what a fair outcome should look like, regardless of how realistic that expectation was for their charge. The most common complaint about outcomes related to expectancy was that the defendant expected a more favorable sentence based on their charge, and of course what they believed others were receiving.

**Recommendations for Future Justice Research**

While there was ample support for traditional concepts of procedural and distributive justice, the identification of several other issues also identified in more recent studies, suggest some changes should be made to the traditional justice framework for future research. First, the continued use of non-survey methodologies will show if the newly identified justice components are found in other samples, as well as possibly uncovering further components not yet identified. Survey based studies should consider adding questions about components such as the need for information and case processing time.

Second, survey-based justice research should be wary of using any questions that simply ask defendants about the fairness of proceedings without any context. The current study findings indicate that the definition and operationalization of fair may vary across defendants. Participant comments also suggest that asking about what is fair may trigger more responses about outcomes than process, thus caution should be used when interpreting results from such ambiguous, yet close-ended questions. Adding follow-up questions that get at the specifics of fairness may provide insight into what fairness means to defendants in such studies.
**Procedural and Distributive Justice as Interrelated Concepts**

One of the main research questions for the current study was on the nature of the relationship between procedural and distributive justice from a defendant perspective. Participants highlighted the connected nature of process and outcome in their recent cases, commenting about how unfair processes may lead to unfair outcomes. Studies have usually either focused solely on procedural justice, or used distributive justice as simply one component of procedural justice (Lind and Tyler, 1988; for examples see Sunshine and Tyler, 2003; Tyler, 1990; 2003). Several studies from the 1990s examined both justice components, each finding that distributive justice played a unique role in mediating outcome judgements (Bos, Lind, Vermunt, and Wilke, 1997’ Flinder, 1994; Tyler, 1994). In one of these studies, the results suggested that procedural justice was the primary influence on outcome satisfaction, but that distributive justice exerted a separate and significant effect on how participants felt about their outcome (Tyler, 1994). Another found that distributive justice perceptions mediated the effects of procedural justice on outcome judgements (Flinder, 1994).

There is relatively little justification provided in the research for excluding distributive justice or including it as only a measure of procedural justice, and the failure to accurately model the relationship between the two concepts limits understanding of how defendants make fairness assessments (Hauenstein et al., 2001). The current study provides support for future research to examine the two concepts together, as most defendants that identified fair process issues as important did so because they believed fair processes would lead to fair outcomes. For example, some believed that gaining more process control, particularly through telling their story or
speaking up in court (voice), would allow them to direct the proceedings to more favorable outcomes.

But outcome fairness assessments were more often based on perceived distributive justice than procedural justice perceptions. The majority of defendants in the sample (thirty-six) established that the fairness of an outcome is based on how it compares to the outcomes of others in similar or worse situations (comparison), which in turn creates an expectation about the type of outcome they are likely to receive (expectancy). Procedural justice did play a role in creating outcome expectations as well, particularly the perceived neutrality of the judge, which in turn translated to perceived trustworthiness according to some defendants. Defendants who believed a judge was unbiased were more likely to believe that their outcome would be fair in comparison to outcomes received by others, something that was raised when some participants were asked why they expected a fair outcome. Similarly, defendants who trusted their defense attorney were more likely to expect a favorable outcome compared to what they might have received had they felt their attorney was not doing a good job representing them. This relates to the earlier discussion of how trust in attorneys is built, with multiple defendants explaining that they trusted attorneys who communicated well and who they believed were advocating for their clients.

The model that can be suggested from these findings is one in which procedural justice assessments may alter distributive justice perceptions already possessed by defendants at the start of their case. Distributive justice perceptions then directly impact the judgement of outcome satisfaction, although this judgement may change post-sentence as defendants learn new information about outcomes received by others and/or have time to reflect on their own outcome. Given the qualitative nature of this study and small sample size, the above model cannot be generalized, but it does represent the first qualitative attempt to examine the relationship between
these two concepts and as such is an important contribution to the literature. Importantly, the model is based on explanations about the relationships between concepts described by defendants themselves, thus it is worth considering in future research endeavors, both survey and non-survey based.

Based on the findings from the current study, and a few articles discussed above, it is recommended that moving forward justice studies should also attend to the equally important concept of distributive justice rather than focusing solely on procedural justice. Doing so will improve understanding of that relationship, since the current state of research has provided scholars with several similar, but different models. Research that neglects to include measures of distributive justice may also be leaving out crucial parts of the defendant experience, limiting the utility of models formulated from such research. The spate of recent work using non-survey methods supports the need for further study of the relationships not only between procedural and distributive justice, but between individual components of each.

The current study only interviewed defendants post-sentence, which means there is no way to tell which came first – perceptions of outcomes or perceptions of process. One study utilizing pre- and post-interviews found that defendants very much had process concerns in the early stages of the case, and that many of those process concerns remained the same after the case ended (De Mesmaecker, 2014). However, there were some differences of note, like concern over the behavior of the prosecutors and the court setting that only appeared in the post interviews. It is possible that some process concerns expressed by participants in the current study only arose after sentencing as the defendant thought of ways to explain their unsatisfactory outcome. If I had conducted pre-interviews at the start of each case, participants may have brought up different issues, or offered different explanations for their expected outcomes.
The findings of the Belgian study, and the current study, raise questions about the nature of the relationship between procedural and distributive justice. Do defendants develop perceptions of the process as fair during the case, or do they develop them once the outcome has been obtained? That is, do they declare certain processes to be fair or unfair based on whether the outcome is fair? Or do they make assessments of fair outcomes and processes separately? These questions cannot be answered with the current data, but future qualitative justice studies should attempt to ascertain the order in which defendants make fairness judgements. Ideally, further longitudinal research should be undertaken that carefully examines differences and similarities across time points in the issues raised by participants. This will improve our understanding of how defendants may develop perceptions of process and outcome issues over the course of a case, as well as our understanding of the relationship between these two justice concepts.

Improving Research on Attorney-Client Relationships

The Bad Rap of Public Defenders

K: Did you have a defense attorney for that case?
R: Nah, I had a public defender.

D09, White male, 30

Similar to the title of the infamous Casper piece on defendant perceptions of defense attorneys,\(^4\), the current study sample almost universally believed that private attorneys were better than public attorneys (1971). When asked why private attorneys were better, most talked

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\(^{4}\) The piece was titled: “Did you have a lawyer when you went to court? No, I had a public defender.”
about getting better plea deals and more favorable sentences. Yet when asked what they liked about their attorneys, private or public, most talked about issues of communication and advocacy, regardless of the actual outcome.

While defendants care a great deal about outcomes, as evidenced by the concerns with outcome fairness that 77% of the sample shared, they are also quite invested in the quality of the relationship with their attorney. This has been suggested by prior research showing that communication, a concern for the client’s best interests and well-being, and shared decision-making are all factors clients consider when rating the quality of their representation (Boccaccini & Brodsky, 2002; 2004; Casper, 1978). Participants in the current study identified communication and advocacy as the two most important aspects of the attorney-client relationship. They also suggested that trust in the attorney-client relationship is built when the attorney communicates in a desired manner with and advocates for their client. The issues of decision-making control, attorney legal knowledge, and vertical representation were all discussed by participants, but by far fewer of them than the above identified issues.

This suggests several things, not the least of which is that some aspects of the attorney-client relationship may matter more when clients assess the quality and benefit of that relationship. For participants in this study, advocacy and communication were the key aspects of the relationship, and happen to be the two concepts most related to procedural justice. I already discussed above the relationship between attorney-client communication and the need for information expressed by many defendants. Advocacy relates to perceptions of fair process because, as many defendants pointed out, the process is not fair if the defense attorney is not working on behalf of the client. Indeed, some defendants went so far as to claim the public defenders work with the prosecution, making the process inherently unfair.
This leads to a secondary conclusion: the majority of defendants in this sample did not trust public defenders to varying degrees. Yet, both in the current study sample and nationwide, most defendants use public defenders because they lack the financial means to hire a private attorney. Expectations for private attorneys were also much higher than for public ones. For a few defendants, this came from an understanding that public defenders were overloaded with cases and had no time to do more than the minimum for their clients. Most who discussed this issue identified money as the reason they had the right to expect more from their attorney – if you pay an attorney, you are paying for a certain quality and amount of work. Using that logic, some defendants extended the argument to say that the more money you pay, the better outcome you are guaranteed. They recognized that one is literally buying an attorney’s time, and thus the more time you pay for, the more time and quality of work you should receive.

Naturally, many participants felt this was not fair and biased the system in favor of those who could afford an attorney. This theme was expounded upon in multiple interviews, with defendants discussing the various ways that people with public defenders were disadvantaged. All of this goes back to caseloads, communication, and defendant perceptions. If public defenders had more time to communicate with their clients, which would likely require a decreased caseload in the current study site, they might be able to change some of the negative beliefs many defendants have formulated about public defenders. There is no objective data in the study site, or nationwide, to suggest that defendants with private attorneys do indeed receive better outcomes. Thus, the perceptions of these defendants may be more based off stories they hear from other defendants, and possibly the lack of communication with the public defenders, rather than any factual basis.
These findings also demonstrate the need to further study procedural and distributive justice in relation to attorney-client relationships, preferably with qualitative methods. The two areas of research have share several concepts and intertwining issues that have not been addressed. When researchers ask a defendant if his or her case processing was fair and just, how much of that is due to an assessment of the work of the defense attorney versus of the judge or prosecutor? Given the unique role of the defense attorney as the only advocate and confidant of defendants, it would seem highly likely that that relationship would impact defendant perceptions of procedural and distributive justice.

While separate research on attorney-client relationships should continue to be undertaken, there is a place for also studying this issue within procedural and distributive justice research. Doing so will enhance knowledge in both literatures, as we work to understand the issues that impact assessments of fair process and outcomes, as well as quality attorney-client relationships.

**Justice and System Legitimacy**

*The Meaning of Fair*

The word ‘fair’ is the most often used word in procedural justice research, not only to describe outcomes and processes, but in many of the questions posed to participants about their experiences and perceptions. And while scholars rely on generally agreed upon definitions when posing such questions, those definitions are rarely if ever shared with respondents, leading to questions about operationalization in defendant responses. Many defendants in the current study indeed did describe their experiences and outcomes in general terms by using the words ‘fair’ or
‘unfair’. When prompted to explain exactly what they meant by those terms, there were multiple explanations given, demonstrating that the concerns voiced above are not without merit.

Furthermore, more defendants associated the concept of fair with outcomes than procedures. Some studies have taken care to specifically ask about fair process issues in an attempt to clarify their meaning. Yet in the current study, when defendants were asked about the process specifically some still discussed their outcome in their recent case, suggesting that researcher assumptions about consistency in word operationalization and definition in prior research may have been wrong for at least some respondents.

Further qualitative research would go a long way towards addressing this issue of definition consistency, by confirming with participants how they define and operationalize certain key words and concepts often used in prior research. And it would benefit future survey-based research to first clarify any such definitions to insure all respondents are indeed answering the same question.

*If The System is Perceived as Illegitimate, Does Process Even Matter?*

Twenty-six defendants expressed concern about the perceived legitimacy of the criminal justice system, including the local courts they had recently been through. These defendants felt that a system that allows misconduct from legal actors and that favors defendants of wealth and privilege cannot be trusted to give one fair outcomes via a fair process. Much of the argument for employing procedural justice in courts and policing is based on a multitude of studies that suggest procedural justice leads to increased citizen compliance and cooperation, as well as improved perceptions of legitimacy (e.g. Gau and Brunson, 2010; Sunshine and Tyler, 2003; Tyler, 2013). Yet, for these defendants, process mattered little when faced with the perceived
inequities built into the system that they believed would always guarantee themselves and other poor defendants less favorable outcomes.

This raises further questions about the impact of singular experiences on what appeared to be long held beliefs about unethical behaviors and a lack of system legitimacy. The participants in the current study who discussed issues of misconduct and defendant privilege had not developed these ideas based solely on their recent experience, although for some defendants it was clear their recent case provided further support for these beliefs. But for others their recent case had been judged fair, in both outcome and process, yet they still expressed an adamant belief in the general illegitimacy of the justice system.

Participants in the current study identified two specific concerns – overcharging and an unfair advantage for defendants with money and/or social capital. The belief of many participants that the system favors those with money and social capital may mitigate the impact perceptions of procedural and distributive justice might have on outcome satisfaction, particularly if the defendant believes these issues to have impacted the immediate outcome. Defendants who are poor and lack connections to people that might benefit them during a criminal case may care less about fair processes since they already believe their outcome will be worse based on their financial and social standing. There may also be a tendency to assume the worst, engaging in what is commonly known as a self-fulfilling prophecy. Defendants may be predisposed to be unsatisfied with outcomes and procedures because they have already decided that others with money and connections will receive more favorable outcomes. It was beyond the scope of the current study to explore such issues further, as the data do not allow for any definitive statements about the relationship between process assessments in a recent case and more general beliefs about the legitimacy of the criminal justice system. Future research should
carefully examine the process of developing perceptions of legitimacy and system-wide misconduct over time, as it may have an impact on perceptions of recent cases.

I can conclude that even for those participants with grim views of the legitimacy and fairness of the system at large, matters of procedure and outcome distribution still had an impact on their assessments of outcome satisfaction with their recent case. A few even proclaimed surprise that their experience was fairer and less stressful than they had anticipated, suggesting that while long-held views of the justice system may not be altered by a single favorable experience, defendants are still able to judge each experience on its own merits.

**Timing of Data Collection**

An issue previously unexamined in the justice literature is the timing of data collection in relation to the case and sentence. There was some evidence provided directly by participants that when they are interviewed may impact their perceptions, particularly when it comes to outcome satisfaction. When asked specifically about their satisfaction with the outcome, ten defendants said that if I had asked them at a different time, I would have received a different response.

Interviews were conducted in the order of release dates, to ensure that defendants due for release very shortly would still have the opportunity to be interviewed. As I worked through the list of interested persons, the release dates moved further out, with the last interview involving a man not due for release until August 2017 (four months after the interview). Eight defendants made comments about the effect of this timing on their satisfaction, with the consensus being that the closer a defendant is to their release date, the more satisfied they will be with their outcome.
Multiple defendants who were close to their release date said that if asked about outcome satisfaction months ago they would have expressed anger, but now they had accepted it and moved on. Others near the beginning of their sentence expressed the anger described, but said that when they got closer to the end of their sentence they would feel better about it all. Most defendants, however, did not mention the timing of the interview in their responses. The concern is that those defendants who did not mention interview timing could still be impacted by the temporal proximity of the interview to the sentence start or end date. My guess is that if I had explicitly asked about this issue, more defendants would have discussed changes in outcome satisfaction over time.

Much prior research on justice issues and attorney-client relationships has been cross-sectional, as was the current study (Tyler and Lind, 2001). There have been two notable exceptions to this, with each conducting pre- and post-interviews, but only one sampling people involved in the criminal justice system (De Mesmaecker, 2014; Tyler et al., 1999). This has caused some scholars to call for more studies to utilize such a pre-post design, with the goal of furthering our understanding of how participant assessments of fair process change over the course of a case. And the findings from the current study suggest that the timing of interviews in relation to case processing may play a role in defendant outcome satisfaction assessments. Future research should, when possible, address this issue by interviewing defendants at multiple time points during the process. Barring that, studies should be sure to ask defendants to recall how they felt about outcomes and process at various points during their case and sentence. While their memory may not be perfect, if the question is tied to concrete events, defendants are more likely to accurately remember their sentiments at the time (Weiss, 1994).
Limitations

There are several important limitations to this study that must be discussed, including the lack of generalizability, homogeneity of the sample, and potential researcher bias. In the discussion above of the timing of interviews I brought up a fourth limitation – eight participants expressly stated that their satisfaction with their case outcome was at least partially dependent on when they were asked. That is, defendant outcome satisfaction assessments may change over the course of a sentence. All participants were interviewed once, while serving their sentence, with some being released in a matter of days, while others had been sentenced only a couple months ago. Based on comments from some participants, at least some would have changed their responses if I had interviewed them earlier or later in their sentence. As all of the participants had taken guilty pleas, this cannot be applied to defendants found not guilty or with dismissed cases, although it is likely there is much less variability in satisfaction among those defendants. Future research should address this issue by conducting interviews at multiple time points, to gauge how perceptions make change as a sentence wears on.

Second, the sample contained only forty-three defendants, all of whom were currently serving jail sentences from one of two local courts. While it is not uncommon to have smaller samples when conducting in-depth interviews, this does mean the findings are not generalizable beyond the county sentenced jail population in Central County. The main contribution of the current study was never meant to be in generalizable findings, but in providing a more in-depth understanding of the issues that matter most to defendants in defining their own experiences in the criminal justice system. That said, these findings can be used, with caution, to suggest avenues for future research in other jurisdictions and populations. It is also encouraging to note that this study provides support for some findings from prior procedural and distributive justice
research, as well as research on attorney-client relationships, contributing to the generalizability of the bulk of knowledge from both literatures.

The demographic homogeneity of the sample also limits generalizability. Of the forty-three participants, three were female and a separate three were Hispanic; most participants were Black or White males. This too limits generalizability of the findings beyond the sample. While there were no discernable differences in responses by sex, given that there were only three women interviewed, further research into women’s experiences in the criminal justice system is needed before any conclusions can be made about how they might differ or be like that of male perceptions. The same applies to the perceptions of Hispanic defendants. The only comparison that could be made in the current study was between Black and White males, and as discussed above, the only difference in perceptions between those two groups was in the perceptions of racial bias in the system. Black defendants were more likely to perceive the system as biased than were White defendants.

A third limitation has to do with the entire sample being inmates currently in jail on county sentences. While using only incarcerated participants provides several practical advantages in the way of contacting and retaining participants, it also limits the conclusions that can be drawn from this study. Jailed participants represent a certain section of offenders – those charged with crimes serious enough to warrant jail time, but not serious enough to warrant prison time. Thus, findings from the current study are not relatable to defendants in traffic court or in prison, for example. Another limitation has more to do with conducting interviews in the jail environment. Although all interviews were conducted in private consultation rooms used for inmate meetings with their attorneys, it is possible that participant responses were impacted by assumptions about less privacy than they might have on the outside. And participants were
required to submit their name to jail staff, so despite being assured by myself that their individual answers would not be reported to jail staff, some participants may have held back or left certain things out during the interviews. Unfortunately, there is no way to know for sure exactly how defendant interviews were impacted by the jail setting, thus a measure of caution should be used when applying these findings to non-jailed populations, or in generalizing them at all.

Finally, in qualitative research there is always the potential for researcher bias to skew both data collection and the interpretation of findings. My prior research experiences have been focused mainly on one side of the criminal justice equation – that of the defense. Whether it be interviewing juvenile delinquents and ex-gang members, or working with indigent defense providers to study court reform, I have had little experience working with police and prosecution. This may have impacted my attitudes towards participants by making me more empathetic and willing to believe their stories. To counter this, I took care to look for inconsistencies when analyzing the data, as well as during interviews as much as was possible. But I acknowledge that some bias may still have impacted the findings presented here.

**Closing Remarks: Moving Towards a More Complete Understanding of Defendant Perceptions and Experiences**

In conclusion, the discussion above and the findings from the current study demonstrate a need to expand justice research and attorney-client relationship research in several directions, both methodologically and substantively. The lack of methodological variety in procedural justice research has received increased attention from scholars more recently, with several studies published in the last few years that examine procedural justice using qualitative methods. And for the most part, the findings from those studies have supported the prior survey-based
research, which is encouraging, although one study did identify several new components of procedural justice including a need for information. And the current study identified several issues not yet examined, including a concern for case processing efficiency, interview timing in relation to sentence, and inconsistent definitions of the word ‘fair’ among defendants. Further investigation into these topics is warranted despite the lack of generalizability from the sample, given that defendants in the current study consistently identified them as important to their perceptions of procedural and distributive justice. Non-survey based research would be particularly useful in identifying any further components of procedural or distributive justice, or of assessments of attorney-client relationships.

Substantively, there is a need for further exploration of the relationship between procedural and distributive justice, particularly how that impacts assessments of outcome satisfaction. The current study explored the potential relationship between the two types of justice from defendant perspectives in an attempt to provide further clarity on the nature of these impacts. In analyzing the interviews, there was not one defendant who did not discuss procedures and outcomes as related issues, but not always in the manner suggested by much procedural justice research. That is, most defendants did not discuss their process perceptions as the catalyst for their assessment of outcome satisfaction. Many instead discussed how the procedures impacted their outcome expectations, which were first created based on comparison to outcomes others had received. The model suggested by the current study is another in a line of similar models suggested by some prior quantitative research that demonstrated a mitigating influence of distributive justice in the relationship between procedural justice and outcome satisfaction. The relationship between procedural and distributive justice indeed has enough empirical support that future research should more closely examine how that relationship is modeled in other samples.
There is also a need for research that examines issues of procedural and distributive justice alongside those of attorney-client relationships. As discussed above, not only do the two literatures share many components and measures, but the current study suggests they may be intertwined in defendant assessments of fair process and outcomes. Participants in the current study identified many ways in which their perceptions of procedures and outcomes were related to their assessment of the quality of the attorney-client relationship. For example, assessments of process fairness were often related to the perceived quality of the attorney-client relationship, specifically attorney communication and advocacy for the client. This strongly suggests that these previously separate literatures would benefit greatly from more studies that examine the connections between both sets of issues. Overall, the recommendations to be gained from the current study are that future research should focus on reconciling the suggested relationships between the components of procedural and distributive justice, as well as those used to measure quality in attorney-client relationships. A more complete model of the development of defendant perceptions and opinions can only be gained by looking carefully at these three areas.
Appendix A: Defense Attorney and Judge Interview Instruments

Defense Attorneys

- What is the first thing you do upon being assigned/taking a case?
- When do you first meet your client? Before or after they are arraigned?
- Do you ever represent clients at arraignment? If so, what do you try to do at that appearance?
- In what ways do you most commonly communicate with clients? (i.e. phone, text, email, in person) How often do you usually communicate with clients?
- What do you think are the most important aspects of the client-attorney relationship?
  - Do you take into account their ideas about how to proceed with the case? Why or why not?
  - Do your clients ever tell you that they wish you did something different? Do they ever express appreciation for certain things you do?
- What are your goals when representing a client? What role do you think defense attorneys play in case processing?
- Do you generally know if your client is gang involved or a gang member?
  - Does client gang involvement affect how you strategize or plan in a case?
- In your experience, are defendants under the impression that they will get a better outcome with a private attorney? Why do you think that is?
- What are your thoughts on the District Attorney’s Office? What about the current judges in the courts you practice in?
- Do you think it matters to defendants if the process seems fair? Why or why not?

Judges

- Generally, what do you see as your job in your role as a criminal court judge?
- What is your goal at a defendant’s first appearance?
- How do you make bail and release decisions? What factors are most important for you to consider? Do you call an ADA for bail recommendation?
- Do you know if defendants are gang members or involved in a gang? When and from where/whom do you get this information?
  - Would you do anything different in a case that involved a gang member defendant?
- What do you see as the role of the prosecutor in court? What about defense attorneys?
- What type of behavior do you expect from defendants in court?
- How do you make sentencing decisions? What factors are most important for you to consider?
- What do you think matters most to defendants during case processing?
  - Do you feel it is important that court proceedings seem fair to defendants? Why or why not?
Appendix B: Defendant Interview Instrument

Today I want to talk with you about your opinions on and experiences with the criminal justice system in “Research Site” and about your perceptions of the criminal justice system more generally. I also have a few questions about groups and individuals you may spend time with in “Research Site” or the surrounding cities and towns.

I am not associated with the police, any city government or court, the public defender’s office, the district attorney’s office, or probation/parole in any way. As explained in the letter you just received, I am an independent researcher and doctoral student from the School of Criminal Justice at the University at Albany. Everything we discuss today will be confidential and will not be associated with you personally in any way. I would like to record the interview to be sure I accurately get your comments down, but no one outside of the research team will have access to your comments. Would you like to participate in this study? Are you comfortable with me recording our conversation?

You can contact myself or my faculty advisor with any questions you may have about this study. Our contact information is included at the bottom of the study information letter you received. The interview usually takes 1-2 hours, but you may choose to end this interview at any time, and you may refuse to answer any questions. Do you have any questions for me before we begin?

Section A: Introductory Questions
We’ll start with a few basic questions about you and how things are going right now.

A.1: Current Situation

• In what city are you currently living? How long have you lived there?
  • Where did you live before? Why did you end up moving here?
  • Which neighborhood are you living in now? What do you like or not like about living there?
• Are you currently employed? If yes: What is your job? If no: When was the last time you were employed (month, year)? Are you currently looking for work?
• Are enrolled in any type of educational program or school? Can you tell me a bit about that?
• What are your plans for the next year?
• What is your general impression of the criminal justice system?

A.2: Gang Status

• Would you currently identify yourself as a gang member?
  • If no: Did you ever identify as a gang member? During what time period were you involved with a gang?
  • If yes: What about any type of group? Is this group involved in any type of criminal activities?
  • If yes: What gang are you involved with? When did you first join the gang?
• Do you think other people in your neighborhood might identify you as a gang member? What about police or probation officers? What about outreach workers or service providers in your city?
• Can you tell me a little bit about your gang involvement?
• What activities did your gang participate in? Were you involved in criminal behaviors as part of the gang? What about on your own?
• If respondent does not identify as gang member: Would you consider any of your family or friends to be gang members?
  o If yes probe about: How often would you say you hang out with them each week? Do you think other people might identify you as somehow involved with or related to these people? Might police identify you as a gang member based on these relationships?
  o If no: Where you grew up, were there gangs in your neighborhood? Did you interact with gang members often?

Section B: Experience with Law Enforcement, the Group Violence Intervention, and the Local Criminal Courts

B.1: Law Enforcement
Next, I’d like to ask if you a few questions about law enforcement in “Research Site”.

• What is your impression of the “Research Site” Police Department? Why do you feel that way?
  o Probe about specific experiences and reasons for impression of local police agency.
• Tell me about your first experience with the police. How old were you?
  o How many times would you guess that you have interacted with the police?

B.2: GVI
Police departments often make special efforts to target certain types of crime.

• Do you know about any special efforts by law enforcement that focus on members of street gangs, or violence?
  o [If yes]: what can you tell me about them?
• Probe re: what are they doing? How do they do it? Why are they doing it? Does it apply to all gangs or only some gangs? Do you think that it affects the things that gang members do? Does it affect what you do?

B.3: Central County Court Systems
Most people have had some experience with court, or know someone who has. I’m curious what your general opinion is of the courts in “Research Site” and the people who work there.

• Have you ever been to “Research Site” City Court?
• What is your impression of “Research Site” City Court and the judges there?
  o How would you describe your experiences in that court?
  o How about your friends or family? What were their experiences like?
• Have you ever been to “Research Site” County Court?
• What is your impression of “Research Site” County Court and the judges there?
How would you describe your experiences in that court?
How about your friends or family? What were their experiences like?

What about attorneys working for the District Attorney’s Office? What is your impression of that office?
Have you had any experiences with them? What about your family or friends?

Section C: Perceptions of Case Processing
This next set of questions are about your experiences during your most recent court case. This case can be one where you were found guilty, took a plea bargain, or had the case dismissed. Remember, I am interested in your opinions and thoughts. Please try to answer the questions to the best of your memory.

C.1: General Case Perceptions
I want to start with some general questions about your experience.

Thinking about this recent case, what would you start with when asked how this experience has been for you?
What are your thoughts on the verdict in the case?
[If sentenced]: What about your sentence? How did you feel about that?

C.2: Perceptions of Arrest
Next I want to ask you some more specific questions about the process you went through from arrest to the case being closed. Let’s start with the arrest.

How do you feel about the process of being arrested for this case? What about the officers who arrested you?
How did the arresting officer(s) treat you? Why do you think they treated you that way?
[If GM]: Do you think your gang member status had any effect on your treatment by the officers who arrested you or those who worked at the place you were detained?
What happened immediately following your arrest?
Were you held in any type of detention center or jail? [If yes]: About how long were you there before you were first brought before a judge?
Was this the first time you had been arrested?
[If no]: About how many times before this had you been arrested? How did this arrest experience compare to prior arrests?
[If yes]: How did you feel, getting arrested for the first time?

C.3: Perceptions of Arraignment
Next I want to ask you a few questions about the first time you went before a judge, an appearance often referred to as an arraignment.

When did you first get to meet with a defense attorney? Do you remember if there was an attorney at your first appearance before a judge?
Did you get a chance to talk with your attorney in private before going in front of a judge for the first time?
[If yes]: What did you and your attorney talk about at that meeting?
o [If no]: Did your attorney speak to you at all before standing with you before the judge?

- What was the outcome of this first court appearance?
  - Follow up if needed with specific outcome questions. Was bail set? Were you released on your own or under probation supervision? Or were you remanded to jail?
- What do you think about the decision made by the judge?
  - How do you think the judge made his or her decision?
  - Would you say the judge was fair in their decision-making?
- [If bail]: Were you able to make bail at any point during your case? [If no]: Why not?

C.4: Procedural Justice

Next I want to get your thoughts on your treatment by court actors such as judges and prosecutors, and on the decisions those people made during your case.

- In general, how do you feel about the judge who presided over your case? What about their decision-making process?
  - [If necessary prompt with the following questions if they were not answered in response to above question]:
    - Did you feel the judge treated you with respect?
    - Was the judge fair in their decisions?
    - Did he/she give you a chance to say something if you wanted to? Did the judge listen to your story?
    - Was the judge someone you felt you could trust to make impartial decisions based on facts and to treat you fairly?
    - Do you feel the judge took what you had to say into consideration when making his/her decision?

- In general, how do you feel about the prosecutor(s) that handled your case? What about their decisions?

- How did the prosecutor treat you throughout the case?
  - [If necessary prompt with following questions and request explanations for each response]:
    - Did you feel the prosecutor treated you with respect?
    - Did he/she give you a chance to say something if you wanted to?
    - Do you think the prosecutor made their decisions impartially and based on facts?

- Were there any other people, besides your defense attorney, involved in your case that I didn’t mention?
  - [If yes]: What was their involvement in your case? How do you feel about their decisions? What about their treatment of you?
- [If GM]: Do you feel that your [perceived] gang member status had any effect on the way you were treated by any of these people?

C.5: Client-Attorney Interactions

Let’s talk a bit about your experiences with your defense attorney(s).
• Did you have an attorney represent you in this case? How did you get your attorney?
• What would you start with when asked about your experience with your defense attorney(s) for this recent case?
• How would you describe your relationship with your attorney(s)?
• Do you believe your attorney(s) did a good job representing you on this case? Why or why not?

• How do you feel about your attorney’s communication throughout your case?
  o How many times did you meet in person with them? How would you describe those interactions?
  o What about phone calls or letters, how often did you get those?
• Do you feel your attorney listened to you?
  o Did they take your requests and questions seriously?
  o Did they provide complete and clear responses to all your questions?
• Did you trust your attorney?
  o Do you think that they were honest with you at all times?
• How did your attorney make decisions about your case?
  o Were you involved in making those decisions? In what way?
• In what ways, if any, did your attorney advocate for you?
  o Did they assist you in making bail? What about helping to find diversion programs or get you into pre-trial release?
  o Did they advocate for the final disposition and sentence you wanted?
• [If GM]: Do you feel that your attorney treated you any differently because of your [perceived] gang member status?
• Overall, how well would you say your attorney performed their duties-very well, acceptable, fair, or poor?
• Were you to go to court again, would you use this attorney a second time if you had the choice?
• At any point throughout your case did you attempt to hire a private attorney?
  o [If yes]: Why? What was the outcome of this attempt?
  o [If no]: Why not?
• In your opinion, would you be more likely to obtain a better case outcome with a private attorney or a public defender? Why?

C.6: Distributive Justice (expectancy & comparison)
Now I want to ask you a few questions about expectations you had at the start of your case and the eventual result of the case.

• Prior to the resolution of your case, what did you expect would happen?
• Why did you think your case would turn out that way?
  o What factor(s) did you think would most impact the resolution of your case?
  o [If necessary probe]: Did you expect to take a plea or to go to trial? What sentence were you expecting? Why?
  o [IF GM]: Did you think being a gang member would affect any of the outcomes of your case?
• Was there any reason you thought your outcome would be similar or different compared to others?
• What types of outcomes do you think others with the same charge as you generally received?
  o What do you think led to the outcomes of those cases? Do you think gang involved defendants might receive different outcomes?
• Had you witnessed or heard about any other cases similar to yours?
  o [If yes]: How did what happened in those cases compare to your case?

C.6: Satisfaction with Case Outcomes
Finally, I want to ask you a few questions about your satisfaction with the case outcomes.

• Overall, would you say you are satisfied with how this case turned out? Why or why not?
• Specifically, what things about your case and the people involved were you not satisfied with? What things were you satisfied with?

• Is there anything related to the topics we covered today that I didn’t ask you about that you want to talk about?
Appendix C: Study Information Sheets

Defense Attorneys

Perceptions of Justice: Comparing Gang and Non-Gang Involved Defendants on their Perceptions of Procedural and Distributive Justice

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The goal of this research project is to learn about how people experience the criminal justice system, as well as the experiences of legal officials and personnel who work in that system. Specifically, I want to know how defendants describe the perceived fairness and legitimacy of proceedings, and how they felt their case outcomes compared to others. I am also interested in how defendants interact with various legal officials and personnel, including their defense attorney and the presiding judge in their case.

Part of this research project involves interviews with defense attorneys who provide representation to clients with criminal charges in “Research Site” courts. The goal is to learn about how attorneys structure their work, including how they communicate with and advise their clients, their views on the role that a defense attorney plays in the court process, and their experiences representing gang involved clients compared to non-gang involved clients.

Interviews usually last 45-60 minutes and the interviewer will take notes on your responses to questions on the above topics. Your identity will remain anonymous and no identifying information will be associated with your comments at any time. All information obtained in this study is strictly confidential unless disclosure is required by law. In addition, the Institutional Review Board and University officials responsible for monitoring this study may inspect these records. I do not anticipate any risk in your participation. Although you may not receive direct benefit from your participation, others may ultimately benefit from the knowledge obtained from this research.

If you agree to participate in this interview, you should be aware of your rights as a research participant:

- You may choose not to answer any questions and may refuse to complete any portions of the research you do not wish to for any reason.
- You may request further information on this study at any time before, during, or after your participation.
• Research at the University at Albany, involving human participants, is carried out under the oversight of the Institutional Review Board (IRB). This research has been reviewed and approved by the IRB. If you have any questions concerning your rights as a research subject or if you wish to report any concerns about the study, you may contact University at Albany Office of Regulatory & Research Compliance at 1-866-857-5459 or hsconcerns@albany.edu.

If you have any questions about this study, please contact me using the information provided at the top of this sheet. This letter is for your records.

Thank you,

Kirstin Morgan

Judges

Perceptions of Justice: Comparing Gang and Non-Gang Involved Defendants on their Perceptions of Procedural and Distributive Justice

Researcher Contact:
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The goal of this research project is to learn about gang member experiences within the criminal justice system, as well as the experiences of legal officials and personnel who interact with those defendants. Specifically, I want to know how gang members compare to non-gang involved defendants in how they describe the perceived fairness and legitimacy of proceedings, and how they felt their case outcomes compared to others charged with similar crimes. I am also interested in how defendants interact with various legal officials and personnel, including their defense attorney and the presiding judge in their case.

Part of this research involves interviews with elected judges in city, county, and town jurisdictions within “Research Site”. The goal is to learn how judges process criminal cases, including their thoughts on defendant behavior in court, how they make decisions throughout
case processing, and their thoughts on processing gang involved defendants compared to non-gang involved defendants.

Interviews usually last 45-60 minutes and the interviewer will take notes on your responses to questions on the above topics. Your identity will remain anonymous and no identifying information will be associated with your comments at any time. All information obtained in this study is strictly confidential unless disclosure is required by law. In addition, the Institutional Review Board and University officials responsible for monitoring this study may inspect these records. I do not anticipate any risk in your participation. Although you may not receive direct benefit from your participation, others may ultimately benefit from the knowledge obtained from this research.

If you agree to participate in this interview, you should be aware of your rights as a research participant:

- You may choose not to answer any questions and may refuse to complete any portions of the research you do not wish to for any reason.
- You may request further information on this study at any time before, during, or after your participation.
- Research at the University Albany, involving human participants, is carried out under the oversight of the Institutional Review Board (IRB). This research has been reviewed and approved by the IRB. If you have any questions concerning your rights as a research subject or if you wish to report any concerns about the study, you may contact University at Albany Office of Regulatory & Research Compliance at 1-866-857-5459 or hsconcerns@albany.edu.

If you have any questions about this study, please contact me using the information provided at the top of this sheet. Principal Investigator or the Co-Principal Investigator listed at the top of this sheet. This letter is for your records.

Thank you,

Kirstin Morgan
Appendix D: Defendant Informed Consent Form & Study Information Letter

Perceptions of Justice: Comparing Gang and Non-Gang Involved Defendants on their Perceptions of Procedural and Distributive Justice

Today I am requesting your participation in a research project looking at people’s experiences in criminal court. This research is being done as part of my dissertation, which will assist me with earning my Ph.D. The goal of this research project is to learn about defendant experiences within the criminal justice system. Specifically, I want to know how defendants perceived the fairness and legitimacy of court proceedings, and any interactions with court actors such as judges, prosecutors, and defense attorneys. I would also like to learn more about how you felt your experiences in court compared to others you know, or other people who were charged with similar crimes. I am also interested in what your relationship was like with your defense attorney, and whether you were satisfied with the services that attorney provided, as well as with the outcome of your case. Finally, I am interested to know if gang involved defendants differ in their responses from non-gang involved defendants.

I hope to learn about these issues by interviewing people who have been defendants in “Research Site” courts about their experiences and opinions. Your opinions on the criminal justice system are important so that we may learn more about defendant experiences with the legal system in this area. They may help us to better understand what happens while cases are in court and what issues matter most to people charged with a crime.

I got your name because you signed up to participate in this research based on a flier that was distributed by jail staff. You may still decline to participate at any time. I am not associated with the jail staff or Sheriff’s Department, any other police agency, any city government or court, the public defender’s office, the district attorney’s office, or probation or parole in any way. I am an independent researcher and doctoral student from the School of Criminal Justice at the University at Albany.

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Your responses will not be connected to your identity, and nothing about your individual responses will be shared with anyone. Summarized information from all interviews may be shared the “Research Site” Office of the Public Defender and the Office of the Alternate Defender. Your participation in this research will have no effect on any probation or early release from jail.

If you agree to participate, you will be asked to complete an interview about your experiences in “Research Site” criminal courts. Interviews usually last 60-90 minutes and $20 will be deposited into your commissary account for your time. I will record the audio of this interview, just to be sure your comments are represented accurately. You can request not to be recorded. To protect the information you share with me today, your identity will remain anonymous as I will not record your name and no identifying information will be associated with your comments at any time.

All information obtained in this study is strictly confidential unless disclosure is required by law. In addition, the Institutional Review Board and University officials responsible for monitoring this study may inspect these records. I do not anticipate any risk in your participation. Although you may not receive direct benefit from your participation, others may ultimately benefit from the knowledge obtained from this research.

If you agree to participate in this interview, you should be aware of your rights as a research participant:

- You may stop the interview at any time.
- You may choose not to answer any questions and may refuse to complete any portions of the interview you do not wish to for any reason.
- You may request further information on this study at any time before, during, or after your participation.
- Research at the University Albany, involving human participants, is carried out under the oversight of the Institutional Review Board (IRB). This research has been reviewed and approved by the IRB. If you have any questions concerning your rights as a research subject or if you wish to report any concerns about the study, you may contact University at Albany Office of Regulatory & Research Compliance at 1-866-857-5459 or hsconcerns@albany.edu.

If you have any questions about this study, please contact the Researcher or the Faculty Advisor listed at the top of this sheet. Upon verbally consenting, you are providing your informed consent to participate in this study. This form has been provided to you for your records.
Appendix E: Jail Recruitment Flyer

**Requesting participants for an independent research study about experiences in local courts.**

A University at Albany student is requesting participants to be interviewed about their experiences in “Research Site” City or County criminal courts. Participants will be asked about their treatment and experiences in court, satisfaction with the outcome of their case, and the relationship with their defense attorney.

Anyone interested please contact jail staff to have your name put on a study interest list. Up to 50 people will be randomly selected from the list to participate. All participants will have $20 deposited in their account by the researcher upon completion of the interview.

*This research is not affiliated with the “Research Site” County Sheriff’s Department, the “Research Site” County Correctional Facility, or any other agency. Participant responses will be kept confidential. Participation in this research will have no effect on early release or release under probation.*
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