The Perception of Justice

Tort Litigants’ Views of Trial, Court-Annexed Arbitration, and Judicial Settlement Conferences

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Preface

This research involved analysts at several different institutions. Patricia Ebener, Deborah Hensler, Allan Lind, and Robert MacCoun are staff members of the Institute for Civil Justice at The RAND Corporation. William Felstiner is Director of the American Bar Foundation. Judith Resnik is Professor of Law at the University of Southern California. Tom Tyler is Professor of Psychology at Northwestern University and staff member of the American Bar Foundation.

The research was supported with grants from the Institute for Civil Justice and the Law and Social Policy Program of the National Science Foundation.
Foreword

Most citizens have little if any direct contact with the nation's civil courts. Among those who do, all but a handful do so very infrequently. As a result, only a very small subset of people are "repeat players" in the nation's civil courts.

Perhaps it's not surprising, then, that individual litigants' views of the civil justice system are generally not accorded much weight in discussions of how the system might be improved. Instead, it is the "repeat players" (judges, lawyers, and corporations) whose views tend to be most instrumental in designing reforms to the system. Moreover, when individual litigants' preferences are considered, it is generally assumed that what matters most to them are outcome, cost, and timing. Thus, litigants' satisfaction with the system and their preferences with regard to procedures are basically determined by whether and how much they win or lose and by how long it takes and how much it costs to obtain that outcome.

This report provides an interesting and somewhat surprising view of what individual litigants want from the tort system. The study focuses on a sample of litigants in modest-stakes personal injury cases in three different jurisdictions—each of which uses a different court-sponsored dispute resolution mechanism. The study investigates how litigants' satisfaction with their experiences is influenced by hearing procedures, case events, and their impressions of the litigation process.

Although winners were more satisfied with their experiences than losers, the litigants' satisfaction with their experiences had less to do with actual case outcomes, costs, and delay than with how the litigants' experiences with the system compared with their expectations. Of particular importance to litigants' ratings were the perceived fairness, dignity, and carefulness of the proceedings, whether they felt they had exercised some control over the proceedings, and how they evaluated their attorneys. Moreover, litigants translated these comparisons of what actually happened versus what they expected into very different evaluations of the different procedures in which they took part.

These findings raise a number of important questions. First, given their relatively infrequent contact with the system, what in fact shapes
litigants' expectations of the system? Second, how accurate are individual litigants' expectations, and are they subject to change? Third, how do these results generalize to the wider array of participants in the system? Because the defendants in our study were typically insured, because the stakes involved were modest, and because those litigants are not "repeat players," there is reason to believe that these findings may not be representative of the expectations of litigants involved in larger-stakes cases or those who are repeat players. On the other hand, the majority of cases in the system (although not necessarily the majority of the dollars at issue) involve such modest stakes. Moreover, many of the procedural reforms that have been discussed are specifically designed to expedite the resolution and lower the costs of just these types of cases.

These questions rise above the level of academic debate in light of calls for procedural reforms to lower the costs and speed up the processing of tort litigation. Although the study cannot provide a definitive yardstick to use in evaluating the reforms that are being debated, they do suggest that improvements in perceived justice and satisfaction with the system are more likely to result from changes in the tone of the judicial process than from innovations that are strictly designed to cut costs or reduce delay.

Kevin F. McCarthy, Director
The Institute for Civil Justice
Executive Summary

BACKGROUND AND GOALS OF THE STUDY

This study investigated the attitudes and perceptions of individual plaintiffs and defendants in relatively small personal injury tort cases in three state courts. Policy debates often include assertions about how litigants react to various procedures and what litigants want from courts, but prior to the current study there was little empirical information against which these assertions could be tested. The research reported here investigated how tort litigants’ fairness judgments and their satisfaction with their experiences with the civil justice system are affected by hearing procedures, case events, and impressions of the litigation process. The study examined tort litigants’ satisfaction and perceptions of fairness under three court-sponsored dispute resolution procedures: trial, court-annexed arbitration, and judicial settlement conferences, all procedures in which a third party becomes involved with the dispute. The study also investigated a wide variety of other factors that might affect tort litigants’ fairness judgments and satisfaction.

The study focused on three dimensions of litigant attitudes about their experiences with the civil justice system: perceptions of procedural fairness, satisfaction with the case outcome, and overall satisfaction with the court system. The social science literature and policy debates suggested five sets of factors that might affect these attitudes: the actual procedures the litigant encountered; the actual outcome, delay, and cost of the litigation; the litigant’s personal evaluation of the outcome, delay, and cost; the litigant’s impressions of the litigation process; and the personal characteristics of the litigant. The study examined the extent to which each of these factors was associated with satisfaction and perceptions of fairness on the part of tort litigants.

METHODOLOGY

Individual litigants involved in tort cases in three state courts were interviewed about their litigation experiences and their beliefs, impres-
sions, and attitudes. The courts were selected to be generally
equivalent with respect to the population they served but different with
respect to their principal method of third-party dispute resolution. We
selected cases resolved by trial in the Nineteenth Circuit Court in Fair-
fax County, Virginia; cases resolved by court-annexed arbitration in the
Court of Common Pleas in Bucks County, Pennsylvania; and cases
resolved by judicial settlement conference in the Seventh Circuit Court
in Prince Georges County, Maryland.

Data from bilateral bargaining cases in each county were used to
control statistically for differences between the counties. The final
analytic sample included 286 litigants: 122 in Fairfax County, 74 in
Bucks County, and 90 in Prince Georges County.

The telephone interviews averaged just over one-half hour in length
and included measures of the various factors described above. The
interviews also collected information on the litigants' social background
characteristics, the nature of the dispute, and relevant litigation events.

RESULTS OF THE STUDY

The three third-party procedures differed considerably in the pro-
cedural fairness and satisfaction ratings they engendered. By and
large, arbitration hearings and trials were viewed more favorably than
were settlement conferences.

In general, the study found that case outcome, delay, and cost were
less strongly related to perceived fairness and satisfaction than is gen-
erally thought. Winners were more satisfied with the outcome than
were losers, and winners were somewhat more likely than losers to see
the procedure as fair and to be satisfied with the court, but these reac-
tions account for only a relatively small portion of the variation in litig-
ant satisfaction and perceived fairness. Satisfaction and perceived
fairness were even less strongly correlated with delay and litigation
cost than with case outcome. These findings may have been due in
part to the fact that we were studying litigants in tort cases, where
defendants are usually insured and represented by lawyers paid by
their insurers and where plaintiffs' legal costs may be "hidden" within
a favorable outcome. Nonetheless, these findings raise doubts about
whether cost- or time-saving innovations will increase individual tort
litigants' satisfaction and perceived fairness.

The litigants' personal evaluations of case outcome and delay were
more strongly correlated with perceived fairness and satisfaction than
were objective measures of outcome and delay. But the litigants' per-
sonal evaluations of case outcome and delay were not strongly related
to the actual amount of the outcome or the actual duration of the case—sugging that litigants vary considerably in the standards they use to determine whether they have done well or whether a case has taken too long. Apparently, it is not so much the actual outcome or duration of the case that raises or lowers satisfaction and apparent fairness, but how the outcome and duration compare to the litigant’s expectations. Litigation cost, whether absolute or relative to subjective standards, showed no substantial relationship to perceived fairness or satisfaction among these tort litigants.

The litigants’ perceptions of procedural fairness and satisfaction showed relatively strong correlations with several aspects of impressions of the litigation process. In particular, procedural fairness judgments were strongly correlated with perceptions that procedures are unbiased and with the perceived dignity of the procedure, the perceived carefulness of the process, evaluations of counsel, comfort with the procedure, and perceived control over case events and outcomes. System satisfaction was strongly correlated with evaluations of counsel, the perceived dignity of the procedure, comfort with the procedure, perceptions that procedures are unbiased, perceived control, and the perceived carefulness of the process. Outcome satisfaction was correlated most strongly with perceptions of procedural bias, evaluations of counsel, perceived control, and dignity of the procedure. Perceptions of fairness and satisfaction were not strongly related to the personal characteristics of the litigants.

Analyses of procedure-based differences in the litigants’ impressions of the litigation process revealed a number of errors in common assumptions about how tort litigants view trial, arbitration, and settlement conferences. For example, contrary to commonly held assumptions, we found that trial engendered higher levels of perceived control and participation as well as higher levels of litigant comprehension. All of these findings are contrary to the view that trial is an incomprehensible and alienating event for litigants. The data suggest that tort litigants do not view trials as lessening their involvement in the legal process, but rather as increasing their involvement.

CONCLUSIONS

Our data show that tort litigants do differentiate among procedures: they are sensitive to variation in procedures, and their impressions of the litigation process play a large role in determining their beliefs about fairness and their satisfaction with the court. The tort litigants we studied appeared to want a dignified, careful, and unbiased hearing
of their cases. The litigants wanted to exercise some control over the handling of their cases and over the ultimate outcome of these cases. They wanted procedures with which they could feel comfortable, but this does not mean that they wanted less formal procedures—informality did not make litigants either more or less comfortable. Further, litigants' positive attitudes about procedures and about the court system were closely linked to their perception that they had lawyers who were trustworthy and competent.

The study also showed which qualities of procedures matter less to tort litigants in cases such as those we studied. The litigants' judgments of the extent to which they had been allowed to participate in the proceedings, their impressions of the formality of the procedure, and their confidence that they understood the proceedings showed little correlation with perceptions of fairness or satisfaction. There was little evidence of any strong interest in procedures held in private; in fact, on the part of defendants, public procedures were seen as fairer.

The findings do not reveal much interest on the part of litigants in very informal, high-participative, simplified procedures. Alternative procedures less formal than trial can be quite acceptable to litigants, as can be seen in the litigants' generally favorable reactions to court-annexed arbitration. However, the arbitration procedure appears to be acceptable not because it is informal, but rather because it is seen as dignified and careful. The study showed that whatever procedure is used, formal or informal, it must be enacted well and seriously if it is to be viewed as fair.

The study suggests that improvements in perceived justice and satisfaction are more likely to come from changes in the tone of the judicial process than from innovations designed to cut costs or reduce delay. Further, the study suggests that care must be taken to ensure that innovations intended to reduce cost and delay do not do so at the expense of those qualities of the judicial process that are more important to litigants.
Acknowledgments

This research could not have been conducted without the cooperation of the judges, administrators, and staff of the Bucks County Court of Common Pleas, the Fairfax County Circuit Court, and the Prince Georges County Circuit Court. We particularly thank Paul Kester, Court Administrator, Mark Zaffarano, Court Administrator, and the Honorable Albert T. Blackwell, who made it possible for us to use court records in each site. We are grateful to all the litigants who shared their experiences and views with us as well as to court officials for their assistance, support, and patience.

We also thank Bob Bell, who collaborated on the research design and developed the sampling plan; Laural Hill, who assisted in the design and management of survey operations; the RAND Survey Research Group staff, who conducted the fieldwork; Craig McEwen of Bowdoin College, Carrie Menkel-Meadow of UCLA Law School, and Susan Turner of RAND for their thoughtful review and helpful comments on an earlier draft; and Andrea Fellows for her skillful editing of the manuscript.
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I. INTRODUCTION

Litigant satisfaction with civil justice procedures has been the topic of much speculation and argument but little research. Calls for judicial reform dating back to the early days of this century have held that existing procedures offend popular notions of fairness,\(^1\) and procedural innovations are often justified by assertions that the change will increase litigant satisfaction with and support for the legal system.\(^2\) In recent years, concern over litigant satisfaction has intensified. The movement to develop alternative dispute resolution (ADR) procedures has focused attention on the goals and reactions of the consumers of justice, with the result that litigants' perceptions of fairness and their satisfaction with the litigation experience have become important issues in the design and implementation of judicial innovations. For example, in the context of one popular ADR procedure—court-annexed arbitration—debate about litigants' perceptions of the fairness of alternative and traditional procedures has been vigorous. Opponents of court-annexed arbitration have argued that those whose cases are required to undergo arbitration will feel they are being unfairly treated, while supporters of the programs have contended that litigants will find arbitration procedures to be fair and satisfying.\(^3\)

The growing concern of policymakers with issues of litigant satisfaction and perceived fairness has been paralleled by a growing body of social science research on the topic. One source of this research literature is the long-standing interest of anthropologists and sociologists in


the beliefs and actions of those involved in disputes; another stems from psychological studies of laypersons' judgments of procedural justice. Together, these two lines of research have produced advances in theory and research methods that facilitate the empirical study of litigants' attitudes about judicial procedures. It is such a study that we report here.

GOALS OF THE CURRENT STUDY

We undertook the research reported here to discover how procedures, case events, and impressions of the litigation process influence tort litigants' fairness judgments and satisfaction with their experiences with the civil justice system. Because of their implications for policy debates and program development, three issues were of particular interest in the study and figured largely in its design.

First, we designed the study to test whether litigants do in fact react differently to different procedures. We examined the satisfaction and perceived fairness effects of three popular court-sponsored procedures: trial, court-annexed arbitration, and judicial settlement conferences. The data we collected can tell us whether tort litigants are sensitive to differences in procedures and, if they are, which of these procedures they find fair and satisfactory.


Second, we were interested in discovering what other aspects of the litigation experience might be associated with litigant satisfaction and perceptions of fairness. With sound empirical knowledge of the features that are associated with the experience of litigation as satisfying and fair, we reasoned, future reforms could be designed to promote features that are associated with greater satisfaction and perceived fairness and to avoid features that might diminish satisfaction and perceived fairness. We examined a wide variety of factors that are thought to be associated with fairness judgments and satisfaction, and we studied the extent to which satisfaction and perceived fairness were correlated with case outcomes, litigation costs, and delay. We also examined the extent to which perceived fairness and satisfaction were correlated with litigants' personal evaluations of litigation consequences, their impressions of the litigation process, and litigants' personal characteristics. The study allows us to draw conclusions about what features of litigation procedures, practices, and outcomes might affect satisfaction and perceived fairness.

The third general issue addressed in the study is how litigants perceive trials, arbitration hearings, and settlement conferences on dimensions other than perceived fairness and satisfaction. Debates about procedural reform often include assertions about how litigants perceive trial and various other hearing or settlement-encouraging procedures. We tested some common assumptions about how litigants react to traditional and alternative procedures by collecting data on how the litigants in our study viewed each of the three procedures, and we found that many of these assumptions are incorrect.

CAVEATS

Before we proceed, several limitations of the present study should be noted. First, this study examined the attitudes and perceptions of tort litigants in relatively small-dollar-amount cases that went to third-party conferences or hearings. The litigants we studied had certain characteristics that may have led them to experience and react to the litigation process in a different manner than would other types of litigants in other types of cases. For example, most of the defendants in

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6The study examined a variety of impressions of the process that were less clearly evaluative than perceived fairness or satisfaction, such as impressions of the process as dignified, biased, private, informal, and careful. Included in this category of process impressions were litigants' beliefs about how much control they could exercise over the process and its outcome, how good their attorney was, how much they were allowed to participate, how well they understood the proceedings, and how comfortable they felt with the procedures used in the case.
our studies were insured and were represented by insurance company
lawyers. These defendants' limited financial exposure and their limited
litigation costs may have caused them to respond in a different fashion
than would, for example, defendants in contract cases, who have to pay
both the judgment, if the plaintiff prevails, and their own attorneys' fees.
We chose to examine tort litigants because tort cases represent
one of the more frequent areas of contact between the individual
citizen and the civil justice system. Whether these litigants' views of
their litigation experiences are the same as those that might be seen in
other kinds of litigation is a subject for future research.

Another important limitation of the current study is that it exam-
ines only three procedures, albeit three important procedures within
the civil justice system. All three are court-mandated procedures
involving, for most litigants, representation by counsel. We did not,
for example, study litigant reactions to alternative dispute resolution
procedures outside the court. We chose the procedures we did because
they represent three distinct approaches to resolving tort cases within
the civil justice system and because we could obtain roughly compar-
able groups of litigants exposed to each procedure. We make no asser-
tion that our findings generalize beyond the procedures we studied.
We describe in Sec. III the implications of other limitations imposed by
the research sample and design; for the moment it is sufficient to note
that this study can speak only to the views of tort litigants exposed to
this specific array of procedures.

In this report we will be concerned with questions of litigants'
 impressions of justice, not with external measures of the quality or
effectiveness of the procedures. Litigants' perceptions of fairness can
be wrong, of course. Preferences and perceptions reflect in part what
litigants are told about the legal system and its procedures. Further,
litigants may misunderstand how a given procedure works or make
incorrect assumptions about the implications of some aspect of the pro-
cedure. If our research shows that one procedure appears to litigants
to be less fair than another, this finding means only that the first

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7See, e.g., C. R. Sunstein, "Legal Interference with Private Preferences," University of
To our knowledge there is no direct empirical study of the extent to which litigants' per-
ceptions and preferences are external to the litigant's particular litigation experiences.
There is, however, a substantial body of social science theory suggesting that at least
some part of litigants' perceptions and preferences is due to basic cultural values and

1985, pp. 643–663. Cohen discusses how impressions of fairness in the workplace can be
erroneous when employers give workers an illusion of participation in organizational
decisionmaking.
procedure is lower in apparent justice, not that it is necessarily flawed in any other sense. Apparent justice is, however, no trivial matter. It would be difficult to contend that a procedure is good policy if most of those whom it is designed to serve believe it to be unfair.

Thus, litigants' fairness judgments and satisfaction cannot be the sole consideration in policy decisions concerning the use of particular dispute resolution procedures. As we have just explained, there are good reasons for viewing litigants' fairness judgments and satisfaction as important features of any high-quality dispute resolution procedure. But perceived fairness and satisfaction on the part of litigants are not the only, or even necessarily the most important, standards that a dispute resolution procedure must meet. Critics of recent moves toward more strenuous judicial efforts to promote settlement have noted the danger of basing procedural choices only on the desires, reactions, and interests of the parties to the dispute.  

These critics argue that litigation and litigation procedures should serve not only the individual parties to the suit but also the society at large. The state provides various dispute resolution methods for disputants, and society has an interest in maintaining a structure for dispute resolution that comports well with the political and social values of the society. Procedures express our value structure. Thus, society has concerns about dispute resolution that can be distinct from those of the litigants. In addition, the accumulation of individual decisions in trials and appeals provides a body of law to guide the actions of people in circumstances similar to those involved in the suit. Moreover, society may have an interest in avoiding particular outcomes of disputes, such as agreements that might benefit the plaintiff and defendant but that would harm the community as a whole. Once society's institution for resolving disputes has been engaged, it is argued, society's interests must always be considered in responding to the resolution of—and presumably in choosing the process of resolving—the dispute.

Just as it would be a mistake to take litigants' evaluations of their experiences as the sole criterion in assessing the quality of judicial programs and procedures, however, so would it be a mistake to ignore altogether litigants' views of the litigation process. The fact that apparent

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11See Lind and Tyler, 1988, pp. 112–127, for a more extensive discussion of tradeoffs between perceived procedural justice and other desiderata of legal procedures.
fairness and litigant satisfaction continue to figure largely in policy debates reflects a widespread perception that the legal system must attend to the concerns of all those whom it seeks to serve.

OVERVIEW OF THE REPORT

In the next section, we consider some conceptual issues that arise with respect to perceived fairness and litigant satisfaction. First we review the social science literature that has informed our notions of what is meant by perceived fairness and satisfaction. We discuss why the current study focused on three dimensions of litigants' evaluations of their experiences: judgments of procedural fairness, satisfaction with litigation outcomes, and satisfaction with the overall performance of the legal system. We then provide some background on the three third-party procedures examined in the study: trial, court-annexed arbitration, and judicial settlement conferences. Next we turn to a discussion of various factors that might affect perceived procedural fairness and satisfaction. Here we draw on both existing social science research and policy debates that touch on issues of litigant reactions to judicial procedures. We describe how these factors might be affected by the procedures we studied and how they might be linked to procedural fairness, outcome satisfaction, and system satisfaction.

The third section describes the methods used to collect and analyze the data and presents the principal characteristics of the survey sample. In it, we discuss how we selected three courts that used the three procedures we wanted to study, and we then describe the three courts and the specific arbitration, settlement conference, and trial procedures that we studied. We also discuss how we used data from cases settled prior to any third-party procedure in conjunction with several statistical methods to remove the effects of county differences from our analyses. Finally, we discuss the considerations that guided our selection of cases and individual litigants for our sample, and we present the characteristics of the respondents in the final analytic sample. In the third section we also describe some of the limitations that are inherent in the methods and the research design. We then outline the interview methods that were used to collect the data and the analytic methods that guided our construction of multiple-item scales to measure some aspects of litigants' impressions of litigation processes.

The fourth section presents and discusses the major findings of the study. We begin with a description of the effects of the three procedures on perceived fairness and satisfaction. We then present analyses of the relationship between case outcome, cost, and delay and
perceived fairness and satisfaction. We continue our presentation of
the results with analyses of other factors thought to affect perceived
fairness and satisfaction. We examine the links between perceived
fairness and satisfaction and two aspects of litigants' subjective reac-
tions to their case experiences: their personal evaluations of litigation
outcome, cost, and delay and their impressions of the litigation process.
Next we describe analyses that tested whether litigants with different
characteristics differed with respect to satisfaction and judgments
about the fairness of the procedure. We present a comparative analysis
that examines the relative importance of each of these factors to per-
ceived fairness and satisfaction. We then describe the litigants'
impressions of the three procedures on dimensions other than fairness
and satisfaction, and we note how these impressions correspond with
or differ from those that are generally assumed in discussions about
how litigants view these procedures.

The fifth and final section summarizes the research findings and
discusses their implications for policy and innovation in civil justice
procedures.
II. RESEARCH ISSUES

This study drew on research and theory from the social and behavioral sciences as well as on a substantial body of legal scholarship and debate. A full review of these literatures is beyond the scope of this report, but a summary of some of the policy debates and a description of some previous research findings must be presented to explain why we conducted the study as we did and why we measured case characteristics and litigants’ attitudes as we did. The first point to be considered is what is meant by perceived fairness and satisfaction.

THREE ATTITUDBINAL DIMENSIONS

Research on the psychology of people’s reactions to justice system experiences has identified three distinct components of evaluations—three basic questions that one might ask to understand the litigant’s attitudes about the operation of the system in his or her case.¹ First, does the litigant believe that the procedures used in the case are fair? Second, is the litigant satisfied with the outcome of the case? And third, is the litigant satisfied with the overall performance of the civil justice system? Responses to these three questions are, of course, likely to be correlated with one another, but there is good reason to view each as tapping a distinct aspect of litigants’ evaluations of their experiences with the civil justice system.

Procedural Fairness Judgments

Procedural justice is a concept that is familiar to lawyers by virtue of the importance accorded due process in the jurisprudence of the United States. A substantial body of research has shown that laypeople are concerned with the fairness of procedures and that they have firm ideas about what constitutes a fair procedure.² Research has

¹This literature is reviewed in Lind and Tyler, 1988, pp. 61–127.
also shown that judgments of procedural fairness are important in
determining lay attitudes about legal institutions and outcomes\(^3\) and in
determining whether laws are obeyed.\(^4\) Indeed, a number of recent
studies suggest that judgments of procedural justice are one of the most
important factors influencing reactions to encounters with government
institutions.\(^5\)

**Satisfaction with Case Outcome**

It is likely that litigants’ evaluations of court experiences turn in
part on whether the litigant is satisfied with the outcome of the case.
Satisfaction with case outcome is, of course, likely to be affected by
whether the litigant wins or loses and by the amount won or lost, but
studies have shown that outcome satisfaction is also affected by the
procedures that produce the outcome.\(^6\) Typically these studies show
that, although those who win are more satisfied than those who lose,
winners are more satisfied and losers less dissatisfied if the procedures
are seen as fair.

Although satisfaction with the outcome is generally enhanced if the
procedures producing the outcome are seen as fair,\(^7\) outcome satisfac-
tion is a reaction to judicial experiences that is distinct from pro-
cedural fairness judgments. A litigant might think that the procedures
used in the case were fair but may nonetheless believe that the out-
come was wrong. Conversely, a litigant might think that the procedure
was unfair but might still like the outcome and find it satisfactory.
Existing research bears out this distinction, typically showing only a

\(^3\)See, e.g., J. D. Casper, T. R. Tyler, and B. Fisher, “Procedural Justice in Felony
Cases,” *Law and Society Review*, forthcoming; Tyler, 1984; and T. R. Tyler and R.
Folger, “Distributional and Procedural Aspects of Satisfaction with Citizen-Police

\(^4\)T. R. Tyler, *Why People Follow the Law*, Yale University Press, New Haven, forth-
coming.

\(^5\)See, e.g., K. A. Rasinski, T. R. Tyler, and K. Fridkin, “Exploring Dimensions of
Legitimacy: The Mediating Effects of Personal and Nonpersonal Legitimacy on Leaders-
ship Endorsement and System Support,” *Journal of Personality and Social Psychology*,
Injustice on Support for Political Authorities,” *Journal of Applied Social Psychology*,

\(^6\)Casper et al., forthcoming; J. M. Landis and L. Goodstein, “When Is Justice Fair?”
L. Musante, L. Walker, and J. W. Thibaut, “Procedure and Outcome Effects on Reac-
tions to Adjudicated Resolution of Conflicts of Interest,” *Journal of Personality and

\(^7\)Lind and Tyler, 1988.
moderate correlation between procedural fairness and outcome satisfaction.\(^8\)

**Satisfaction with the Court System**

The third dimension of litigants’ evaluations of case experiences is the litigant’s overall satisfaction with the court system that processed the case. Satisfaction with the court system corresponds to what political scientists term “diffuse system support,” i.e., a person’s general level of support for the institution in question.\(^9\) In comparison with specific beliefs about the fairness of the procedures used in the case or satisfaction with the particular outcome the litigant received, satisfaction with the court system is a more general attitude. Social psychological research shows that general attitudes are less strongly influenced by any single experience and that such attitudes are influenced only moderately by more specific attitudes.\(^10\) People are unlikely to alter radically their overall attitude toward the court system on the basis of a solitary good or bad experience. Litigation experiences might well have some effect on overall satisfaction with the system, but we would expect that effect to be weaker than would be the case with judgments of procedural fairness or satisfaction with case outcome. Psychological research suggests that satisfaction with the court system is affected by both procedural fairness judgments and outcome satisfaction as well as by long-standing attitudes about the courts.\(^11\)

**Correlates of Perceived Fairness and Satisfaction**

Policy debates and existing research suggest a number of factors that might affect procedural justice judgments, outcome satisfaction, and system satisfaction. These factors fall into five general categories. First, there are the procedures used in the litigant’s case. In this study, the procedural factors involved whether the case was tried, arbitrated, or resolved at a judicial settlement conference. The second general category consists of the objective consequences of the case for the litigant—the amount of money won or lost, the cost of the litigation,

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\(^8\)See, e.g., Lind et al., 1980, and Walker et al., 1979.


\(^11\)Tyler, 1984, and Lind and Tyler, 1988, Chap. 4.
and the time required to obtain a resolution. A third category of factors that might affect perceived fairness and satisfaction consists of the litigant's personal evaluations of case consequences. Case outcome, cost, and delay also figure in this third category, but here the factors of concern are not the absolute consequences but rather litigants' evaluations of how the consequences relate to expectations and judgments about what the outcome, cost, and time to judgment should have been. A fourth category consists of litigants' personal impressions of the litigation procedures and process. The fifth category consists of the litigant's personal characteristics and his or her situation in the case. We discuss each of these categories in the sections that follow.

THREE THIRD-PARTY PROCEDURES

We studied litigants' reactions in the context of traditional civil trial procedure and two common court-sponsored alternative procedures: court-annexed arbitration and judicial settlement conferences. These three are not the only procedures that are used in the civil justice system, of course, but they are three of the most common third-party procedures, and our study of them allowed us to examine litigants' reactions to three quite different justice system procedures. In Sec. III, we provide a detailed description of the procedures as they were implemented in the courts we studied, but some discussion here of the general form of each of the procedures will provide a frame of reference for considering how each might affect litigants' attitudes.

Court-Annexed Arbitration

Court-annexed arbitration in its current form originated in the Pennsylvania state courts in the 1950s. In the years since, the procedure has been adopted in many other jurisdictions. Court-annexed arbitration typically involves a relatively brief and informal hearing held within a few months of the time that issue is joined. The

arbitrator or arbitrators, who are usually members of the local bar, hear the case and issue an award with respect to liability and damages.\textsuperscript{13} Cases are usually required to undergo arbitration only if the amount in controversy is below a specified dollar amount.\textsuperscript{14} Although court-annexed arbitration programs are generally mandatory for cases that satisfy the program's criteria for inclusion, the awards themselves are nonbinding—either side can, at their option, reject the award and request trial \textit{de novo}.\textsuperscript{15}

As noted above, there is substantial controversy concerning litigants' reactions to court-annexed arbitration.\textsuperscript{16} Proponents of arbitration argue that the relatively informal arbitration hearings will be more easily understood by, and more accessible to, litigants than are trials and that these qualities will lead to greater perceived fairness in arbitration. In contrast, opponents of arbitration argue that routing smaller cases to relatively short, informal hearings before a lawyer arbitrator and routing higher-stakes cases to full-fledged trials before an official judge or a jury offend both the reality and the appearance of justice.

Although this study is the first to compare litigants' evaluations of arbitration with their evaluations of other procedures, a number of studies have examined the effectiveness of arbitration in disposing of cases. These studies have shown that some but not all arbitration programs resolve cases more rapidly than do traditional settlement and trial procedures.\textsuperscript{17} To date there have been only two studies of litigants' reactions to arbitration; both examined arbitration litigants' pro-

\textsuperscript{13}Some courts use single-arbitrator panels, while others use two- or three-arbitrator panels; see Ebener and Betancourt, 1985; Hensler, 1986; and E. S. Rolph, \textit{Introducing Court-Annexed Arbitration: A Policymaker's Guide}, The RAND Corporation, R-3167-ICJ, 1984.

\textsuperscript{14}In the past decade the use of court-annexed arbitration has spread to the federal courts, in which cases subject to the procedures involve substantially larger amounts in controversy than did the state court cases in the original arbitration programs. Even in the federal courts, however, there is a ceiling on the amount in controversy for cases required to undergo arbitration. At this time the maximum ceiling in a federal court-annexed arbitration program is $150,000.

\textsuperscript{15}Many court-annexed arbitration programs allow for a penalty to be assessed against parties who request trial \textit{de novo} and fail to do as well at trial as they did in arbitration.

\textsuperscript{16}The controversy surrounding court-annexed arbitration and other alternative dispute resolution procedures is extensive, and we can describe in this report only those points that are relevant to an investigation of tort litigants' reactions to court-based procedures.

cedural fairness judgments, but did so without comparing arbitration to other procedures. The studies showed that litigants generally thought arbitration hearings were fair, but because they did not examine litigants' reactions across procedures, there was no way to test whether arbitration was seen as being as fair as other third-party procedures.

 Settlement Conferences

Judicial settlement conferences are another popular means of resolving cases short of trial. Pretrial conferences are used for both case settlement and trial preparation, but in recent years they have increasingly become a forum for judicial intervention in search of settlement. The use of settlement conferences to resolve disputes without trial has been one of the most common responses within the judiciary to the search for less expensive and more rapid methods of resolving cases. Settlement-oriented pretrial conferences have been widely advocated, and are now widely used, as a means of achieving judicial management of both trial court and appellate cases. Judicial settlement conference procedures are quite different from court-annexed arbitration.

Settlement conferences often do not involve any direct participation at all for litigants; the attorneys typically meet with a judge in chambers and undertake an informal discussion of the possibilities for and advantages of settlement. In most judicial settlement confer-

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20 See, e.g., Dispute Resolution in Massachusetts, 1986, pp. 22–23. As noted below, the settlement conference program we studied generally excluded litigants from the conferences. This practice is common, especially in state court settlement conference programs, but it is by no means always the case. Our findings concerning settlement conferences might not apply to programs that allow or require litigant attendance at the conferences.

21 There are settlement conference procedures, especially in the federal courts, in which the third party is a magistrate or other judicial officer rather than a judge; see, e.g., Brazil, 1987; A. Partridge and E. A. Lind, Reevaluation of the Civil Appeals Management Plan, Federal Judicial Center, Washington, D.C., 1983; and D. M. Provine, Settlement Strategies for Federal District Judges, Federal Judicial Center, Washington, D.C., 1986. In some programs, including the program we studied, the settlement conference judge is not the judge who presides at trial.
ences, the concern is to reach an agreement that will resolve the case more than to assess liability. There is no effort to adjudicate the dispute: evidence and legal issues are weighed not in an effort to find a legally correct outcome, but rather to gauge what might be acceptable compromises of the case. Unlike those that govern trial or arbitration, the procedures that govern what happens in settlement conferences are seldom prescribed by rule or statute: the judge is more or less free to adopt whatever practices he or she feels to be appropriate. The sharp contrast between the basic rationale of settlement conferences and that of court-annexed arbitration: court-annexed arbitration is more like a trial, albeit one with abbreviated presentations of evidence and no jury, while judicial settlement conferences are more akin to bargaining sessions in which the goal is a compromise with which everyone can live. In general, there are few restrictions on the kinds of cases subject to judicial settlement conferences. The judge, who is personally involved in the conference, can make individualized decisions about the appropriateness of the procedure for a given case and can tailor settlement conference events to fit the case in question.

As is the case with arbitration, existing research on settlement conferences has tended to examine the effectiveness of the procedure in settling cases or in preparing cases for trial, rather than the procedure's effects on litigants' fairness judgments or satisfaction.

22A survey of settlement conference practices and attorney reactions to them is reported by J. A. Wall and L. F. Schiller, "The Judge off the Bench: A Mediator in Civil Settlement Negotiations," in M. H. Bazerman and R. J. Lewicki (eds.), Negotiating in Organizations, Sage Publications, Beverly Hills, 1983; see also Brazil, 1987, for an account of the practices and experiences of a federal magistrate who is one of the leading advocates of settlement conferences.

23This research shows mixed results with respect to the effectiveness of settlement conferences in settling cases. See Provine, 1986; Menkel-Meadow, 1985; Partridge and Lind, 1983; and M. Rosenberg, The Pretrial Conference and Effective Justice, Columbia University Press, New York, 1964.

24There are, to our knowledge, no empirical data on litigant reactions to judicial settlement conferences. One might be tempted to look to studies of small-claims court mediation procedures, which are also court-sponsored and which also involve compromise decisions, but there are many differences between small-claims mediation and judicial settlement conferences. See C. A. McEwen and R. J. Maiman, "Mediation in Small Claims Court: Achieving Compliance Through Consent," Law and Society Review, Vol. 18, 1984, pp. 11-49; and A. Sarat, "Alternatives in Dispute Processing: Litigation in a Small Claims Court," Law and Society Review, Vol. 11, 1976, pp. 339-375. For example, one important difference between mediation (as practiced in the small-claims courts studied in previous research) and the judicial settlement conferences we studied is that the litigants are nearly always present in the former and are often excluded from the latter.
Trial

Trial—with its full range of procedural safeguards and its attendant costs—is the traditional standard against which other dispute resolution procedures are judged. Even in jurisdictions that employ no formal alternative to trial, most cases settle or are withdrawn short of this culmination of judicial process. Nonetheless, when debates about the fairness of an alternative procedure occur, the principal question is generally whether the alternative is as fair as a trial. The trials in this study included both jury and bench trials, with the former predominating.

Trials differ from each of the other two procedures on several dimensions. Trials are more formal and more public than are arbitration hearings or settlement conferences—it is very rare indeed for anyone not involved in the case to attend settlement conferences and arbitration hearings of the sort we studied. Another difference is that, in contrast to arbitration hearings, trials are conducted by official judges and result in verdicts that are binding unless appealed. Whereas settlement conference agreements are negotiated compromises, trial results are not. Rather, at trial, as in arbitration hearings, a third party renders a judgment about liability and damages.25

LITIGATION OUTCOMES, COSTS, AND DELAY

Litigation Outcomes

Common sense suggests that whether the litigant wins or loses and how much is won or lost will have substantial effects on outcome and system satisfaction and procedural fairness judgments. Economic analyses of litigation behavior also assume that satisfaction and

25Our survey of litigants' reactions to court experiences included interviews with litigants whose cases were resolved through settlement short of trial, arbitration, or settlement conference. For reasons that are explained in Sec. III, we had to use the responses of the respondents in settlement cases to control for the possibility of spurious differences between the three jurisdictions we studied, and this analysis made it impossible to compare bargaining with third-party procedures. It remains an interesting question where third-party procedures stand in relation to bilateral bargaining in terms of perceived fairness and litigant satisfaction.

26Notwithstanding this theoretical distinction between trials and arbitration hearings on the one hand and settlement conferences on the other, there might be little objective difference in the outcomes produced. Jury verdicts often appear to involve awards that are compromises between the positions advocated by the two sides, and arbitrators are sometimes accused of issuing “split the difference” decisions. See, e.g., J. Hamitt, S. J. Carroll, and D. A. Relles, "Tort Standards and Jury Decisions," Journal of Legal Studies, Vol. 14, 1985, pp. 751-762. Nonetheless, as will be seen later in the report, the fact that the adjudicatory procedures included a finding of liability appears to have some interesting implications for litigants' reactions.
procedural preference are largely a function of the monetary outcome and the costs associated with obtaining that outcome. There has been little research testing these assumptions in the context of the civil justice system, but relevant studies have examined the role of case outcomes in determining perceived fairness and satisfaction in encounters with the criminal justice system. In these studies, a question that has been raised repeatedly is whether the effect of outcomes is so strong that it overshadows the effects of other factors. In criminal justice settings, the answer is that much of the variation in perceived fairness and satisfaction cannot be explained by the person’s outcomes and is attributable instead to procedures and perceptions of the legal process. It remains to be seen whether the same is true in civil justice settings.

The case outcome may be important to litigants' reactions for reasons other than its financial implications. Because case outcomes are often tied to decisions about the propriety of litigants' past actions, litigants might view any favorable decision as a vindication of their actions and any unfavorable decision as a condemnation of their actions. Thus, there may be an increment in satisfaction simply from having won the case and a decrement from having lost, quite apart from the absolute amount of the win or loss. Litigants in trial or arbitration procedures might be more likely to show added satisfaction effects for simply winning or losing than would litigants in settlement conferences, because the former adjudicatory procedures require explicit liability judgments, while settlement conferences sometimes blur or avoid decisions about liability. We were able to test this “vindication effect” with the data from this study.

Case outcomes are likely to have their strongest effects on outcome satisfaction, but there is good reason to suspect that outcomes also affect perceptions of procedural fairness and satisfaction with the court system. A number of studies in criminal justice contexts have shown that people view procedures as fairer when they receive favorable outcomes than when they receive unfavorable outcomes. System satisfaction is likely to be affected by case outcome by virtue of the likelihood that outcome-linked changes in outcome satisfaction will in turn affect the overall level of satisfaction with the system.

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29Another potential outcome effect on perceived fairness and satisfaction involves the possibility, with a compromise outcome, of developing a resolution that is better tailored to the needs of the parties; see, e.g., Menkel-Meadow, 1985. We had no way to evaluate this aspect of the outcome and thus could not speak to this issue.
Litigation Cost and Delay

One of the principal reasons for designing and instituting procedures such as court-annexed arbitration or settlement conferences is the hope that these procedures will resolve cases more rapidly and reduce the cost of justice. Less delay and lower litigation costs are desirable in their own right, of course, but it is generally assumed that delay and cost are also undesirable because they are important sources of litigant dissatisfaction.\(^{30}\) Because no previous research has examined the links between cost and delay on the one hand and litigant dissatisfaction on the other, there is no empirical basis for inferring how much dissatisfaction is due to these factors and how much is attributable to other aspects of the litigation experience. It might be that cost and delay are not as important in determining litigants' reactions as they are generally thought to be. Some commentators have argued that faster is not always better,\(^ {31}\) a position that might be reflected in the attitudes of litigants.\(^ {32}\) It is certainly conceivable that litigants are willing to tolerate a more costly and a slower justice system if they see these attributes as leading to higher-quality decisions.\(^ {33}\)

The question of how delay and cost affect litigant satisfaction and fairness judgments has policy implications. Procedural innovations often focus on reducing cost and delay with the assumption that a variety of benefits, including greater litigant satisfaction, will result. If satisfaction is not in fact closely linked to cost and delay, these innovations, however successful they may be in reducing costs and delay, might fail to produce improvements in litigant satisfaction.


\(^{31}\)See, e.g., Resnik, 1982.

\(^{32}\)R. Abel, \textit{The Politics of Informal Justice: The American Experiences}, Academic Press, New York, 1982. Abel argues that although litigants "... want cheap, speedy justice, justice may be more important to them than speed—and they may be willing to pay for it" (p. 8).

\(^{33}\)There is also the possibility that some litigants will prefer delay for purely self-serving reasons. It is often argued that defendants prefer that judgment be deferred because this allows them to retain the use of the funds in controversy. As we noted above, most of the defendants in the present study were insured and would not benefit directly from delays in case resolution.
SUBJECTIVE EVALUATIONS OF LITIGATION OUTCOMES, COSTS, AND DELAY

We noted above that it is almost a truism that satisfaction with outcomes increases as the outcomes themselves improve. In point of fact, however, the relationship between the absolute level of outcomes received and satisfaction with those outcomes may be more tenuous than most people believe. Social psychological research on reactions to outcomes has shown that the absolute level of outcomes matters relatively little—it is where an outcome falls in relation to expectations that is important in determining whether that outcome is satisfactory.34 If a litigant wins more than expected or loses less than expected, he or she will be more satisfied, regardless of precisely how much is won or lost. Thus, even a loss can leave a litigant satisfied with the outcome as long as the loss is less than what was anticipated.

These findings open another means for procedures to influence satisfaction over and above any effect on absolute outcomes. If a particular procedure leads to a larger positive discrepancy between expectations and outcomes than does another procedure, the first will produce greater satisfaction. Thus, procedures can affect satisfaction by changing litigants’ expectations concerning the likely outcomes of cases as well as by changing the outcomes themselves.35

Just as litigants’ relative judgments of their outcomes might be more important than the absolute level of those outcomes, so too may relative judgments of delay and cost play a greater role in satisfaction and perceived fairness than do absolute levels of delay and cost. Litigation procedures might be seen as unfair not because of how long they take or how much they cost in absolute terms, but rather because they take longer than expected or cost more than seems reasonable within the litigants’ frame of reference.

LITIGANTS’ IMPRESSIONS OF THE LITIGATION PROCESS

The fourth category of factors that might affect litigant satisfaction and perceived fairness consists of impressions of the litigation process.

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35This line of reasoning suggests an interesting hypothesis: if there are no differences in actual outcomes, procedures that seem to litigants initially to promise good outcomes can lead to less satisfaction than procedures that threaten poor outcomes. See Thibaut and Kelley, 1959.
A variety of potentially important dimensions are suggested by existing research in psychology, sociology, anthropology, and political science. Legal and policy debates also suggest that litigants might view trial, court-annexed arbitration, and judicial settlement conference procedures in certain ways, providing hypotheses that are tested in the present study.

Control

Anthropologists and sociologists engaged in the comparative study of dispute-processing institutions have long believed that procedures allowing disputants to craft their own resolution of a dispute are more likely to produce satisfaction than are procedures that vest control over outcomes in a judge or a jury. In the context of the three procedures under study here, this body of research suggests that litigants would prefer settlement conferences and arbitration hearings to trials, because trials, which do not allow the parties to veto the verdict, deprive the disputants or their attorneys of control over the outcome. In reality, however, all three procedures are more heavily controlled by the attorneys and judges than by the litigants, so it is by no means certain that litigants will differentiate the procedures along these lines. In addition, the favorable view of disputant-controlled procedures in legal anthropological theory is not unconditional: disputant control over litigation outcomes is thought to be most important when the dispute involves people who must continue to interact after the dispute is over. In disputes involving strangers, disputant control over outcomes might have less effect on fairness judgments and satisfaction. Because disputes among strangers constitute the bulk of tort cases, which are the focus of this study, outcome control might not enhance the perceived fairness of arbitration and settlement conferences as much as one would otherwise expect.

The other major research tradition, psychological studies of procedural justice, also suggests that disputant control is an important fac-

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36 See, e.g., Abel, 1974; Gluckman, 1969; Gulliver, 1979; Nader, 1969; and Nader and Todd, 1978. For explicit application of this position to the analysis of settlement conferences, see Menkel-Meadow, 1985.

37 Imposed outcomes are thought to be less likely than voluntary or disputant-designed outcomes to accommodate the complex needs of a continuing relationship, and thus disputant control over outcomes is thought to be especially critical in the context of continuing relations. See, e.g., Felstiner, 1974, and Gulliver, 1979.

38 The "ongoing relationship" condition might occur more often in contract cases subject to court-annexed arbitration and judicial settlement conferences, however. All of the litigants in our study had been involved in tort cases.
tor in litigants’ evaluations of legal procedures. However, this line of research emphasizes the importance of control over the disputing process rather than control over the dispute outcomes. Psychological studies have shown that disputants will view a procedure as fair and satisfying even when the procedure vests control over the outcome in a judge or a jury, as long as the disputant and his or her attorney retain control over the processing or handling of the case. Although psychologists also emphasize the importance of control, their research and theory have generally shown that control over the process is more important than control over the outcome.

Notwithstanding the theoretical distinction between control over the decision and control over the process, most research has simply confirmed that one or both types of control lead to greater perceived fairness and satisfaction. There has been no definitive answer to the question of whether outcome control or process control is more important in determining perceived fairness and satisfaction.

Evaluations of Counsel

Because litigants’ experiences with the civil justice system are guided and interpreted in large part by their lawyers, it is reasonable to expect that litigants’ evaluations of their justice system experiences will depend in part on their relationship with counsel. Several lines of argument suggest that evaluations of one’s lawyer might have substantial impact on evaluations of the system. If lawyers are viewed as agents of the legal system and if they are the agents with whom the litigant has the most contact, then favorable impressions of the lawyer might generalize to produce favorable impressions of the system. In addition, evaluations of lawyers might influence perceived fairness and satisfaction by virtue of the importance of the lawyer for successful litigation. For litigants to be comfortable with a litigation process that

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requires them to depend on the honesty and ability of counsel, they must trust their lawyers and believe that their lawyers are competent. To the extent that litigants do not trust their lawyers, they are likely to fear the process and view it as unfair.

Another line of reasoning supports the idea that evaluations of lawyers are likely to affect evaluations of the system but predicts that favorable evaluation of one's lawyer will be a source of negative evaluations of the system. This line of thought emphasizes the role of the lawyer in explaining the system to the litigant and considers how the lawyer's self-interest might color his or her explanations of procedures and case events. Support for this more critical view of lawyer-litigant relations can be found in recent research examining interactions between counsel and litigants in divorce cases. The research showed that some lawyers blame poor progress or poor outcomes on the court system and its procedures while taking credit themselves for favorable events and outcomes. This finding suggests that the more the lawyer is liked and trusted, the less favorably the system is viewed, especially when the case outcome is unfavorable to the litigant.

Participation

A concept closely related to control is participation in the proceedings. One can distinguish participation from control on the theory that a litigant may be influenced by the act of participating, even if his or her actions clearly have no impact on the outcome or the process. Participation is thus distinct from control in that participation involves simply the opportunity to take part in the legal process, even when one's actions do not affect the outcome or process of the case. Studies of reactions to the criminal justice system and other political institutions have suggested that feeling that one has been allowed to assume an important role in the proceedings can lead to favorable reactions to procedures. This research suggests that participation has positive consequences for its own sake, not only because it enhances one's capacity to control one's outcomes or the process leading to those outcomes. It appears that participation, whether or not it is effective in

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securing favorable outcomes, enhances fairness and satisfaction by making the litigant feel involved in and a part of the justice system.\textsuperscript{43}

Greater litigant participation in dispute resolution is advocated by some supporters of court-annexed arbitration procedures.\textsuperscript{44} It is sometimes argued that traditional trial procedures leave litigants feeling left out of the process by giving the impression that their cases have been taken away from the parties to the dispute. Interest in designing procedures that are less formal than trial is stimulated in part by the belief that informality will allow greater litigant participation. Whether procedures such as arbitration do in fact lead litigants to feel that they have participated more fully is not clear and is one of the issues addressed in the current study.\textsuperscript{45}

**Dignity**

Recent research and theory suggest that dignity of treatment is an important determinant of perceived fairness. A recent study of judgments of procedural fairness in encounters with the police and courts showed that one of the most important factors leading to the perception of procedural fairness is the belief that one has been treated in a dignified fashion—i.e., with politeness and respect.\textsuperscript{46} Two recent theories of judgments of procedural fairness also hypothesize that dignity or dignified treatment can have substantial effects on feelings of procedural fairness and satisfaction.\textsuperscript{47} The rationale in these theories is most obvious when one considers how people might feel if their cases were handled without dignity or if they themselves were treated in an undignified fashion. Undignified treatment would suggest that the system did not accord much importance to the case or the litigant, and this in turn would be very likely indeed to provoke negative reactions to the court, its procedures, and the outcomes produced by the procedures. According to these theories, undignified treatment by the


\textsuperscript{45}Note that the current study examines the effect of participation only within the context of the three third-party procedures under study. Litigants who desired high levels of participation might have participated actively in settlement processes before the conference or hearing and may thus have removed themselves from the study.


justice system is viewed as a personal affront and stimulates the same sort of strong reaction that an insult would provoke in daily social life. 48

At first thought, litigants seem likely to view trial as more dignified than arbitration or settlement conferences. It might be the case, however, that none of the procedures is viewed as undignified and that none therefore suffers lower apparent fairness for this reason. The question is one that can be addressed by the current study.

Formality

We noted earlier that some advocates of judicial reform contend that reducing the formality of hearings will permit greater litigant participation and hence lead to greater perceived fairness and satisfaction. According to this view, formality is a barrier to litigants’ understanding of the process and a feature of traditional trials that intimidates and alienates people. However, it is by no means certain that formality leads to negative reactions on the part of litigants. Formality might be seen as adding to the dignity of a hearing and therefore, for reasons just described, as a feature that enhances perceived fairness and satisfaction. When formality takes the form of strict rules of conduct or evidence, it might be seen by the litigant either as a safeguard that promotes the fairness of the hearing by eliminating bias or as a threat to the open and free consideration of evidence that might be important to the just resolution of the dispute. Further, no previous research has tested whether trials are in fact seen as more formal than arbitration or settlement conferences. All three of the procedures we studied are more formal than most events in the daily lives of litigants, and it may be that all three are seen as equally formal. All of these speculations suggest that formality might affect perceived fairness, and the diversity of potential effects of formality points out the need for empirical testing of the relation between formality and perceived fairness.

Comfort and Comprehension

Other impressions of the litigation process are suggested by calls for judicial reform, especially calls for the adoption of less formal

alternatives to trial. If trial is as formal and as alienating as this image suggests, litigants might be expected to have difficulty understanding what is happening, and they might be expected to be uncomfortable with the process.\footnote{Litigants' comfort with procedures and their comprehension of case events are often seen as related benefits of less formality, but it is certainly possible that comfort and comprehension are different dimensions on which one might rate a procedure. As we describe in Sec. III, we tested empirically the extent to which ratings of comfort and comprehension were sufficiently correlated to allow us to construct a single scale based on both ratings.} But to contend that informality will improve understanding or make litigants more comfortable implies that litigants find formal trial procedures uncomfortable, a position that is often asserted but that has yet to be demonstrated empirically. In fact, the proposition that the formality of trials makes litigants uncomfortable has never previously been tested. Similarly, although trials are often alleged to be too complicated and difficult for the layperson to understand, there were no previous data showing that litigants feel that they do not understand their trials.\footnote{Some research does show comprehension problems among jurors; see, e.g., M. Selvin and L. Picos, The Debate over Jury Performance, The RAND Corporation, R-3479-ICJ, 1987; but see also J. S. Cecil, E. A. Lind, and G. Berman, Jury Service in Lengthy Civil Trials, Federal Judicial Center, Washington, D.C., 1987, for data showing that most jurors themselves believe that they understand trial events and jury instructions.}

Privacy

Procedural Care and Procedural Bias

The various factors considered thus far in this section have all concerned the feelings that procedures might provoke in litigants with respect to how they are being treated in the course of their interaction with the law. Existing research and theory leave little doubt that these quality-of-treatment factors are important. Again and again in the research findings that we have described in this section, judgments of fairness and satisfaction have been found to be influenced by how well or poorly people feel they have been treated in the process of getting through an encounter with the legal system. But procedures are also evaluated on the basis of whether they appear accurate and capable of producing high-quality decisions. If a procedure seems to be careless, if it appears to omit consideration of important facts, or if it is obviously biased, it will not be likely to be seen as fair.\textsuperscript{53} There may, however, be such a thing as too much carefulness. Anthropologists have suggested that, given a choice between speed of resolution and carefulness, litigants will generally choose the former.\textsuperscript{54}

There are two aspects of quality of process that have received a great deal of attention in psychological theory on procedural fairness: the quality of information gathering, which we label "procedural care," and the existence of bias or favoritism in procedural rules, which we label "procedural bias."\textsuperscript{55} Both of these dimensions are hypothesized to affect procedural fairness judgments.

LITIGANT CHARACTERISTICS

The fifth and final category of factors that might affect satisfaction and procedural justice judgments consists of the litigant's personal characteristics and his or her situation in the case.

The gender, age, race, education, or affluence of a litigant might conceivably affect views of the fairness of procedures or satisfaction with the outcome or the justice system. We know of no previous research showing definitively that these factors influence satisfaction or procedural fairness judgments in civil justice settings, but caution


\textsuperscript{55} See, e.g., Leventhal, 1980; and Lind and Tyler, 1968, Chap. 9.
suggested that we look for differences linked to personal characteristics. If litigants did differ in how they view procedures, general statements about perceived fairness or satisfaction would be inappropriate.

In our assessment of the effects of the three procedures on litigant satisfaction and fairness judgments, it seemed advisable to consider whether the litigant in question was the plaintiff or the defendant in the case. In our study, most of the defendants were insured, so their potential losses and their legal costs were often assumed by the insurer. Plaintiffs, in contrast, had a more direct stake in the litigation—the outcome of the case had immediate implications for plaintiffs' financial situations. Because each of the procedures might have different implications for the interests of defendants and plaintiffs, plaintiffs might react favorably to one procedure and defendants to another. With this in mind, we tested for differences between plaintiffs and defendants in all our analyses. We also examined whether litigants who had a prior relationship with their opponents differed from those who did not in their view of the litigation process.

The various research issues described in this chapter provide a rich collection of hypotheses that are amenable to empirical test in a study of litigants' attitudes and beliefs about their experiences with the civil justice system. In the next section, we describe the design of the study and the interview questions we used to gather data on these issues.
III. METHOD AND SAMPLE

RESEARCH DESIGN

One of our principal interests in the study was the comparison of litigants' evaluations of different civil procedures. To this end, we interviewed litigants who had experienced three different third-party civil procedures: trial, arbitration, and judicial settlement conferences. To promote the comparability of the litigants' responses, our research design called for interviews with litigants in similar cases in three state courts. The courts had to be matched with respect to their administrative characteristics and with respect to the demographic features of the counties they served, and, of course, they had to use different third-party procedures.

We studied only certain parts of the litigation process in this research. Our interest lay in the comparison of specific procedures rather than in the comparison of overall court systems. Therefore, our study examined two groups of cases per court system: cases that settled prior to any hearing and cases that required third-party intervention for resolution. We interviewed litigants in cases that settled prior to trial, arbitration, or settlement conference in order to gather information on how litigants in each court viewed their experiences with the court, apart from experiences with a third-party procedure. Because these cases had not been exposed to any third-party procedure, they provided a means of adjusting for differences among the courts that were not due to the procedures under study.¹

In the trial court system, the second group of cases studied was made up of those disposed of by trial; in the arbitration court, the second group of cases consisted of those resolved after an arbitration hearing; and in the settlement conference court, the second group of cases comprised those resolved at or after a settlement conference. As we explain later in this section, this research design, like any other, imposes limits on the inferences that can be drawn from the research.

¹An admittedly more rigorous design would use at least six different courts—two different courts to represent each of the three dispute resolution procedures. This design would permit us to separate clearly the effects of a procedure from any effects due to the specific county where that procedure is in use. We initially developed such a design but were unable to obtain sufficient funding to implement it.
COURT SELECTION

Our selection of courts was guided by both methodological and practical considerations. Naturally, our first criterion was to identify fairly typical courts that use the three procedures of interest in typical ways. Second, to minimize effects due to unique features of the specific locale in which a procedure occurred, our design required three courts that were similar to each other with regard to features other than the third-party procedures they use. For example, we needed courts with similar caseload composition, time to trial, and general rules of procedure. Third, we needed to identify courts in communities with roughly equivalent demographic characteristics. Finally, we needed to choose courts whose record systems would permit us to select cases according to mode of disposition.

We decided to focus on state courts of general jurisdiction rather than federal courts. There were several reasons for this decision:

1. The policy debate regarding procedural changes in the courts often focuses on tort litigation, especially in smaller-money-value suits, and these cases are typically tried at the state court level.\(^2\)

2. Although the growth of judicial settlement efforts has been better documented with regard to the federal system,\(^3\) our research indicates a similar development among the largest trial courts in the state system. Further, state courts initiated, and continue to adopt, court-annexed arbitration procedures.

3. Previous ICJ research had surveyed state and metropolitan court administrators about state court efforts to reduce pretrial delay. This survey provided us with a data base that we could use to identify trial courts that fit our design requirements.\(^4\)

The information gathered in the ICJ survey just described was supplemented by additional telephone interviews with court officials in a number of regions of the country. The information from these interviews enabled us to identify the types of pretrial procedures used in numerous state courts throughout the country. We used 1980 United States census data to compare potential sites with respect to per capita

\(^2\)For example, in 1985, 95 percent of all tort filings and 99 percent of all automobile-related torts were filed in state courts. See J. S. Kakalik and N. Pace, Costs and Compensation Paid in Tort Litigation, The RAND Corporation, R-3391-ICJ, 1986.

\(^3\)Provine, 1986.

court caseload and major demographic characteristics. Finally, numerous site visits were made to verify and extend our understanding of the candidate courts and to solicit cooperation for the study.

Some of the courts we examined were not appropriate for the design either because they used forms of the procedures that did not seem typical or because they used multiple third-party procedures on the same cases. In some courts, for example, settlement conferences were conducted by the attorneys in the absence of a judge. Of the remaining candidates, some were rejected on the basis of discrepancies in time to trial, case characteristics, and county demographics. Ultimately, we identified three courts that provided an acceptable degree of fit to our criteria: the Nineteenth Circuit Court in Fairfax County, Virginia, a trial court; the Court of Common Pleas in Bucks County, Pennsylvania, which has had a court-administered arbitration program for several decades; and the Seventh Circuit Court in Prince Georges County, Maryland, which has a judicial settlement conference program. These three courts seemed generally similar to many other metropolitan courts we have seen. Salient demographic characteristics of the three counties and administrative features of the three courts are presented in Table 3.1.

Table 3.1

COMPARISON OF COURTS AND COUNTIES IN THE STUDY

<table>
<thead>
<tr>
<th>Variable</th>
<th>Fairfax County</th>
<th>Bucks County</th>
<th>Prince Georges County</th>
</tr>
</thead>
<tbody>
<tr>
<td>Third-party forum</td>
<td>Trial</td>
<td>Arbitration</td>
<td>Settlement conference</td>
</tr>
<tr>
<td>1980 population(^a)</td>
<td>596,901</td>
<td>479,211</td>
<td>665,071</td>
</tr>
<tr>
<td>Nonwhite population(^a)</td>
<td>15%</td>
<td>4%</td>
<td>42%</td>
</tr>
<tr>
<td>Median household income(^a)</td>
<td>$30,065</td>
<td>$22,016</td>
<td>$22,395</td>
</tr>
<tr>
<td>Trial rate</td>
<td>15%</td>
<td>7%</td>
<td>8%</td>
</tr>
<tr>
<td>Total number of judges in courthouse</td>
<td>11</td>
<td>10</td>
<td>14</td>
</tr>
<tr>
<td>Concurrent jurisdiction with lower court</td>
<td>$500–$7,000</td>
<td>$2,500–$4,000</td>
<td>$2,500–$10,000</td>
</tr>
</tbody>
</table>

\(^a\)General Population Characteristics; Advance Estimates of Social, Economic and Housing Characteristics; Number of Inhabitants, "U.S. Bureau of the Census Reports, Washington, D.C., 1980."
PROGRAM DESCRIPTIONS

We describe below the courts and the programs that were included in the study. These descriptions present the trial, arbitration, and settlement conference programs as they were enacted at the time of the study.

Trial

Fairfax County, which consists for the most part of suburban communities of Washington, D.C., is home to a relatively affluent population. Its court, located in a modern county office complex, prides itself on its use of up-to-date court management technology and good calendar control. At the time of our study, attorneys in Fairfax could expect rapid movement to trials once they announced that they were ready. Trials of personal injury suits involving modest amounts of damages would generally be conducted expeditiously. In Fairfax County, no formal hearings or pretrial conferences are required prior to trial.\textsuperscript{5}

Court-Annexed Arbitration

Bucks County is located in the outer suburban ring of Philadelphia. Although known to many as an artists' hideaway, the county includes blue-collar factory towns, rural villages, and wealthy exurban communities.

Arbitration is well established in Bucks County; at the time of the study, about 90 percent of civil damage suits were disposed of through the program. As in most Pennsylvania counties and many other jurisdictions with court-centered programs,\textsuperscript{6} arbitration hearings are held in the county courthouse in small and spare jury deliberation rooms. Typically both plaintiffs and defendants attend the hearings, along with their attorneys. Other witnesses are rarely called. The hearings are informal and brief (about 45 minutes on average); each side is given an opportunity to present his or her case, but there is little procedural elaboration.

In Bucks County, civil cases are assigned to arbitration unless the statement of damages accompanying the complaint exceeds a $20,000 limit. For one week out of every month, five to six arbitration panels

\textsuperscript{5}All but four of the 99 trial litigants in the final analytic sample reported that they had had jury trials; the remaining four litigants reported that their cases had been tried by a judge without a jury. There were too few nonjury trials to permit any comparisons to be made between these trials and those that had had a jury.

\textsuperscript{6}Cf. Rolph, 1984; see also Adler, Hensler, and Nelson, 1983, for a description of a similar arbitration program in another Pennsylvania court.
hear four or five cases a day. Each panel is composed of three attorneys with a collective experience of at least—and usually more than—ten years of law practice. Arbitrators are selected by the court and receive no information about the cases prior to the hearings. The panel’s decision is nonbinding; disputants may reject the decision and either settle the case or go to trial de novo. The arbitration award is rejected in about 9 percent of the cases. The party requesting trial de novo must post a $300 bond; if their position improves by 10 percent or more, two-thirds of their bond ($200) is refunded to them.

Bucks County arbitration hearings are very similar to those we have seen in many other Pennsylvania courts and in New Jersey and Delaware. Some other courts, especially those in California, use a different hearing format.⁷

Judicial Settlement Conference

Prince Georges County, located in the Maryland portion of Washington’s suburban ring, is less affluent and more racially mixed than are the other two counties.⁸ On a typical weekday, its picturesque nineteenth-century courthouse is crowded with a mix of lawyers and clients much like that seen in more urban courts. Records overflow the clerks' offices, and the court is hard pressed to maintain a speedy trial calendar.

In Prince Georges County, all personal injury suits, regardless of their monetary case value, are assigned to a settlement conference. Prince Georges’ settlement conference program, like others around the country, was instituted primarily to speed cases by reducing the trial rate. The conferences are held by “settlement judges,” generally not the same judges who would preside at trials if the cases were to go to trial. Settlement judges view their conferences as bargaining sessions intended to provide an opportunity for opposing counsel to take a hard look at the strengths and weaknesses of their cases and to get a neutral assessment of the value of the case. Conferences generally last one hour or less. Participation of the individual litigants is viewed as unnecessary and possibly counterproductive; litigants are frequently


⁸If perceived fairness and satisfaction were strongly affected by income or race, this would pose some problems of comparability for the research design. In fact, as noted in the next section, neither factor was found to be strongly correlated with fairness judgments or satisfaction. Further, as described in the next section, we were able to remove statistically any variation that was due to county differences, and thus we had an additional way of ensuring that differences among the counties did not produce the effects we attributed to procedures.
excluded from the conferences. Lawyers are pressed to obtain authorization for settlement (up to a reasonable anticipated amount) before the conference or to ensure that they can reach their clients by phone during the conference.

The Prince Georges settlement conferences are similar to those that we have seen in major metropolitan courts in California (e.g., San Francisco, Santa Clara, Los Angeles, and San Bernardino) and in courts in New Jersey, Pennsylvania, and New York.

**ADJUSTING FOR COUNTY DIFFERENCES**

The fact that each third-party procedure was based in a different county meant that it was possible that differences appearing to result from the three third-party procedures were in fact due to local variations in attitudes, beliefs, or experiences. For this reason, the analyses of procedure effects had to control for differences in litigants' perceptions that might exist between the counties. We adjusted statistically for county differences by conducting what are termed analyses of covariance on the entire set of responses, including the responses of the bargaining resolution litigants. The adjustments, or “covariates,” were codes constructed to reflect the different counties used in the study. This analysis tests and removes any variation in the dependent variable that can be attributed to the respondent’s county. Procedure effects are tested after the county-based variation has been removed.

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9 Only five of the 53 settlement conference litigants in the final analytic sample reported that they had attended the conference. Too few litigants had attended the conference to allow us to compare the reactions of those who did and those who did not attend the conference. As we noted in Sec. II, this means that the results of the study may not be applicable to settlement conference procedures that encourage or require litigant attendance.

10 As noted below, a different method of adjustment was used for the single-item variables that allowed only dichotomous responses.

11 We used two arbitrary contrasts: the first gave all Bucks County respondents a score of +1 and all Prince Georges County respondents a score of −1; the second gave all Bucks County respondents a score of +1 and gave all Fairfax County respondents a score of −1.

12 The third-party procedure differences were tested with one- and two-degree-of-freedom effect contrasts that specifically examined differences among the third-party procedures or the interaction of these differences with party position (plaintiff versus defendant). Because each county had both third-party and bargaining procedure litigants, the county codes were sufficiently independent of the third-party conditions to allow the effects of the third-party procedures to appear. As we note in Sec. IV, however, there were some county differences that could not be adjusted away. Specifically, county differences that involved other factors, such as the litigant's position in the case, remain a concern. We tested for such differences and used our findings to avoid statements that might reflect spurious results, but there is always the danger that some undetected effect is present.
A similar strategy was used in other analyses. In the correlation, regression, and confirmatory factor analyses reported below, the analyses used "partial correlations" based on the total data set, with contrast codes removing the covariation attributable to county. For the log-linear analyses used to test the effects of the procedures on dichotomous variables, county was entered as a factor in the design, and any interdependence between county and the dependent variable was estimated and removed from the tests of relationship between the dependent variable and the procedure, party (plaintiff versus defendant), and procedure-by-party interaction effects.\textsuperscript{13}

SAMPLE

Sampling Procedures

In order to select individual litigants to interview, we first identified cases that had been exposed to the various procedures of interest to our study. Since our objective was to compare the effects of different resolution procedures on litigants with similar types of disputes, the selected cases in each procedural condition had to be similar except for the procedure used to resolve them. Therefore, the cases in all three counties were restricted to those that met the eligibility rules for the arbitration or settlement conference programs.

The initial sample of cases consisted of tort cases with awards of $50,000 or less that were disposed of during 1983 and 1984. Cases were included regardless of party configuration—i.e., some cases involved cross- or counter-claims, although these were relatively rare. Several additional restrictions were placed on this sample. Since our interest was in the reactions of individual litigants rather than those of corporate litigants, the sample included only cases in which at least one party was an individual or an individual operating a small business. Corporate and government litigants were not included in the study because previous research suggested that institutional representatives'\textsuperscript{13}

\textsuperscript{13}It should be noted that the settlement case litigants are not equivalent to a control group in a true experimental design because we did not randomly assign litigants to "treatments"—i.e., either to settlement or to a third-party procedure. Instead, litigants select their own treatment by either accepting or rejecting opportunities for early settlement. It is possible that the different court systems, with their different procedural options, provide differential incentives for accepting or rejecting an early settlement, making the settlement litigants less similar than we assume. Because of this possibility, using the settlement data provides an unavoidably imperfect solution to the problem of adjusting for county differences.
procedural concerns differ from those of individuals. Because contract cases were not eligible for judicial settlement conferences in Prince Georges County, such cases were excluded from the sample. Finally, cases disposed of by appeals from lower (typically small-claims) courts, by procedural dismissals (e.g., defaults or demurrers), or by summary judgments were excluded from the sample. As we have already noted, the results of our study should be taken as applying only to litigants similar and similarly situated to those we interviewed.

Filing lists provided the source of preintervention settlement cases in Prince Georges County, while 1983 and 1984 disposition lists were available from automated information systems in Fairfax and Bucks counties and provided the starting point for identifying preintervention settlement cases in those sites. These lists and additional court records were reviewed to determine case type, date filed, and method of disposition. Trial, arbitration, or settlement conference cases were identified using court scheduling lists supplemented by court dockets and case files.

In these courts, as in others, most cases are resolved without any third-party intervention. Because our sample design called for equal numbers of cases that did and did not require intervention in each court, this meant that we generally targeted every third-party intervention case for the survey and randomly sampled a small number of bilateral bargaining cases from the universe of settled cases.

We initially identified 958 civil suits (262 in Fairfax County, 374 in Bucks County, and 322 in Prince Georges County) that appeared to meet our target criteria. These cases involved 2,946 litigants of all types. Elimination of institutional and corporate litigants as well as litigants for whom no telephone number was available yielded 1,333 individuals. Seventy-four of these litigants were excluded from the sample because their cases were still pending or because reexamination of the record showed that the case type was not included in the study. Thus, the eligible sample for the interviews consisted of 1,259 individuals.

Table 3.2 shows the final disposition of the sample. We attempted to locate telephone numbers for each of the individual litigants in these cases using court records when available, supplemented by directory assistance and local voter registration lists. Ten attempts were made to interview each individual litigant over a six-month period, from October 1984 to March 1985.

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15. Multiple parties from the same case are represented so infrequently in our final sample that we ignored the potential effects of nonindependence due to specific case identity in our statistical analyses.
Table 3.2

SURVEY COMPLETION RATES

<table>
<thead>
<tr>
<th>Variable</th>
<th>Bucks County</th>
<th>Fairfax County</th>
<th>Prince Georges County</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eligible telephone sample</td>
<td>437</td>
<td>409</td>
<td>413</td>
<td>1,259</td>
</tr>
<tr>
<td>Not locatable</td>
<td>115</td>
<td>143</td>
<td>152</td>
<td>410</td>
</tr>
<tr>
<td>Net telephone sample</td>
<td>322</td>
<td>266</td>
<td>261</td>
<td>849</td>
</tr>
<tr>
<td>Refused</td>
<td>105</td>
<td>81</td>
<td>69</td>
<td>255</td>
</tr>
<tr>
<td>Percent of net telephone sample</td>
<td>33%</td>
<td>30%</td>
<td>26%</td>
<td>30%</td>
</tr>
<tr>
<td>Not reached during field period</td>
<td>87</td>
<td>36</td>
<td>65</td>
<td>188</td>
</tr>
<tr>
<td>Completed telephone interviews</td>
<td>130</td>
<td>149</td>
<td>127</td>
<td>406</td>
</tr>
<tr>
<td>Percent of net telephone sample</td>
<td>40%</td>
<td>56%</td>
<td>49%</td>
<td>48%</td>
</tr>
<tr>
<td>Interviewed litigants excluded from final sample</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Property damage only</td>
<td>41</td>
<td>14</td>
<td>3</td>
<td>58</td>
</tr>
<tr>
<td>Case value reported to be greater than $35,000</td>
<td>2</td>
<td>4</td>
<td>9</td>
<td>15</td>
</tr>
<tr>
<td>Unable to identify procedure</td>
<td>13</td>
<td>9</td>
<td>25</td>
<td>47</td>
</tr>
<tr>
<td>Final analytic sample</td>
<td>74</td>
<td>122</td>
<td>90</td>
<td>286</td>
</tr>
</tbody>
</table>

We were unable to locate approximately 33 percent of the sample because the initial telephone number was incorrect or out of date and we could not obtain a correct telephone number. The substantial attrition of the sample due to our inability to locate the litigant suggests that we may be underrepresenting litigants who are more mobile or who do not have telephones listed in their names. As we explain below, neither the original case sample nor the final analytic sample is representative of litigants in the courts or procedures in question. Thus, there is reason to avoid interpreting responses in this study as indicative of the general level of litigant satisfaction or perceived fairness. Because the attrition and refusal rates are generally similar across the three counties, as can be seen from Table 3.2, greater confidence can be placed in comparisons across procedures or in analyses investigating the interrelationships among various litigation consequences and litigants' perceptions. Even in this context, caution is necessary if there is reason to believe that the litigants who were not in the sample might have shown a different pattern of responses or different interrelationships among variables.
satisfaction, the level of attrition is not a serious threat to the validity of the study.

Of the net telephone sample of 849, approximately 30 percent either chose not to participate or failed to complete the interview. An additional 22 percent were not reached during the field period of the survey. The final completion rate, based on the net telephone sample, was 48 percent.

Of the 406 litigants interviewed, data from only 286 were used in the analyses reported below; for the most part, the additional exclusions were made to make the samples in the three counties more comparable.

We included all tort claims in our initial sample, but we later restricted the study to personal injury torts. Only 58 of the litigants we interviewed reported that their cases involved claims of property damage without personal injury, and 41 of these cases (71 percent) were from Bucks County, with another 14 in Fairfax County and 3 in Prince Georges County. Not surprisingly, awards or settlements were substantially smaller in the property-damage-only cases than in personal injury cases, although the probability of winning was similar to that in the personal injury cases. The cases involving only property damages were also distinct in that 8 of the 11 pro se litigants we surveyed participated in these cases. It seemed likely that the arbitration program in Bucks County might attract smaller cases that would otherwise be brought in small claims court. Because these cases differed from the personal injury cases and occurred disproportionately in Bucks County, the property-damage-only cases were excluded from the final sample in the interest of ensuring comparability of cases across counties.

We wanted a generally similar distribution of case values in each court. Because of the program eligibility criteria in Bucks County, this meant that ideally we would have restricted the universe to personal injury and property damage suits worth $20,000 or less. However, there was no court mechanism for assessing case value in either Prince Georges or Fairfax County. As a result, our recourse was to ask litigants about the outcome of their cases. We assumed that respondents' reports of case outcome would provide a more valid indicator of case worth than their reports of claimed damages, but even in Bucks County case outcomes could exceed $20,000. We dropped 15 respondents from our final analytic sample (4 from Fairfax County, 2 from Bucks County, and 9 from Prince Georges County) because they reported case outcomes greater than $35,000, setting the cutoff value to produce a sample that avoided too much deviation from the Bucks County arbitration criteria. Finally, 47 of the respondents—9 in Fairfax County, 13 in Bucks County, and 25 in Prince Georges County—
were unable to identify the procedures encountered in their cases or provided descriptions that conflicted with the court’s records for their cases. Most of these litigants were able to provide very little information about any of the details of their lawsuits. Because we were not able to place them with confidence in the correct cell of our research design, the data from these litigants were not included in our analytic sample.\textsuperscript{17}

Our final analytic sample consists of 286 litigants: 122 in Fairfax County, 74 in Bucks County, and 90 in Prince Georges County. The final research design and cell sizes are shown in Table 3.3. As noted earlier, the responses of litigants whose cases terminated by prehearing settlement were used only to control statistically for county differences.

**Final Analytic Sample**

The average age of litigants in the final analytic sample was 40 years. The final sample included 166 (58 percent) men and 120 (42 percent) women. Eighty-five percent of the sample were employed full or part time outside the home. Sixty-five percent of the sample were

<table>
<thead>
<tr>
<th>Site</th>
<th>Number of Litigants with Cases Settled Before Hearing</th>
<th>Number of Litigants Experiencing Third-Party Procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fairfax County</td>
<td>24</td>
<td>Trial 98</td>
</tr>
<tr>
<td></td>
<td>(11 pltf., 13 dftd.)</td>
<td>(49 pltf., 49 dftd.)</td>
</tr>
<tr>
<td>Bucks County</td>
<td>22</td>
<td>Arbitration 52</td>
</tr>
<tr>
<td></td>
<td>(14 pltf., 8 dftd.)</td>
<td>(22 pltf., 30 dftd.)</td>
</tr>
<tr>
<td>Prince Georges County</td>
<td>37</td>
<td>Settlement conference 53</td>
</tr>
<tr>
<td></td>
<td>(21 pltf., 16 dftd.)</td>
<td>(28 pltf., 25 dftd.)</td>
</tr>
</tbody>
</table>

\textsuperscript{17}There were respondents whose cases went to trial \textit{de novo} in the arbitration and settlement conference courts. These respondents were relatively rare—only five in Bucks County and nine in Prince Georges County. We therefore added these respondents to the arbitration and settlement conference cells, respectively, because they had initially experienced the procedure in question. The interview questions that addressed specific procedures always asked about the first third-party procedure the litigant had encountered.
married. The sample was 88 percent Caucasian, 9 percent black, and 3 percent other ethnic groups. Eight percent of the sample had less than a high-school education, 27 percent had a high-school degree, 31 percent had some college, and the remaining 33 percent had a college degree. Five percent of the sample reported a total family income of $10,000 or less, 16 percent reported an income between $10,000 and $20,000, 19 percent reported an income between $25,000 and $35,000, 28 percent reported an income between $35,000 and $50,000, and 32 percent reported an income over $50,000.

The final analytic sample consisted of 145 plaintiffs and 141 defendants. Ninety-eight percent of the plaintiffs and 100 percent of the defendants were represented by counsel. Ninety percent of the defendants were insured, and nearly all of these (87 percent of all defendants) were represented by lawyers supplied by their insurance company. Nearly all (94 percent) of the plaintiffs reported that their lawyers were working on a contingent fee arrangement. The most frequent contingent fee rate was one-third of the award: 70 percent of the contingent fee plaintiffs reported this rate. The range of reported contingent fee rates was 10 percent to 60 percent of the award; about 8 percent of the contingent fee plaintiffs reported rates less than one-third of the award, and about 22 percent reported rates greater than one-third of the award.

Most (78 percent) of the cases in which the respondents had been involved were automobile-related torts; the remainder were other personal injury torts. Most of the respondents had no relationship with their opponent prior to the incident that initiated the case: only 16 percent reported any business or personal relationship prior to the case.

LIMITATIONS INHERENT IN THE RESEARCH DESIGN

All research designs impose limitations on the interpretation of the research results. In our study, three limitations are especially important. First, the respondents in our study are not representative of all litigants in the courts studied, or even of all litigants in personal injury torts. Second, our study was not designed to examine the effects of the three procedures on case outcomes, cost, or duration, and it does not speak to the advantages or disadvantages of the procedures on any criteria other than those involving litigants’ evaluations of their experiences. Third, when the study reveals that two perceptions are related

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18These limitations are in addition to the conceptual caveats discussed in Sec. I.
or, in the terminology of statistics, "correlated," we generally cannot
determine which is the cause and which is the effect. We discuss these
limitations further in the remainder of this section, noting how the
limitations flow from the design of the study.

We selected litigants for the interviews with an eye to testing
whether litigants react differently to different third-party procedures.
This led us to select specific sets of litigants in all three courts. As we
have noted in previous parts of this section, we specifically excluded
cases and litigants in each court that were different from those in the
other two courts, and we used data from litigants in settled cases only
to adjust for county differences. These aspects of the design facilitate
the comparison of responses across the three courts and across the
three procedures but also mean that the litigants interviewed in each
court are not representative of the general population of litigants in
that court. For this reason, as well as because of the substantial attri-
tion of the sample that occurred in trying to locate and interview liti-
gants, it would be a mistake to use these data to try to infer overall
levels of perceived fairness and satisfaction among litigants in these or
other courts.19

An additional limitation results from our efforts to generate compar-
able groups of litigants who had been exposed to the three third-party
procedures and from the attrition of our sample from case selection to
the completed interviews. Although we could make the litigants
roughly comparable across procedures, we have no guarantee that the
cases in which the litigants were involved were the same in each pro-
cedure. For example, we know that the litigants in each procedure
were drawn from cases that involved awards of at most $35,000, but we
do not know whether the distribution of cases across various amounts
in controversy was the same in each county. Because we are interested
in litigants rather than in cases, this selection does not threaten the
aims of the study. However, the data from this study cannot be used to
infer whether the procedures differ in their effects on case outcomes,
litigation cost, or case delay.

Finally, because our study used comparisons based on preexisting
rather than randomly constituted groups of litigants, there is some
ambiguity about causes and effects. We report correlations among
various beliefs or between procedures or outcomes and beliefs, but it is
sometimes difficult to say precisely why the correlation occurs. The

19Another reason for caution in using our data to determine whether litigants are in
general satisfied with their litigation experiences is what is termed in the social sciences
a "positivity bias." By and large, people respond favorably more often than unfavorably
when asked about their satisfaction with or evaluation of government institutions or
other entities.
difficulty of sorting out cause and effect is especially severe in the case of correlations between two attitudes that are held at the same time. For example, we report in the next section that litigants are more likely to see court procedures as fair when they evaluate their attorney favorably. But do favorable evaluations of attorneys lead to higher fairness judgments, or do high fairness judgments lead to favorable judgments of attorneys? To make things even more complicated, it might be the case that both fairness judgments and attorney evaluations are affected by some third factor, such as the outcome of the case or speed with which it is resolved.

In our reporting of the results of the study, we will take this causal ambiguity into account. Only when there is evidence from other research establishing the direction of causality do we use such terms as "cause" or "effect." When no clear causal ordering has been established, we use terms that do not imply causality. When we use language that implies causal relationships, we will cite the studies that show that the factor in question can cause changes in perceived fairness and satisfaction. We will forgo altogether the use of causal language when we are talking about the relationship among various attitudes and beliefs; the present data simply do not support assertions about which attitudes are causes and which are effects.

INTERVIEW PROCEDURES

The litigants were interviewed using a Computer-Assisted Telephone Interviewing (CATI) system. On average, completed interviews lasted about 33 minutes. The litigants were asked to describe their social background characteristics, the dispute and relevant prelitigation events, and the costs they accrued as a result of the lawsuit. They were also asked to describe and evaluate any settlement activities, their impressions of the court-administered procedure used to resolve the dispute (trial, arbitration, or judicial settlement conference), and their overall attitudes about their experience with the court. Appendix A shows the wording of the questions that assessed the litigants’ perceptions of the procedures and case experiences, their procedural fairness judgments, and their satisfaction with the outcome and the court. The

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20 The word effect is also used below as a term of art in footnotes reporting the results of analyses of covariance. In this context, the term should not be interpreted as implying causal relationships.

21 Even when there is previous research showing causal relationships involving the factor in question, it is not certain that all of the correlation observed here is due to changes in perceived fairness and satisfaction caused by that factor.
interview included many other questions, but those presented in App. A are the principal items used in the analyses in this report.

CONSTRUCTING MULTIPLE-ITEM SCALES

Distinguishing Fairness and Satisfaction

In Sec. II, we noted that the existing research literature on evaluations of court experiences distinguishes three attitudinal dimensions: procedural fairness judgments, satisfaction with outcome, and satisfaction with the court system. A first step in constructing multiple-item measures of litigants' evaluations of their experiences was to test whether litigants' answers to the interview questions in the present study support this distinction. One might imagine, for example, that the litigants simply liked some procedures and disliked others and that their judgments of fairness and their satisfaction ratings were just different ways of indicating this single underlying evaluation. In that case, we would need to construct a measure of this single underlying factor. If, on the other hand, we found that the litigants in our study did in fact distinguish procedural fairness from satisfaction, we would attempt to construct a multiple-item measure of procedural fairness, which was measured with two interview items, and we would use single-item measures of outcome satisfaction and system satisfaction, each of which was measured with a single question in the interview.

We used a procedure termed confirmatory factor analysis\(^{22}\) to test for empirical support for distinguishing fairness from satisfaction. This statistical procedure tests how well the data fit a given model of responses. We compared two models. The first regarded fairness and satisfaction as related but distinct dimensions of evaluating justice system experiences. The second model regarded fairness and satisfaction simply as different manifestations of a single underlying evaluative factor. The first model showed excellent fit to the data;\(^{23}\) the second model showed a somewhat lesser fit.\(^{24}\) A comparison of the fit of the two models showed that the first model fit the data significantly better.


\(^{23}\)Chi-square (1) = .38, \(p = .535\); goodness of fit index (GFI) = .999, adjusted goodness of fit index (AGFI) = .993.

\(^{24}\)Chi-square (2) = 34.34, \(p < .001\); GFI = .940, AGFI = .699.
than did the second.\textsuperscript{25} Thus, procedural fairness and satisfaction were found to be clearly distinct and not simply reflections of a single underlying evaluative factor.

It was not possible to conduct a comparative test of a model that distinguishes fairness from satisfaction and a model that distinguishes fairness, satisfaction with the court, and outcome satisfaction.\textsuperscript{26} It was possible, however, to conduct a test of the overall fit of a model distinguishing three components of litigants’ evaluations. When we did this, we found that the three-component model fit the data as well as did the two-dimensional model.\textsuperscript{27} Because the three-component model is congruent with the existing literature on reactions to courts as well as with the literature on attitude measurement, we elected to use that model in the analyses we report in the next chapter. Throughout our analysis of the results, we will consider procedural fairness judgments, outcome satisfaction, and satisfaction with the court to be distinct reactions to the litigation experience.\textsuperscript{28}

\section*{Testing the Reliability of Multiple-Item Scales}

There were seven groups of items that might constitute multiple-item measures of underlying attitudes and impressions described in Sec. II: ratings of procedural fairness, ratings of the attorney, ratings of perceived control, ratings of formality and rule strictness, ratings of comfortableness and understanding, ratings of procedural care, and ratings of procedural bias. One of these sets of items—ratings of comfortableness and understanding—showed such a low inter-item correlation that it was clear the items should be treated separately.\textsuperscript{29} The remaining sets of items were good candidates for the construction of multiple-item scales.

We computed the reliability of the five perceptual item scales and the procedural fairness scale; all show acceptable reliabilities. As

\textsuperscript{25}For the test of the difference between the two models, chi-square (1) = 33.96, p = .001.
\textsuperscript{26}The three-latent-variable model could not be estimated in a fashion that permitted hierarchical tests with the one- and two-latent-variable models discussed above because we had too few observed variables.
\textsuperscript{27}Chi-square (1) = .38, p = .535; GFI = .999, AGFI = .993.
\textsuperscript{28}As expected, the measures of perceived procedural fairness, outcome satisfaction, and system satisfaction were correlated: \( r(\text{procedural fairness, outcome satisfaction}) = .61, p < .001; \) \( r(\text{procedural fairness, system satisfaction}) = .68, p < .001; \) \( r(\text{outcome satisfaction, system satisfaction}) = .84, p < .001. \) Unless otherwise indicated, all correlations in this report are partial correlations adjusting for the effects of county.
\textsuperscript{29}A polyserial correlation of only .145 was found between litigants’ perception of the procedure as comfortable and their ratings of their understanding of the proceedings.
measured by “Cronbach’s alpha,” an index of scale consistency, the reliabilities are .71 for evaluation of the attorney, .73 for perceived control, .63 for perceived procedural care (carefulness and thoroughness), .62 for perceived formality and rule strictness, .63 for perceived procedural bias (bias and favoritism), and .81 for perceived procedural fairness.\textsuperscript{30}

On the basis of these findings, we constructed six multiple-item scales. Each respondent’s score on each scale is the average of the ratings on the items that comprise the scale. If one of the items was missing a response, we substituted the predicted value for the item based on a regression of that item on the other item or items on the scale. If data were missing on more than one item, the scale value was coded as “missing” for that respondent.

An additional multiple-item scale was constructed in a different way from the questions asking for evaluations of the duration of the case. The item asking about whether the case lasted too long or not long enough was used to expand the scale asking whether the time had been reasonable. If the litigant thought the duration of the case was too short, the response to the reasonableness item was multiplied by $-1$, yielding a scale that ran from unreasonably short through reasonable to unreasonably long.

\textsuperscript{30}The alphas for the procedural care, procedural bias, and formality/strictness of rules scales are admittedly somewhat lower than might be desired but are not surprising for scales constructed from dichotomous items. We reasoned that the scales were more reliable than the single items, so we used the scales in the analyses reported here.
IV. RESULTS AND DISCUSSION

In this section, we present the major findings of the study. There are three rather distinct sets of findings. First, there are those concerning whether the procedures we studied differed in the satisfaction and perceived fairness they engendered. Second, there are findings concerning the relationship between perceived fairness and satisfaction and other factors. Third, there are findings concerning how the three procedures were viewed with respect to impressions other than satisfaction and perceived fairness. We will address each set of findings in turn.

PROCEDURE EFFECTS ON SATISFACTION AND PERCEIVED FAIRNESS

We noted in Sec. I that one of the goals of the study was to determine whether litigants’ fairness judgments and satisfaction were affected by differences in the procedure used to resolve the case.\(^1\) We begin our presentation of the results of the study with analyses of the effects of third-party procedures on perceived procedural fairness, outcome satisfaction, and system satisfaction.

Perceived Procedural Justice

The three third-party procedures differed considerably in the procedural fairness ratings they engendered.\(^2\) Those tort litigants in our


\(^2\)The test for main-effect (i.e., across-the-board) differences due to procedure was statistically significant, \(F(2, 271) = 5.27, p < .006\), as was the test for main-effect differences due to party position (i.e., plaintiff versus defendant), \(F(1, 271) = 8.53, p < .004\), and the interaction of party and procedure effects, \(F(2, 271) = 10.48, p < .001\). An empirical
study who had experienced arbitrations or trials thought that arbitration hearings and trials were fairer than did those litigants who had had settlement conferences.\(^3\) Figure 4.1 shows the mean procedural justice scale values for litigants in each of the three procedures.\(^4\)

The results diagrammed in Fig. 4.1 have some noteworthy implications. First, the data show that procedures can indeed affect perceived fairness in civil justice system contexts. The differences in the perceived fairness of the three procedures show that litigants are sensitive to procedures, seeing greater fairness in some and lesser fairness in others. At least in terms of judgments of procedural fairness, procedure clearly matters to litigants.

As we explain later in this section, it appears that the procedural fairness differences among procedures were due to litigants’ impressions of the dignity and carefulness of the various procedures. The perceived fairness advantage of arbitration and trial over settlement conferences seems to be due to litigants’ perceptions that arbitration and trial procedures are more dignified and that they employ a more careful and thorough process. As we note below, perceptions of dignity and procedural care play an important role in judgments of procedural fairness.

**Outcome Satisfaction**

Litigants were more dissatisfied with their outcomes under settlement conference procedures than were those litigants who had had

\(^3\)The comparison of perceived fairness ratings for arbitration and settlement conferences was significant, \(F(1, 271) = 6.35, p < .004,\) and the test of whether this comparison differed depending on whether the respondent was a defendant or a plaintiff was not significant, \(F(1, 271) < 1.0, p > .6.\) The interaction of the party factor and the comparison of ratings of trial to ratings of arbitration and settlement conferences was significant, \(F(1, 271) = 20.76, p < .001.\) However, this interaction was due to an apparently spurious difference between plaintiffs and defendants in Fairfax County. The plaintiff-defendant difference was even greater in Fairfax bargaining cases than in Fairfax trial cases. Both defendants and plaintiffs rated trials as fairer than settlements. The significant interaction occurred because the method we used to remove county-specific variation in ratings did not remove variation that was linked both to the respondent’s county and to some other variable. In this case, the other variable was the respondent’s side of the case.

\(^4\)The test of the covaried county codes was also significant, \(F(2, 271) = 4.69, p < .01,\) indicating that there were county differences in procedural fairness ratings. In the interest of brevity, we will henceforth report the test of significance for the county contrast regression only when it is significant.
Fig. 4.1—Procedural fairness judgments (adjusted for county)
either trial or arbitration procedures.\textsuperscript{5} Figure 4.2 shows the average outcome satisfaction ratings of litigants in each of the three procedures.\textsuperscript{6}

Because the procedure effects on outcome satisfaction may well be due to the nature of the outcomes produced by the various procedures, we defer until later in this section a discussion of the implications of these findings.

**Satisfaction with Court**

Figure 4.3 shows the mean ratings on the item asking about system satisfaction. As can be seen from the figure, litigants showed similarly moderate levels of satisfaction with the court in response to all of the procedures.\textsuperscript{7}

**FACTORS CORRELATED WITH SATISFACTION AND PERCEIVED FAIRNESS**

We continue our investigation of litigants' views of the civil justice system with analyses that test the relationship between the fairness and satisfaction measures and the various factors discussed in Sec. II.\textsuperscript{8}

\textsuperscript{5}Significant effects were found for the respondent's party, $F(1, 265) = 21.40, p < .001$, and for the party-by-procedure interaction effect, $F(2, 265) = 4.40, p < .013$. The test of the county contrasts was not significant, suggesting that there were no strong differences between the counties in ratings on this item, $F(2, 265) = 1.42, p < .24$.

\textsuperscript{6}The interaction of party and the comparison of trial to the two alternative procedures was significant, $F(1, 265) = 5.55, p < .019$, and the interaction of party and the comparison between arbitration and settlement conference fell short of being significant, $F(1, 265) = 3.03, p < .08$. However, the defendant-plaintiff difference in satisfaction with trial outcomes does not in fact appear to be due to the trial procedure; a similar difference appears in the outcome satisfaction ratings of Fairfax bargaining respondents. The defendant-plaintiff difference in arbitration is not statistically significant and therefore is probably best considered the result of random fluctuations in the data.

\textsuperscript{7}The analysis of covariance, adjusting for potential county differences, showed significant effects for party, $F(1, 271) = 9.53, p < .002$, and for the interaction of procedure and party, $F(2, 271) = 6.04, p < .003$. The interaction of party and the comparison of trial to the other two procedures was significant, $F(1, 271) = 12.08, p < .001$. Again, however, the interaction effect seems to be the result of an across-the-board difference in the ratings of Fairfax County plaintiffs and defendants. The difference cannot be attributed to different reactions to trials because there is a difference at least as large in the ratings of bargaining case plaintiffs and defendants in Fairfax County.

\textsuperscript{8}Two considerations led us to use simple correlations, rather than multiple regression procedures, to examine potential correlates of perceived fairness and satisfaction. First, some of the factors that might affect fairness and satisfaction were themselves correlated to a sufficient degree that it was difficult for multiple regression procedures to disentangle their relationship with perceived fairness or satisfaction. This is what is termed a "multicollinearity" problem. This problem was of sufficient magnitude to threaten the interpretability of any single regression coefficient but was not severe enough to threaten the overall regression analyses reported later in this section. Second, some of the impression factors were not assessed in some cells of the design, making it necessary to use simple correlations for these factors in any event. To be consistent, we decided to
Fig. 4.2—Satisfaction with outcomes (adjusted for county)
Fig. 4.3—Satisfaction with the court (adjusted for county)
Table 4.1 presents the correlations we observed between the three litigant evaluation dimensions and the factors that had been hypothesized to affect perceived fairness or satisfaction.

**Litigation Outcome, Costs, and Delay**

Two questions arise with respect to the relationship between satisfaction and perceived fairness and case outcome, cost, and delay. First, how strongly are litigants’ fairness judgments and satisfaction linked to the outcome of the case, the delay in receiving that outcome, and the cost of the litigation? Second, if litigant satisfaction and perceived fairness are indeed correlated with outcome, cost, or delay, can the procedure effects described in the preceding section be explained by procedure-linked differences in outcome, cost, or delay? To answer the first question, we examined the correlations between litigants’ fairness and satisfaction scores and measures of outcome, cost, and delay. To answer the second question, we retested the procedure effects on procedural justice judgments and satisfaction, removing any effects that could be attributed to outcome, cost, and delay.

**Case Outcome.** The amount won or lost in cases in the study ranged between $0 and $35,000. Thirty-five percent of the plaintiffs reported that they had won nothing; for the remaining 65 percent of the plaintiffs, the median amount won was $16,000. Forty-six percent of the defendants reported that neither they nor their insurer had had to pay anything. The remaining 54 percent of the defendants reported a median payout for their side of $5,000, but 80 percent of the defendants thought that their insurance would cover all of their losses.9

The amount of money won or lost in the case has at most only a moderate effect on tort litigants’ evaluations of their court experiences.10 The overall correlations between the amount won or lost and

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9Because the defendants and plaintiffs came from different cases, the rate of payments from defendants does not equal the rate of payments to plaintiffs.

10We speak of outcomes possibly causing changes in litigants’ evaluations because several experimental studies have shown that there is a causal link between outcomes and perceptions of fairness or satisfaction. See, e.g., Walker et al., 1974; LaTour, 1978; and Lind et al., 1983. It is interesting to note, in light of the findings described in this section, that there are at least two laboratory studies that have found no effect for outcomes on judgments of procedural fairness; see, e.g., Lind et al., 1980, and Lind and Lissak, 1985.
Table 4.1
CORRELATES OF SATISFACTION AND PERCEIVED FAIRNESS

<table>
<thead>
<tr>
<th>Variable</th>
<th>Procedural Fairness</th>
<th>Satisfaction with Outcome</th>
<th>Satisfaction with Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>Litigation consequences</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amount won or lost (dollars)(^a)</td>
<td>.14(^d)</td>
<td>.25(^d)</td>
<td>.15(^d)</td>
</tr>
<tr>
<td>Win-lose index(^b)</td>
<td>.15(^d)</td>
<td>.32(^d)</td>
<td>.18(^d)</td>
</tr>
<tr>
<td>Case duration</td>
<td>-.07</td>
<td>-.06</td>
<td>-.08</td>
</tr>
<tr>
<td>Cost to litigant(^e)</td>
<td>.07</td>
<td>-.08</td>
<td>-.06</td>
</tr>
<tr>
<td>Subjective evaluations of litigation consequences</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Outcome relative to expectations</td>
<td>.48(^e)</td>
<td>.68(^e)</td>
<td>.49(^e)</td>
</tr>
<tr>
<td>Duration reasonable?</td>
<td>-.16(^d)</td>
<td>-.24(^d)</td>
<td>-.20(^d)</td>
</tr>
<tr>
<td>Cost justified?</td>
<td>-.11</td>
<td>.13</td>
<td>.04</td>
</tr>
<tr>
<td>Process perceptions</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Perceived control</td>
<td>.38(^d)</td>
<td>.40(^d)</td>
<td>.39(^d)</td>
</tr>
<tr>
<td>Evaluation of counsel</td>
<td>.44(^e)</td>
<td>.48(^e)</td>
<td>.51(^e)</td>
</tr>
<tr>
<td>Participation</td>
<td>.12</td>
<td>.05</td>
<td>.07</td>
</tr>
<tr>
<td>Procedure dignified?(^b)</td>
<td>.57(^e)</td>
<td>.37(^d)</td>
<td>.51(^e)</td>
</tr>
<tr>
<td>Procedure formal? Rules strict?(^c)</td>
<td>.08</td>
<td>-.03</td>
<td>.07</td>
</tr>
<tr>
<td>Understood proceedings?</td>
<td>.15(^d)</td>
<td>.04</td>
<td>.15(^d)</td>
</tr>
<tr>
<td>Procedure comfortable?(^b)</td>
<td>.40(^d)</td>
<td>.32(^d)</td>
<td>.47(^e)</td>
</tr>
<tr>
<td>Procedure private?(^b, c)</td>
<td>-.19(^d)</td>
<td>-.20(^d)</td>
<td>-.37(^d)</td>
</tr>
<tr>
<td>Procedural care</td>
<td>.48(^e)</td>
<td>.31(^d)</td>
<td>.35(^d)</td>
</tr>
<tr>
<td>Procedural bias(^c)</td>
<td>-.60(^e)</td>
<td>-.51(^e)</td>
<td>-.43(^e)</td>
</tr>
<tr>
<td>Litigant characteristics</td>
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<td></td>
</tr>
<tr>
<td>Education</td>
<td>.10</td>
<td>.08</td>
<td>.05</td>
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<tr>
<td>Age</td>
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<td>Gender(^b)</td>
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<td>Family income</td>
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<tr>
<td>Race/ethnicity(^b)</td>
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<td>-.17(^d)</td>
<td>-.09</td>
</tr>
<tr>
<td>Employed(^b)</td>
<td>-.17(^d)</td>
<td>-.11</td>
<td>-.15(^d)</td>
</tr>
<tr>
<td>Prior relationship with opponent(^b)</td>
<td>.09</td>
<td>.03</td>
<td>.05</td>
</tr>
</tbody>
</table>

NOTE: Unless otherwise indicated, all values are partial correlations removing effects of county.

\(^a\)Correlations for this variable are computed using values standardized separately for plaintiffs and defendants; see text.

\(^b\)Dichotomous response variable; values in table are polyserial correlations.

\(^c\)Values based on arbitration and trial procedures only; correlations not adjusted for county.

\(^d\) \(p < .05\).

\(^e\) \(p < .001\).
procedural fairness judgments,\textsuperscript{11} outcome satisfaction,\textsuperscript{12} and system satisfaction\textsuperscript{13} are not statistically significant. However, these overall correlations conceal small but significant effects that appear when the litigant's position in the case is taken into account.\textsuperscript{14} Computing correlations separately for plaintiffs and defendants revealed that the amount won or lost does affect outcome satisfaction. Plaintiffs' satisfaction with the outcome\textsuperscript{15} showed a significant correlation with the amount they won, but their procedural fairness judgments\textsuperscript{16} and their satisfaction with the court\textsuperscript{17} did not. Similarly, defendants' outcome satisfaction\textsuperscript{18} was significantly correlated with the amount their side lost, but their procedural fairness judgments\textsuperscript{19} and system satisfaction\textsuperscript{20} were not.

These findings have some interesting implications for the relationship between monetary outcomes and perceived fairness and satisfaction. First, the fact that the correlation between outcome and outcome satisfaction was stronger when plaintiffs and defendants were considered separately implies that monetary outcomes are judged by different standards on the part of plaintiffs and defendants in tort cases. The second implication has to do with the modest size and uneven pattern of the correlations between outcomes and litigant attitudes. Although the monetary outcome of the case appears to have had a modest impact on outcome satisfaction, the outcome had little or no effect on the perceived fairness of the procedures or satisfaction with the system.\textsuperscript{21} It is understandable that defendants, whose losses were

\textsuperscript{11}r = .07, not significant.
\textsuperscript{12}r = -.01, not significant.
\textsuperscript{13}r = -.05, not significant.
\textsuperscript{14}We computed separate correlations for plaintiffs and defendants for all the variables in Table 4.1. Unless otherwise indicated, there was no substantial difference in the correlation for plaintiffs and that for defendants. In two of the instances where differences were found—in correlations involving case outcome and litigation costs—standardizing the variable separately for plaintiffs and defendants resulted in similar correlations for both positions, suggesting that differences in variance or, more likely, differences in the mean of the variable, rather than differences in the basic relationship with fairness or satisfaction, were the source of the different correlations.
\textsuperscript{15}r = .25, p < .02.
\textsuperscript{16}r = .15, not significant.
\textsuperscript{17}r = .16, not significant.
\textsuperscript{18}r = .20, p < .03.
\textsuperscript{19}r = .04, not significant.
\textsuperscript{20}r = .06, not significant.
\textsuperscript{21}Strictly speaking, it is dangerous to draw inferences from the absence of a significant statistic because the logic of hypothesis testing biases against finding effects or correlations unless they are very clearly present. The present study, however, had a sufficiently large sample for us to expect that most modest to strong correlations would be evident if they existed. The power of the test of significance of the Pearson correlations
insured, might not react strongly to the amount won or lost, but it is rather remarkable that plaintiffs’ fairness and system satisfaction ratings were not correlated with the amount they won.\textsuperscript{22} It is clearly a mistake to think that litigant evaluations of the tort system and its procedures are driven by how much they win or lose.

We noted in Sec. II that simply having won or lost a case might have an impact on litigants’ reactions, quite apart from the amount of money changing hands. Our hypothesis was that litigants might view winning as a vindication of their actions in the incident that produced the lawsuit or as a vindication of their actions in pursuing the dispute. We hypothesized that this “vindication” effect might be especially strong in the two adjudicatory procedures—trial and arbitration—because these procedures call for an explicit determination of liability, while the settlement conference procedure does not. The results of the study supported this hypothesis. First, the overall correlations between an index of winning or losing\textsuperscript{23} and each of the litigant evaluation dimensions, which are shown in Table 4.1, are statistically significant. In addition, the data from litigants whose cases were adjudicated, either in arbitration or at trial, showed a stronger correlation between winning or losing and outcome satisfaction\textsuperscript{24} than did the data from litigants whose cases were resolved in settlement conferences.\textsuperscript{25} Plaintiffs and defendants did not differ substantially in the extent to which their procedural fairness judgments or their outcome or system satisfaction correlated with winning or losing the case.

Although we have labeled the finding a “vindication” effect, it should be noted that from the perspective of those who lose, it is a

\textsuperscript{22}There was no indication that defendants who expected their insurance to pay the outcome differed from those who expected to pay themselves. For procedural fairness judgments, polyserial $r = .10$, not significant; for outcome satisfaction, polyserial $r = .09$, not significant; for system satisfaction, polyserial $r = .07$, not significant. Note, however, that the relationship between who paid and litigants’ satisfaction and perceptions of fairness may be attenuated by the relatively small proportion of defendants who expected to pay the outcome.

\textsuperscript{23}The win-lose index was constructed by counting as having “won” any plaintiff who obtained any monetary award or settlement and any defendant whose side paid nothing at all. Plaintiffs who received no money and defendants whose side paid out anything at all were counted as having “lost.” The index is admittedly less than perfect—plaintiffs who receive token payments may feel they have lost and defendants who make small payments may feel they have won—but the index represents the best objective measure of winning and losing that we could construct.

\textsuperscript{24}Polyserial correlation $= .46$, $p < .001$.

\textsuperscript{25}Polyserial correlation $= .13$, not significant, $z = 2.02, p < .05$. Because all of the litigants whose cases were subject to settlement conferences were in Prince Georges County, no statistical adjustment was made for county.
"condemnation" effect. The correlations just described show that winners and losers differ more in their outcome satisfaction under adjudicative forums than under compromise forums. In some respects, this finding is supportive of one of the major tenets of anthropological analyses of disputing: that adjudicative dispute-processing forums lead to greater polarization between winners and losers with respect to how they view the case outcome. But it should be noted that the relative discontent of losers in adjudicative forums is not sufficiently strong to obliterate the perceived fairness advantage of trial and arbitration over settlement conferences.

Having found that the case outcome does under some circumstances appear to affect procedural fairness judgments, outcome satisfaction, and system satisfaction, we turn to the question of whether the procedure effects described earlier in this section might be due to differences in the outcomes the litigants received under the various procedures. We recomputed the analyses of covariance used to test for procedure differences, removing not only variation that could be attributed to county, but also variation that could be attributed to the win-lose and outcome indices.26

The procedure effect on outcome satisfaction appears to be due to the case outcomes that litigants experienced under the various procedures. When we removed variation in outcome satisfaction that could be attributed to having won or lost a case, we found that the procedure effects disappeared. The procedures differ in the mix of winning and losing, as defined by our rough index, and this difference appears to be the source of the outcome satisfaction difference. Specifically, under the settlement conference procedures, almost all (96 percent) of the plaintiffs we interviewed had "won" in the sense of having received something, and most of the defendants (71 percent) had "lost" in the sense that their side had had to pay something. In contrast, only about half (46 percent) of the plaintiffs in trials and arbitration hearings "won," and only about half (49 percent) of the defendants "lost." Whatever the reasons involved, these results do suggest that the procedure effects on outcome satisfaction are linked to the rates of winning or losing, with greater satisfaction resulting from the procedures that are more evenly balanced in terms of our rough index of winning and losing.

Case Delay. We measured case delay by computing the duration of the case from the time of the incident that gave rise to the case to its final resolution by the court. The duration of the cases ranged from just over two months to six years and five months. The median case

26. The analyses of covariance had four covariates: the two county contrast codes, the win-lose index, and the party-standardized amount won or lost.
duration was just over two years. In comparison to what we have seen in similar cases in courts around the country, the litigants in our study experienced moderate levels of delay.

As can be seen from the correlations reported in Table 4.1, litigants' judgments of procedural justice, their satisfaction with the case outcome, and their satisfaction with the court do not seem to be related to case delay. Because it is arguable that plaintiffs would especially resent delay, we computed the correlations separately for plaintiffs and defendants. Neither plaintiffs nor defendants showed any significant correlation between delay and fairness judgments or satisfaction.\textsuperscript{27}

The low correlations between case delay and litigant satisfaction or perceived fairness might conceivably be due to our measure of delay. We based our measures of delay on the date of the incident rather than the date the case was filed with the court.\textsuperscript{28} If a substantial portion of the time between the incident and the final resolution of the case elapsed before the tort system was activated, there would be little reason to expect that delay, as we have defined it, would affect satisfaction or fairness judgments. We do have some data, however, on whether the litigants delayed substantially in pressing their claims. One of the questions in the interview asked the litigants who were represented by their own lawyers (i.e., the plaintiffs and the few uninsured defendants) how long after the incident they had hired their lawyers. These data showed that the litigants acted quite quickly to activate the tort system, at least insofar as hiring a lawyer constitutes activating the system. The median time from the incident to hiring the lawyer was only 14 days; the mean, which is particularly sensitive to the long delays, is only 91 days. Thus, it appears that most of the delay that litigants experienced occurred after they had acted to take their case to the tort system.

The absence of any correlation at all between delay and satisfaction or perceived fairness is especially striking in light of the frequent assertion that litigants are dissatisfied with the civil justice system because of the delays they encounter. Delay appears not to play a substantial role in determining whether tort procedures are seen as fair and whether the litigant leaves the court satisfied. This finding in turn suggests that procedural innovations that cut down on delay, however desirable for other reasons, cannot be counted on to enhance tort litigants' satisfaction or perceived fairness simply by virtue of reduction in delay.

\textsuperscript{27} Absent any evidence that delay was related to procedural fairness judgments or satisfaction, there was no need to conduct additional analyses to determine whether delay could have caused the procedure effects on perceived fairness or satisfaction.

\textsuperscript{28} We used the date of the incident because we thought the litigants would be more likely to know or to remember when the incident occurred than when the case was filed.
Litigation Cost. We asked several questions about the legal fees and expenses that litigants had to pay, and we used the respondents' answers to compute an overall value for the litigants' costs. \(^{29}\) Ten percent of the plaintiffs reported having no costs at all. \(^{30}\) The median cost for the plaintiffs who did pay something was $2,715. Presumably because of the very frequent use of contingent fee arrangements, plaintiffs' litigation costs rose as their outcomes rose. \(^{31}\) Because most defendants were insured, their personal costs were substantially less than those of the plaintiffs. Sixty-nine percent of the defendants reported no costs at all. For the defendants who did pay some fees or expenses, the median cost was $500.

Judgments of fairness, outcome satisfaction, or system satisfaction appear to be unrelated to the cost of the litigation for the litigant. The data do show small negative overall correlations between the cost measure and each of the satisfaction and fairness variables, \(^{32}\) but closer examination shows these correlations to be spurious: they result from the generally higher fairness and satisfaction ratings of defendants, who had lower direct costs, than plaintiffs, who had higher costs. When the correlations are computed separately for plaintiffs and defendants, neither plaintiffs nor defendants show any significant relationship between costs and procedural fairness judgments, \(^{33}\) outcome satisfaction, \(^{34}\) or system satisfaction. \(^{35,36}\)

As was the case with the results of the analyses of case delay, the absence of any real relationship between litigation cost and perceived fairness or satisfaction is an unexpected and especially noteworthy finding. It is at first glance quite remarkable to find that litigants who

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\(^{29}\) The cost variable did not include such things as the value of the litigant's time or earnings foregone to attend case events.

\(^{30}\) In theory, plaintiffs' attorneys are supposed to be repaid for all their expenses, regardless of the outcome of the case. Our data suggest that, in practice, attorneys may not always insist on or collect such reimbursement.

\(^{31}\) For procedural fairness judgments, \(r = -.19, p < .05\); for outcome satisfaction, \(r = -.28, p < .003\); for system satisfaction, \(r = -.26, p < .005\).

\(^{32}\) For plaintiffs, \(r = .10\), not significant; for defendants, \(r = -.01\), not significant.

\(^{33}\) For plaintiffs, \(r = -.01\), not significant; for defendants, \(r = -1.14\), not significant.

\(^{34}\) For plaintiffs, \(r = -.05\), not significant; for defendants, \(r = -.11\), not significant.

The overall correlations reported in Table 4.1 are based on costs standardized separately for plaintiffs and defendants.

\(^{35}\) The absence of any real correlation between litigation cost and the fairness or satisfaction measures suggests that there is little chance that cost could explain the procedure effects on fairness and outcome satisfaction. Nonetheless, because there was some apparent correlation, we retested the procedure effects, removing any potential effects of cost, and found that the procedure effects on fairness and satisfaction were unrelated to litigation cost.
spent substantial amounts of money on their cases express no more dissatisfaction, and see the litigation process as no less fair, than do those who spent very little or nothing at all.

But these findings must be viewed in the context of fee arrangements in tort cases. It might be argued that defendants in these cases are quite naturally indifferent to legal fees and cost because they do not bear the cost directly: it is their insurer who pays for the litigation. Plaintiffs do ultimately pay their own legal fees and costs, but contingent fee arrangements mean that the absolute amount they pay is in a sense “hidden” by their outcome: they pay more when they get more.

These considerations prompted us to probe further for possible relationships between costs and litigants’ perceptions of fairness and satisfaction. We conducted several analyses that seemed especially likely, given the cost payment structures in tort cases, to show some link between costs and perceived fairness or satisfaction if such a link existed.

We first tested whether defendants whose insurers paid their legal costs reacted differently than those who paid at least some of their legal costs, and we found that who paid the legal fees and costs made no significant difference with respect to defendants’ judgments of procedural fairness or their satisfaction with the system.37 There was a significant relationship between who paid the legal costs and defendants’ satisfaction with the outcome:38 those whose insurers paid were more satisfied with the case outcome. We then tested whether there was any reliable relationship between costs and satisfaction or perceived fairness for those defendants who paid some or all of their legal costs. These tests showed no significant relationship between the costs of these defendants and any of the three fairness and satisfaction measures.39 (It should be noted, however, that the statistical tests based only on defendants who paid their own costs might fail to reveal a relationship because there were so few defendants in this category.)

We also tested whether plaintiffs’ satisfaction and fairness judgments were linked to the contingent fee rate they paid. We found no

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37Polyserial \( r = .11 \), not significant.
38Polyserial \( r = .13 \), not significant.
39Polyserial \( r = .25, p < .05 \).
40For procedural fairness, \( r = .27 \), not significant; for satisfaction with the outcome, \( r = .03 \), not significant; for satisfaction with the system, \( r = .28 \), not significant. Note that although they are not significant, the correlations between cost and procedural fairness and system satisfaction are positive: perceived fairness and satisfaction were, if anything, higher when costs were higher.
significant relationship between the contingent fee rate and any of the fairness or satisfaction measures.41

In general, these findings show little relationship between litigants’ costs and their satisfaction and perceptions of fairness. The litigants we studied might have been insensitive to cost considerations because of the payment arrangements that characterize most tort litigation, but the analyses just described suggest that this is not the only reason that satisfaction and perceived fairness are not linked to costs. Even when we consider aspects of the cost structure that seem especially likely to show some relation between costs and satisfaction or fairness, we find quite modest or nonexistent correlations.

Whatever the reason for the low correlations, these findings suggest that cost concerns do not drive individual tort litigants’ attitudes about litigation. As was the case with the findings on case delay, the litigation cost findings suggest that litigant dissatisfaction or perceived unfairness would probably not be ameliorated by innovations that are designed solely to produce faster and less expensive tort litigation.

Summary. In general, the findings with respect to case outcome, delay, and cost show considerably weaker correlations with satisfaction and perceived fairness than might have been expected. Outcome satisfaction was the only one of the three attitudinal dimensions that seems to be linked strongly to the amount won or lost in the lawsuit. There is some indication that the link between outcomes and litigant evaluations is as much psychological as it is economic. The data also showed a “vindication” effect—we found stronger correlations between satisfaction and the win-lose index in cases subjected to the adjudicatory procedures than in cases subjected to settlement conferences. But even in the adjudicatory procedures the effect of case outcome was only moderate. By and large, the litigants’ attitudes about their experiences seem to have been affected less than one would have expected by how their cases fared.

Procedural innovations are often designed to reduce delay and cost. The results of the study suggest that reductions in cost and delay will have less impact on tort litigants’ evaluations of the court and its procedures than one might have thought. The correlations between case delay and costs and the litigants’ reactions were even weaker than

41 For procedural fairness, $r = .01$, not significant; for outcome satisfaction, $r = .00$, not significant; for system satisfaction, $r = -.08$, not significant. These correlations might conceivably be spuriously low because so many of the plaintiffs had the same contingent rate: 33 percent of the award. We tested this possibility by computing the correlations using only the plaintiffs who had a contingent fee rate other than 33 percent. The results of this second analysis confirmed the general finding of no relationship between contingent fee rate and any of the satisfaction or fairness measures: $r = .03$, not significant, for procedural fairness; $r = .04$, not significant, for outcome satisfaction; and $r = .05$, not significant, for system satisfaction.
those of case outcome: the study showed no real link at all between cost and delay and the litigants' evaluations of their experiences with the tort system.

Subjective Evaluations of Litigation Outcome, Cost, and Delay

Evaluations of Case Outcome. Litigants were more satisfied with the outcome, were more satisfied with the court, and perceived the procedures to be fairer when the outcome exceeded their expectations than when it fell short of their expectations. Litigants' evaluations of their outcomes relative to what they expected showed a substantial correlation with satisfaction and fairness judgments. As can be seen from Table 4.1, evaluations of the outcome relative to expectations showed moderate correlations with procedural justice judgments and system satisfaction and a strong correlation with satisfaction with the outcome.

On the surface, this finding appears to contradict the finding that objective, absolute outcomes play only a modest role in determining perceived fairness and satisfaction. In fact, though, subjective evaluations of the outcome showed little or no relationship to the actual dollar amount of the judgment or settlement, so there is no real contradiction. When we tested the relationship between ratings of the outcome relative to expectations and the amount actually won or lost, we found no significant correlation.\textsuperscript{42} We noted in Sec. II that social psychological theory\textsuperscript{43} suggests that it is not the absolute outcome but rather where the outcome stands relative to expectations that determines satisfaction and perceived fairness. The present data confirm that prediction and emphasize the importance of expectations in determining how case outcomes will affect litigants' attitudes.\textsuperscript{44}

Evaluations of Case Delay. When cases were thought to have been resolved in a reasonable time, litigants were somewhat more satisfied with the outcome of their cases and with the court, and they perceived the procedures to be somewhat fairer. The litigants in the study were asked whether their cases had taken a reasonable or an unreas-

\textsuperscript{42} The correlation between the standardized actual outcome and evaluations of the outcome was .13, not significant.

\textsuperscript{43} Kelley and Thibaut, 1978; Thibaut and Kelley, 1959.

\textsuperscript{44} We tested the possibility that the procedure effects on procedural fairness and outcome satisfaction might be due to litigants' evaluations of the outcome, as we did for the absolute outcome, cost, and delay variables. In fact, we conducted such tests for all of the factors that were hypothesized to affect perceived fairness and satisfaction. With the exception of the findings reported in the sections on dignity and procedural care, none of the factors accounted for the procedure effects on fairness and outcome satisfaction.
sonable amount of time to conclude and, if unreasonable, whether they had taken too long or not long enough. The litigants' evaluations of case duration showed modest but statistically significant correlations with the perceived fairness and satisfaction measures, as can be seen in Table 4.1.

Evaluations of case duration showed no significant correlation with the actual duration of the case.\(^{45}\) Most of the litigants thought that their cases had taken too long to resolve, but this feeling was no stronger among those whose cases had, in fact, taken a long time to conclude than among those whose cases had not taken nearly as long.

**Evaluations of Litigation Cost.** The litigants in the study who had paid for their lawyers themselves were asked whether the lawyers' fees had been worth it. As can be seen from the correlations reported in Table 4.1, there was no significant relationship between evaluations of litigation cost and perceived fairness or satisfaction. There was also no significant correlation between actual litigation costs and the litigants' evaluations of whether the lawyers' fees were justified.\(^{46}\)

**Summary.** The findings with respect to litigants' evaluations of litigation consequences reveal that subjective evaluations of outcome and delay are more strongly related to perceived fairness and satisfaction than are objective measures of outcome and delay. This finding suggests that it is not so much the actual outcome or duration of the case that raises or lowers tort litigants' satisfaction and perceptions of fairness, but how the outcome and duration compare to expectations. Litigation cost, whether absolute or relative to subjective standards, appears not to play much of a role in perceived fairness or satisfaction.

An additional finding of importance is the generally low correlation between measures of actual outcome, delay, and cost and measures of the litigants' *evaluations of* the outcome, delay, and cost. It appears that litigants' evaluations of how well they did, how long their cases took, or how much their lawyers cost have only a tenuous relationship to the actual outcome, duration, or cost of their cases. Most of the variation in evaluations of litigation consequences seems to come from litigants' expectations, not from the objective consequences themselves.

Given the sometimes substantial relationship between litigants' personal evaluations of outcome and delay and their perceptions of fairness and satisfaction, there is good reason for further explorations of the origins of litigants' expectations about case outcome and delay. We know little about how litigants form expectations concerning what they are likely to get from the case and how long it will take. The data

\(^{45}\) \(r = .11, \text{not significant.}\)

\(^{46}\) \(r = -.04, \text{not significant.}\)
presented here raise further intriguing questions about how litigants' expectations are formulated. Further research is needed to investigate the manner in which expectations are created and changed and to study the role that courts, attorneys, and others play in influencing the expectations against which outcomes, costs, and delay are judged. The current study points out the importance of these factors, but it must remain for future research to investigate them more fully.\footnote{See Sarat and Felstiner, 1986; clearly one important source of a litigant's expectations is his or her attorney's statements and predictions.}

**Litigants’ Impressions of the Litigation Process**

**Perceived Control.** Litigants saw the procedures as fairer and were more satisfied with their outcomes and with the court when they felt they had exercised some control over their cases and their outcomes. As shown in Table 4.1, there were moderate correlations between the two-item perceived control index and ratings of procedural justice, outcome satisfaction, and system satisfaction. Because social psychological and anthropological accounts of the importance of control differ with respect to whether control over the process or control over the outcome is most closely linked to satisfaction and perceived fairness, we computed the correlations separately for the measure of process control and for the measure of outcome control. We found no substantial differences between the two measures—the litigants appear to have reacted favorably to both types of control.

Because anthropological analyses of dispute-processing procedures have suggested that control over outcomes is especially important for disputes that involve ongoing relationships, we examined the correlation between outcome control and procedural fairness judgments separately for litigants who had some relationship with their opponents prior to the incidents that led to the disputes. There was no greater correlation for these litigants than for those who had not known their opponents prior to the disputed incidents.\footnote{\( r = .37, p < .05 \), for litigants who knew their opponent; \( r = .37, p < .05 \) for litigants who did not know their opponent prior to the incident.}

**Evaluation of Counsel.** Litigants were more likely to believe that the procedures were fair and were more likely to be satisfied with their outcome and with the court when they trusted their attorneys and viewed them as having a good grasp of the case. The attorney evaluation index showed moderate correlations with ratings of procedural fairness and system and outcome satisfaction, as noted in Table 4.1. In light of previous research in divorce cases showing that attorneys sometimes try to blame the court for negative case events or
unfavorable judgments, we hypothesized that the correlation between evaluations of counsel and procedural justice judgments might be lower or negative for litigants who had lost their cases. We compared the correlations between the attorney evaluation index and the procedural justice index for winning and losing litigants. The results of the comparison were ambiguous: the correlation was somewhat lower for litigants who had lost than for those who had won, but the difference was not statistically significant. Thus, it is unclear whether some lawyers were exerting a negative influence on their clients' fairness judgments. What is clear is that, by and large, favorable evaluations of counsel were associated with greater perceived fairness and satisfaction.

**Participation.** Litigants' feelings of participation in disposing of their cases do not appear to have been an important factor in their judgments of procedural justice or satisfaction. As noted in Table 4.1, there were no significant correlations between the participation measure and any of the fairness or satisfaction measures. This finding is contrary to what one would expect from the importance accorded participation in proposals for alternative dispute resolution procedures. This finding is also contrary to the correlation between participation and procedural justice judgments often seen in studies of perceived justice in the criminal justice system.

**Dignity.** The perceived dignity of the hearing or conference was strongly related to litigant satisfaction and perceived fairness. The litigants' judgments of whether the procedure was dignified showed strong correlations with their procedural justice judgments and their satisfaction with the court. Perceptions that the procedure was dignified also showed a moderate correlation with outcome satisfaction.

Litigants' perceptions of the dignity of the procedure appear to be one reason that settlement conferences did not fare well on the procedural justice index. Settlement conferences were less likely to be seen as dignified than were trials or arbitration hearings. When we

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49 Sarat and Felstiner, 1986.
50 $r = .34, p < .05$.
51 $r = .49, p < .001$.
52 $z = 1.35$, not significant.
53 As we noted in footnote 45 in Sec. II, it should be remembered that we are comparing litigants who were all exposed to some third-party procedure. It may be the case that the litigants who really wished to participate in resolving their case pushed for negotiations to resolve the dispute prior to settlement conference, trial, or arbitration.
54 Musante, Gilbert, and Thibaut, 1983; Tyler, 1987; and Tyler, Rasinski, and Spodick, 1985.
55 As noted in Sec. III, we asked litigants whose cases had gone to settlement conferences for their impressions of the conferences even though they had no personal
tested the procedure effects on procedural fairness judgments, removing any variation that could be attributed to differences in perceived dignity, the fairness difference between settlement conferences and arbitration disappeared.\textsuperscript{56}

**Formality.** Litigants' perceptions of the formality of the third-party procedures and the strictness of its rules are not strongly related to their procedural fairness judgments and satisfaction ratings. As we note below, litigants did see differences in the formality of the procedures, but the formality index was not correlated with any of the fairness or satisfaction measures. The absence of any significant correlation between the formality/rule strictness index and the fairness and satisfaction measures is contrary to what would be expected by those who advocate either less or more formality as a means of enhancing the acceptability of procedures and outcomes.

It is frequently contended that informality is desirable because it is thought to enhance a variety of other factors that should in turn lead to greater perceived fairness and satisfaction. To test this assertion, we computed the correlation of the formality index with each of the other process impression measures. Perceptions of formality were uncorrelated with perceptions of control,\textsuperscript{57} evaluations of counsel,\textsuperscript{58} comprehension of the proceedings,\textsuperscript{59} perception of the procedure as comfortable,\textsuperscript{60} perceptions of participation,\textsuperscript{61} and perceptions of the procedure as biased.\textsuperscript{62} Perceptions of formality were positively correlated with perceptions of the procedure as dignified,\textsuperscript{63} perceptions of the procedure as open to the public,\textsuperscript{64} and perceptions of procedural

\[ r = .10, \text{not significant.} \]
\[ r = -.01, \text{not significant.} \]
\[ r = .05, \text{not significant.} \]
\[ \text{Polyserial } r = -.02, \text{not significant.} \]
\[ r = .19, \text{not significant.} \]
\[ r = -.01, \text{not significant.} \]
\[ \text{Polyserial } r = .24, p < .05. \]
\[ \text{Polyserial } r = -.53 (\text{"procedure private" coded as +1, "procedure public" coded as -1}), p < .001. \]

knowledge of what had occurred. We reasoned that their procedural justice judgments and satisfaction might be affected by what they thought had occurred or what they thought the conference was like, even if those impressions were incorrect. The results show that, whether settlement conferences are in fact less dignified than trials or arbitration hearings or not, the fact that litigants more often believed them to be undignified is one reason for the lower procedural justice judgments for the settlement conferences.
care. These correlations explain the absence of any link between perceived fairness or satisfaction and informality: none of the supposed benefits of informality—greater comprehension, comfort, participation, or control—appear to have occurred in the eyes of the litigants we studied. Greater, not less, formality was associated with some other factors that are associated with greater perceived fairness and satisfaction—dignity and perception of procedural care in particular—but the correlations with these factors were not strong enough to produce significant correlations between perceived formality and perceived fairness or satisfaction.

**Comprehension of Procedure.** Litigant satisfaction and fairness judgments were not strongly linked to any feeling on the part of the litigants that they had problems comprehending the procedure. The small correlations between comprehension and perceived fairness and system satisfaction, reported in Table 4.1, may be due to the absence of substantial variation in the litigants’ ratings of whether they understood the proceedings. The great majority of the litigants reported that they understood the proceedings. We can say, however, that reported problems of comprehension played only a small role in judgments of procedural fairness or system satisfaction among the litigants we studied.

**Comfort with Procedure.** The extent to which the litigants felt comfortable with the procedure was strongly correlated with their procedural fairness and satisfaction ratings: the more comfortable the litigants felt, the more satisfied they were and the more they perceived the procedure to be fair. Taken in conjunction with the finding of no correlation between informality and comfortableness, this finding suggests that there may indeed be perceived fairness and satisfaction benefits that result from making tort litigants feel more comfortable with third-party procedures, but that informality may not be the best way to make the litigant more comfortable with the process. How one might go about making litigants feel more comfortable with the litigation process is not evident from our study.

**Privacy.** Public rather than private procedures were associated with greater perceived fairness and satisfaction for the defendants, but not for the plaintiffs. Perceptions that the procedure is private showed modest negative correlations with procedural fairness judgments and moderate negative correlations with system and outcome satisfaction. When we computed the correlations separately for plaintiffs and defen-

\[ r = .32, p < .001. \]
dants, we found somewhat stronger correlations for defendants\textsuperscript{66} and weaker correlations for plaintiffs.\textsuperscript{67} This finding runs contrary to the hypothesis that litigants prefer to resolve their disputes in private. At least for tort defendants such as those we studied, a public forum is likely to be seen as more fair and satisfying than a private forum.

**Procedural Care.** The perceived carefulness and thoroughness of the procedure are strongly related to procedural fairness judgments and satisfaction. As can be seen in Table 4.1, the procedural care index showed a substantial correlation with perceived fairness and moderate correlations with the two satisfaction measures. Clearly, perceptions of procedural fairness and litigant satisfaction were higher when litigants believed the procedure produced a careful and thorough process.

It appears that procedural care, like perceived dignity, is one reason that tort litigants see arbitration hearings as fairer than settlement conferences. As noted below, arbitration hearings are generally seen as more careful and thorough than are settlement conferences.\textsuperscript{68} When we removed the variation that could be attributed to differences in the perceived procedural care, we found no significant difference remaining in the perceived fairness of arbitration and settlement conference procedures.\textsuperscript{69}

**Procedural Bias.** Procedural bias is one of the strongest correlates of perceived fairness and satisfaction: perceptions of procedural fairness and satisfaction with the outcome and the court are substantially lower if the litigant perceives any bias or favoritism in the procedure. As can be seen in Table 4.1, the procedural bias index shows strong negative correlations with the procedural fairness index and the outcome satisfaction ratings and a moderate negative correlation with the system satisfaction ratings. Few of the litigants viewed the procedures as biased, but among those who did, there was a strong reduction in perceived fairness.

\textsuperscript{66}For procedural fairness judgments, polyserial \( r = -.39, p < .01 \); for outcome satisfaction, polyserial \( r = -.21 \), not significant; for system satisfaction, polyserial \( r = -.55, p < .01 \).

\textsuperscript{67}For procedural fairness judgments, polyserial \( r = .06 \), not significant; for outcome satisfaction, polyserial \( r = -.06 \), not significant; for system satisfaction, polyserial \( r = -.17 \), not significant.

\textsuperscript{68}Given that most of the settlement conference litigants were making their judgments without attending the conference, it is important to note here, as we did in relation to the discussion of perceived dignity, that this finding does not mean that the settlement conferences were in fact less careful and thorough, but only that they were thought to be less careful and thorough. It is interesting to note that, if the conferences were in reality careful and thorough, the fact that most litigants are denied direct experience of that quality worked to the detriment of perceived fairness.

\textsuperscript{69}The test of the comparison of arbitration and settlement conferences, covarying procedural care as well as county, yielded \( F(1, 265) = .40 \), not significant.
Summary. The litigants' perceptions of procedural fairness and satisfaction showed relatively strong correlations with several aspects of their impressions of the litigation process. In particular, procedural fairness judgments were strongly linked to perceptions of perceived procedural bias, the dignity of the procedure, procedural care, evaluations of counsel, how comfortable the litigant found the procedure, and perceived control over case events and outcomes. System satisfaction was strongly correlated with evaluations of counsel, the dignity of the procedure, comfort with the procedure, procedural bias, perceived control, perceptions that the procedure was public, and perceived procedural care. Outcome satisfaction was correlated most strongly with perceptions of procedural bias, evaluations of counsel, perceived control, and dignity of the procedure.

For the most part, the process impressions of plaintiffs and defendants showed similar correlations with their evaluations of the process. Only one measure, perceptions of procedural privacy, showed different correlations for plaintiffs and defendants. The general implication of these findings is that, with the exception of perceptions of privacy, fairness and satisfaction are associated with the same basic features of the litigation experience regardless of which side of the case the litigant is on.

The results of this study offer the possibility that the perceived fairness of a procedure and the satisfaction the procedure engenders can be enhanced by improving such things as the extent to which litigants are treated with dignity, the control afforded litigants, and the apparent carefulness and thoroughness of the procedure. Two of these factors—dignity and procedural care—appear to account for the perceived fairness advantage of arbitration over settlement conferences. The results also show that tort litigants are quite sensitive to the issue of perceived procedural bias: judgments of bias or favoritism were rare, but when they occurred they were closely linked to dissatisfaction and perceived unfairness. But further experimentation and research are needed to discover precisely how litigation procedures can be made to assure litigants that they have been treated with dignity and care and without bias.

Our findings were also remarkable with respect to some features that did not show strong correlations with perceived fairness and satisfaction. Perceptions of participation in the process, procedural formality, and comprehension of the proceedings showed little or no correlation with the litigants' judgments of procedural fairness or satisfaction. The absence of any substantial connection between perceived justice or satisfaction and perceptions of participation and informality is especi-
ally noteworthy in light of the prominence given to these factors in cri-
tiques of traditional litigation procedures.

Litigant Characteristics

Table 4.1 shows the correlations between a number of characteristics of the litigants and judgments of fairness or satisfaction. Only three significant correlations were found, and all three showed only very weak relationships between fairness or satisfaction and the characteristic in question. Younger litigants were somewhat more likely to be satisfied with the case outcome than were older litigants. White litigants were somewhat more likely to be satisfied with the outcome than were nonwhite litigants.\(^7\)\(^0\) And litigants who were employed outside the home were somewhat more likely to view the procedures as fair than were other litigants. By and large, litigants’ personal characteristics made little difference in their evaluations of their litigation experiences.

We also tested the relationship between two aspects of the litigant’s position in the case and his or her fairness and satisfaction ratings: whether the litigant was a plaintiff or a defendant and whether the litigant’s opponent was someone the litigant had known prior to the incident that gave rise to the lawsuit. As noted in the first part of this section, arbitration plaintiffs and defendants differed in their ratings of satisfaction with the outcome of the case. These differences are noteworthy because they point out that the litigant’s particular role in the case can be a factor in how he or she views procedures.

The second variable relating to the litigant’s position in the case—his or her prior relationship to the other party—was not associated with any substantial differences in perceived fairness or satisfaction. Litigants did not differ depending on whether they had had some prior relationship with their opponent, as can be seen from the correlations reported in Table 4.1.

To ensure that the procedure effects reported above were not restricted to any particular subgroup of the litigants, we compared the procedure effects for male and female litigants, for high- and low-income litigants, for litigants of different races, for employed and unemployed litigants, and for litigants who had prior relationships with their opponents and those who did not. In each instance, there was no significant change in the procedure effects.

\(^7\)\(^0\) The correlation between race and outcome satisfaction should be interpreted with caution. There were relatively few nonwhite litigants, and most (75 percent) of the nonwhite litigants were plaintiffs. Because plaintiffs were, by and large, less satisfied with their outcomes than were defendants, the negative correlation between race and outcome satisfaction might simply be a reflection of the lesser satisfaction of plaintiffs.
What Matters Most for Fairness Judgments and Satisfaction?

It is possible to compare the overall strength of the relationship between fairness and satisfaction and each of the five sets of factors described above: the actual procedures used in the case; actual case outcome, delay, and cost; subjective evaluations of the outcome, delay, and cost; subjective impressions of the litigation process; and litigant characteristics. Using multiple regression procedures, we tested the extent to which each set of factors accounted for unique variation in procedural fairness, outcome satisfaction, and system satisfaction—that is, the analysis tested how much of the variation in litigant evaluations could be attributed only to the factor in question. Table 4.2 shows the results of this analysis; the values in the table represent the proportion

<table>
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<td>.006</td>
<td>.013</td>
</tr>
<tr>
<td>Case outcomes, delay, and cost</td>
<td>.004</td>
<td>.035</td>
<td>.010</td>
</tr>
<tr>
<td>Evaluations of outcomes, delay, and cost</td>
<td>.062^e</td>
<td>.169^f</td>
<td>.084^e</td>
</tr>
<tr>
<td>Impressions of litigation process^b</td>
<td>.170^f</td>
<td>.090^e</td>
<td>.153^f</td>
</tr>
<tr>
<td>Litigant characteristics</td>
<td>.016</td>
<td>.015</td>
<td>.011</td>
</tr>
<tr>
<td>Variance explained by all predictors^c</td>
<td>.524^f</td>
<td>.663^f</td>
<td>.530^f</td>
</tr>
</tbody>
</table>

^a Including interactions with litigant role in case.
^b Excluding variables not assessed for one or more procedures.
^c The total percentage of variance explained by all predictors is greater than the sum of the separate percentages because the separate percentages include only the variation that cannot be explained by any of the other predictors.
^d Table entries are proportion of variance uniquely accounted for by factor.
\(^p < .05.\)
\(^p < .01.\)
of variation in the satisfaction or fairness measures that is attributable solely to the factors in question.\textsuperscript{71}

For procedural fairness judgments and satisfaction with the court, the most closely linked variables are clearly those tapping the litigants' impressions of the litigation process. Personal evaluations of the case outcome, delay, and cost are also closely related to procedural fairness and system satisfaction. For satisfaction with case outcome, the critical set of variables are those measuring litigants' personal evaluations of case outcomes, delay, and cost; impressions of the process are less important here than for fairness and system satisfaction, although they too show substantial links to outcome satisfaction. For all three satisfaction and fairness measures, the variables measuring the objective outcomes, cost, and delay, the actual procedures facing the litigant, and the litigants' characteristics played a relatively minor role in comparison to that of the more subjective variables.\textsuperscript{72}

**PROCEDURE DIFFERENCES ON IMPRESSIONS OF THE LITIGATION PROCESS**

We examined litigants' impressions of the litigation process under each of the three procedures in order to test whether the procedures in fact produced the impressions that they are often asserted to produce. Whenever possible, the analyses were adjusted to take into account variation among counties, using the procedures described in Sec. III. Table 4.3 shows mean ratings for the variables with more than two response categories and the percentage of litigants responding affirmatively for variables that offered only two response options.

**Perceived Control**

Respondents' ratings of their control over the outcome and the handling of their cases were generally in the low to moderate range. Defendants who experienced the arbitration and settlement conference procedures gave especially low control ratings, while defendants who experienced trials gave more moderate ratings. The plaintiffs gave

\textsuperscript{71} We also conducted these analyses separately for plaintiffs and defendants and found no substantial differences. Apparently the same general factors matter for plaintiffs' and defendants' evaluations of litigation experiences.

\textsuperscript{72} These findings are all the more impressive since perceptions of procedural bias, one of the litigant impression dimensions most strongly correlated to perceived fairness and satisfaction, were not included in these analyses. Perceptions of bias were excluded because they were assessed in only two of the procedures.
Table 4.3

PROCESS IMPRESSION RATINGS: MEANS AND PERCENTAGES

<table>
<thead>
<tr>
<th>Variable</th>
<th>Role</th>
<th>Trial</th>
<th>Arbitration</th>
<th>Settlement Conference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Perceived control</td>
<td>Plaintiff</td>
<td>2.05</td>
<td>2.11</td>
<td>2.21</td>
</tr>
<tr>
<td></td>
<td>Defendant</td>
<td>2.21</td>
<td>1.83</td>
<td>1.59</td>
</tr>
<tr>
<td>Evaluation of counsel</td>
<td>Plaintiff</td>
<td>2.79</td>
<td>2.85</td>
<td>2.50</td>
</tr>
<tr>
<td></td>
<td>Defendant</td>
<td>3.67</td>
<td>2.75</td>
<td>3.11</td>
</tr>
<tr>
<td>Participation</td>
<td>Plaintiff</td>
<td>3.08</td>
<td>2.31</td>
<td>2.67</td>
</tr>
<tr>
<td></td>
<td>Defendant</td>
<td>2.55</td>
<td>2.41</td>
<td>1.75</td>
</tr>
<tr>
<td>Procedure dignified?</td>
<td>Plaintiff</td>
<td>88.2%</td>
<td>86.2%</td>
<td>72.7%</td>
</tr>
<tr>
<td></td>
<td>Defendant</td>
<td>89.1%</td>
<td>86.3%</td>
<td>74.6%</td>
</tr>
<tr>
<td>Procedure formal?</td>
<td>Plaintiff</td>
<td>3.46</td>
<td>2.89</td>
<td>—</td>
</tr>
<tr>
<td>Rules strict?</td>
<td>Defendant</td>
<td>3.29</td>
<td>2.50</td>
<td>—</td>
</tr>
<tr>
<td>Understood proceedings?</td>
<td>Plaintiff</td>
<td>3.57</td>
<td>3.33</td>
<td>3.28</td>
</tr>
<tr>
<td></td>
<td>Defendant</td>
<td>3.50</td>
<td>3.34</td>
<td>3.17</td>
</tr>
<tr>
<td>Procedure comfortable?</td>
<td>Plaintiff</td>
<td>35.6%</td>
<td>50.0%</td>
<td>42.3%</td>
</tr>
<tr>
<td></td>
<td>Defendant</td>
<td>63.6%</td>
<td>63.6%</td>
<td>54.5%</td>
</tr>
<tr>
<td>Procedure private?</td>
<td>Plaintiff</td>
<td>13.6%</td>
<td>100.0%</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td>Defendant</td>
<td>2.5%</td>
<td>86.4%</td>
<td>—</td>
</tr>
<tr>
<td>Procedural care</td>
<td>Plaintiff</td>
<td>3.22</td>
<td>2.86</td>
<td>1.81</td>
</tr>
<tr>
<td></td>
<td>Defendant</td>
<td>3.84</td>
<td>2.54</td>
<td>2.26</td>
</tr>
<tr>
<td>Procedural bias</td>
<td>Plaintiff</td>
<td>2.22</td>
<td>1.93</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td>Defendant</td>
<td>1.35</td>
<td>1.10</td>
<td>—</td>
</tr>
</tbody>
</table>

NOTE: All means are for four-point scales. Higher values indicate ratings in the direction of the variable name. Entries for dichotomous variables are the percentage of respondents responding affirmatively to the question used in the variable name. For all variables assessed on litigants in bilateral settlement cases, the means reported in this table are adjusted for county differences.

rather moderate control ratings across all the procedures.\textsuperscript{73} We tested whether the two components of perceived control—outcome control and process control—showed the same pattern across the three procedures, and we found that they did.

\textsuperscript{73}The analyses of covariance showed a significant party main effect, $F(1, 274) = 4.36$, $p < .038$, and a nearly significant party-by-procedure interaction $F(2, 274) = 2.88$, $p < .058$. The interaction of party and the comparison of trial to the other two procedures was significant, $F(1, 274) = 5.01$, $p < .026$. 
The generally low level of perceived control among defendants in arbitration and settlement conferences is not surprising. After all, most of these defendants had been pulled into the legal process against their will, and because many of them were represented by lawyers engaged by their insurance companies, few of them could expect to exert much influence on the process or outcome.

**Attorney Evaluations**

The litigants held favorable evaluations of their attorneys. As can be seen from Table 4.3, most of the means for the attorney evaluation index were near 3.0 on the four-point index. The plaintiffs in the settlement conference procedure viewed their attorneys somewhat more negatively than did plaintiffs in the other two procedures, and defendants in the trial and settlement conference procedures gave somewhat higher ratings than did those in the arbitration procedure.\(^{74}\)

The more negative evaluations of attorneys by settlement conference plaintiffs fit with their generally negative reactions to that procedure on a number of measures, just as the rather positive evaluations of attorneys by trial defendants fit with the generally positive reactions to trials on a number of measures. More puzzling are the negative attorney evaluations held by arbitration defendants and the positive evaluations held by settlement conference defendants. An admittedly speculative explanation is that attorneys who were successful at resolving cases at settlement conferences spared defendants the need to invest additional time in their cases, since few of the defendants attended the conferences—and that this led to more favorable evaluations of the attorney. The less favorable evaluations of attorneys by arbitration defendants relative to those held by trial defendants might reflect less rigorous preparation by attorneys for arbitration than for trial.

**Participation**

The plaintiffs gave higher participation ratings than did the defendants for two of the three procedures: trial and settlement conferences. For arbitration, the plaintiffs’ participation ratings were about the same as those of the defendants.\(^{75}\)

\(^{74}\)The analysis of covariance showed significant effects for party, \(F(1, 245) = 13.98, p < .001\), and party by procedure, \(F(1, 245) = 4.15, p < .017\). The test of the interaction of party and the comparison of trial to the two alternative procedures was significant, \(F(2, 245) = 5.37, p < .021\).

\(^{75}\)The participation item showed a significant party main effect, \(F(1, 271) = 10.97, p < .001\), and a nearly significant party-by-procedure interaction, \(F(2, 271) = 2.81, p < .062\). The interaction of party and the comparison of arbitration and settlement conferences was significant, \(F(1, 271) = 5.50, p < .02\).
The procedure that is often asserted to offer little opportunity for direct litigant involvement—trial—was in fact that which received the highest participation ratings among both defendants and plaintiffs. One explanation might be that the process of preparing for trial and the experience of testifying at trial led to feelings of having participated in the litigation process. Whatever the reason for the high ratings of participation for trial litigants, it is clearly wrong to assume that tort litigants feel left out of the trial process.

Dignity

Although all of the procedures were described as dignified more often than not, settlement conferences were seen as dignified less often than were trials and arbitration hearings. As we noted above, the view that settlement conferences were less dignified than the other two procedures appears to be one factor in the lower procedural fairness judgments by litigants whose cases were subject to settlement conferences. It seems likely that litigants whose cases were tried or arbitrated saw that the procedure was dignified and, as a result, viewed the procedure as fair, while litigants whose cases were resolved by settlement conferences and who were, by and large, not allowed to see the process were less likely to take it on faith that the process was dignified. The more moderate impression of the dignity of the process among settlement conference litigants might have produced more moderate fairness judgments, leading to the relatively lower ratings of settlement conferences. One implication of this line of reasoning is that litigants will form impressions of civil justice system procedures whether they personally experience the procedure or not, and that these impressions can have important consequences for their judgments about the fairness of the litigation process.

Formality and Strictness of Rules

Trials were seen as more formal and stricter than were arbitration hearings. (Formality and rule strictness were assessed only for litigants who actually attended one of the third-party procedures, and so few litigants attended settlement conferences that our analyses could not address the perceived formality of that procedure.) We hypothesized in Sec. II that all of the procedures might have seemed

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\[76^{\text{Partial association chi-square (3) = 14.60, } p < .003.}\]

\[77\text{It is also possible that attorneys' descriptions of the conference led their clients to perceive the process as undignified.}\]

\[78^{\text{Procedure main effect } F(1, 125) = 27.49, p < .001.}\]
very formal to litigants and that therefore the litigants might not have differentiated between the procedures in terms of formality. The results are contrary to the hypothesis: arbitration was seen as only moderately formal and strict, while trial was seen as quite formal and strict.

Understanding of Proceedings

The litigants' ratings of their understanding of the proceedings were relatively high and did not vary from one procedure to another. This finding is contrary to what one would expect from notions that trial is an incomprehensible and alienating event for many litigants. As can be seen from the mean ratings shown in Table 4.3, litigants in trials rated their understanding of the proceedings as high as did litigants in either of the other procedures.

Procedure Comfortable?

Defendants were more likely than plaintiffs to describe the procedure as comfortable, but there were no significant differences among the procedures in how comfortable litigants felt themselves to be. The greater comfort of defendants may have been due to their lower stake in the proceedings relative to plaintiffs.

Procedure Private?

The responses to the item asking whether the litigant had found the procedure to be private or public were much as one would expect. Arbitration was more often described as private, while trial was more often described as public. Defendants were less likely to describe either procedure as private than were plaintiffs.

Procedural Care

Trials were seen as employing a more careful and thorough decision-making process than settlement conferences, with arbitration hearings falling in between. The ratings conform to traditional ideas about procedural rigor. As was the case with judgments about the dignity of the procedure, the relatively unfavorable judgments of procedural care

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79 Partial association chi-square (1) = 7.33, p < .007.
80 Partial association chi-square (1) = 101.69, p < .001.
81 Partial association chi-square (1) = 7.07, p < .008.
82 The analysis of covariance on the index of procedural care showed only a procedure main effect, F(1, 248) = 6.68, p < .002. The comparison testing the difference between trial arbitration and settlement conferences was significant, F(1, 248) = 9.99, p < .002.
may result from an unwillingness on the part of litigants who were barred from the conference to ascribe high quality to a process they could not see.

Procedural Bias

Procedural differences on the measure of perceived procedural bias could be tested only for trial and arbitration hearings. There was little evidence that litigants thought either of the procedures was biased, and no differences were seen between the two procedures. There was a significant difference between plaintiffs and defendants with respect to judgments of procedural bias: plaintiffs were more likely than defendants to view the procedure as biased, perhaps because plaintiffs had more at stake and were therefore more worried about bias. Litigants in arbitration hearings did not perceive greater bias than did litigants in trials, the greater perceived informality of the former notwithstanding.

Summary

Some of the procedure-based differences in the litigants’ impressions of the litigation process were contrary to those that would be expected from common assumptions about how tort litigants view trial, arbitration, and settlement conferences. Among the most striking of these were findings that trial engendered higher levels of perceived control, higher levels of perceived participation, and higher levels of litigant comprehension than would be expected from criticism of formal legal procedures. These findings are contrary to the view that trial is an incomprehensible and alienating event for the litigants whose cases go to trial. The data suggest that tort litigants like those we studied view trials as a forum that allows them substantial involvement in the legal process.

The results of the present study provide us with a more complete picture than was previously available of how litigants react to litigation procedures and what drives their evaluations of litigation experiences. We turn now to a discussion of the implications of the findings of the study for policy and practices in the civil justice system.

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83 The procedural bias index was based on items that were assessed only for litigants who actually attended one of the third-party procedures, and so few litigants attended settlement conferences that no estimate could be made of the perceived bias of that procedure.

84 Party main effect $F(1, 125) = 21.60, p < .001.$
V. CONCLUSIONS

WHAT DO LITIGANTS WANT IN THIRD-PARTY PROCEDURES?

The litigants' responses to our interviews provide a relatively clear picture of what matters to them in procedures and what does not. To begin, the study answers the threshold question of whether litigants' attitudes are at all sensitive to differences in procedures. It is clear from our data, and from the findings of other studies, that litigant satisfaction and perceived fairness are indeed affected by the procedure the litigant experienced. The results reported in Sec. IV show that tort litigants such as those we studied are sensitive to issues of procedure and process. The three procedures in our study provoked responses that differed markedly not only with respect to satisfaction and judgments about fairness, but also with respect to impressions of the litigation process on a variety of rating dimensions. We discuss below the implications of litigant responses about the specific procedures we studied, but for the moment the important point is that responses to each procedure were different. In addition, the substantial correlations found between system satisfaction and impressions of the process on such dimensions as dignity of the procedure or perceived control show that judgments about procedures play an important role in tort litigants' overall reactions to their litigation experience.

Desired Qualities of Procedures

The litigants we interviewed appeared to want a dignified, careful, and unbiased hearing of their case. They are favorably impressed by procedures that give them a feeling of control over the process of resolving their case and that allow them to feel comfortable with the proceedings. Impressions of the litigation process were the most powerful determinants of procedural fairness judgments and satisfaction with the court, and judgments of dignity, procedural care, and procedural bias were among the most powerful of these impressions in their effects. Litigants want procedures with which they can feel comfortable, but this does not mean that they want less formal procedures—informality does not make litigants either more or less comfortable. It is also important to litigants to have lawyers whom they view as trustworthy and competent.

The study also suggested that some qualities of procedures matter less to tort litigants. The litigants' judgments of the extent to which
they had been allowed to participate in the proceedings, their impressions of the formality of the procedure, and their understanding of the proceedings had little influence on perceptions of fairness or satisfaction. There was little apparent desire for private procedures; in fact, on the part of defendants, public procedures were seen as fairer.

In total, the findings raise questions about how strong and how widespread is the desire for very informal, high-participation, simplified procedures of the sort advocated by some critics of court procedures. This is not to say, however, that the litigants responded negatively to informal procedures. Alternative procedures less formal than trial appear to be quite acceptable to litigants—witness the generally favorable reactions to court-annexed arbitration—but not because they are less formal, more participatory, or easy to understand. Our study suggests that whatever procedure—formal or informal—is used, it must be perceived to be enacted well and seriously if it is to be viewed as fair.

Recommendations

Any third-party procedure can be implemented in ways that make it more or less dignified, more or less even-handed, and more or less careful and thorough. Our findings suggest that tort litigants' satisfaction and perceived fairness will benefit if action is taken to ensure that civil justice procedures are perceived to be high on each of these dimensions. Conversely, if a procedure appears to treat cases in a less than serious fashion or if there appears to be bias or favoritism, litigants will be quick to see the procedure as unfair, and they will be dissatisfied with the court. As we note in the next subsection, the data show rather convincingly that reductions in the apparent carefulness and dignity of hearings in the interest of cost or delay reductions are likely to be a poor tradeoff insofar as litigant satisfaction and perceived justice are concerned.

We know from the differences seen in impressions of the three procedures we studied that changes in procedures can affect impressions of dignity and procedural care. We do not know which aspects of the procedures account for the differences in impressions, a key point if procedures are to be designed to enhance features that promote perceived fairness and satisfaction. With knowledge of what litigants want from litigation procedures, however, policymakers can proceed to design practices and procedures in an attempt to enhance these features, and program evaluators can assess their success and its impact on overall satisfaction and perceived fairness. As cycles of experimentation and evaluations progress, we can expect better knowledge and finer design to improve litigants' satisfaction with their experiences with the civil justice system.
COST, DELAY, AND FAIRNESS

The Limited Role of Cost and Delay in Litigant Attitudes

The litigants' judgments of fairness and their satisfaction with the court showed remarkably little relation to the cost of the case or how long it took to resolve. Litigation cost, in particular, was more weakly related to satisfaction and perceived fairness than we expected: there was in fact no indication at all that litigation cost was a source of perceived injustice or dissatisfaction. Economic concerns of all sorts seemed to play at most a minor role in determining litigants' attitudes.

This finding, like all the results of our study, must be interpreted in the context of the procedures, cases, and litigants we studied. Because we studied tort cases, we may have been examining a situation in which cost matters little to individual litigants. If we had interviewed litigants in other types of civil cases, where defendants are less often insured and where plaintiffs' fees are more variable, we might have seen stronger correlations between litigants' evaluations and litigation costs.

Even when we examined the situations and measures that should have been most sensitive to cost effects, however, we found little evidence that the absolute cost of litigation affected litigants' attitudes substantially. Even among defendants who were not insured, attitudes showed no substantial correlation with litigation costs. Nor were plaintiffs' attitudes substantially correlated with the contingent fee rate they paid. The fact that we studied tort litigants might account in part for the absence of any relationship between costs and attitudes, but it is by no means clear that costs will matter more outside the particular fee and insurance arrangements that characterize tort cases.

Case delay did affect the litigants' attitudes, but what mattered was not the absolute delay but rather the litigants' personal evaluations of whether the delay was reasonable. Further, the litigants' evaluations of delay showed no relationship to the actual duration of the case. Apparently some delays seem reasonable to litigants while others do not.

Recommendations

One implication of the study's findings on cost and delay is that, if one is interested in enhancing perceived justice and satisfaction in cases such as those we studied, delay-reducing efforts should be targeted at those aspects of delay that are most likely to be seen as unreasonable. Unfortunately, neither our own research nor any that we
know of allows us to say which sorts of delay will be seen as unreasonable. Because litigants' perceptions of the reasonableness of delay may result from lack of information about how long various stages of the litigation process will take, it might be desirable to improve the information that litigants receive about how and when their case will move forward in order to give them more realistic expectations about delay.

More generally, however, there is little support in the study for supposing that cost- or delay-reducing innovations will lead to substantially greater satisfaction or perceived fairness for individual tort litigants. The study suggests that improvements in perceived justice and satisfaction in cases such as those we studied are more likely to come from changes in the tone of the judicial process than from innovations designed to cut costs or reduce delay. Having said this, we hasten to note that there remains much need for innovations designed to ameliorate litigation cost and delay, but for reasons that have nothing to do with litigant satisfaction, and there is certainly nothing in this research that should be taken as being contrary to movements to meet these serious problems. What the present research says is that these efforts are unlikely to improve the attitudes and evaluations that individual litigants take away from their encounter with the tort system.

Further, the study suggests that care must be taken to ensure that innovations that reduce cost and delay do not do so at the expense of those qualities of the judicial process that are more important to the litigants. If more rapid or less expensive procedures accomplish cost and time savings at the expense of apparent dignity, carefulness, or lack of bias, they may constitute a poor bargain in the eyes of litigants.

Cost- and delay-reducing innovations need not diminish the features of the judicial process that matter most for tort litigants' satisfaction and perceived fairness, of course. It is certainly possible to satisfy the litigants' desire for dignity, careful process, and absence of bias using procedures that are not overly elaborate, time-consuming, or costly. With knowledge of the factors that drive litigant attitudes, procedures can avoid tradeoffs that might sacrifice litigant satisfaction or perceived fairness in the interest of cost and delay reduction. Carefully designed procedures can promote both savings and satisfaction.

PROCEDURES AND LITIGANT ATTITUDES

We have focused thus far in this section on the general implications of the study for a better understanding of what tort litigants want and for the design and implementation of future procedures. The study also tells us a good deal about how litigants view the three procedures we studied.
Trial

In some respects, the most surprising results of the study were those showing how tort litigants view trials. Litigants in this study had relatively favorable views of trial. Trials are seen as high in dignity and procedural care. Few of the criticisms of trials were borne out by the data. Trials were not perceived to be uncomfortable, they did not make litigants feel that they had lost control of their cases, and they engendered feelings of high, rather than low, participation.

Court-Annexed Arbitration

The litigants' attitudes about court-annexed arbitration were quite favorable, and both plaintiffs and defendants viewed arbitration as fair and satisfying. The perception of less formality in arbitration hearings did not seem to diminish the perceived dignity of these hearings; nor did it lead to any increase in perceived bias. Any difference in the apparent carefulness and thoroughness of the hearing process was too slight to lead to any reduction in perceived fairness. At least in cases such as those we studied, court-annexed arbitration appears to give both plaintiffs and defendants what they want from the judicial process. This finding is particularly noteworthy given the clear cost differences between trials and arbitration hearings.

Judicial Settlement Conferences

Settlement conferences tended to provoke less favorable reactions than did trial and arbitration hearings. Perceptions of fairness were markedly lower for litigants whose cases were subject to settlement conferences than for those whose cases were subject to the other two procedures. Impressions of settlement conferences on dimensions closely related to fairness were sometimes negative or neutral. In particular, settlement conferences were seen as less dignified and less careful and thorough than were trials or arbitration hearings. At least some of the unfavorable impressions of settlement conferences may be due to impressions formed by litigants who could not attend the conferences and who therefore could not see that the conferences were dignified, careful, or otherwise desirable even if they were. Our data do not reveal much about what tort litigants think of settlement conferences when they are allowed to experience them.

The unfavorable reactions to settlement conferences are a good illustration of how litigant perceptions of a procedure, even when not based on direct experience with the procedure, can affect reactions to the
litigation experience and evaluations of the court. However accurate or inaccurate are the perceptions of settlement conferences, the perceptions are what matter to the litigants.
Appendix A

INTERVIEW ITEMS

Procedural Fairness:

Arbitration: At the time you went through it, how fair did you think the arbitration hearing procedure was?

Settlement conference: At the time the conference took place, how fair did you think it was?

Trial: At the time you went through it, how fair did you think the trial was?

Settlement: At the time, how fair did you think the settlement process was?

Response options: very fair, somewhat fair, somewhat unfair, very unfair.

All procedures: Finally, looking back, do you think the procedure that was used for resolving your dispute was:

Response options: very fair, somewhat fair, somewhat unfair, very unfair.

Outcome Satisfaction: How did you feel about the final outcome? Were you:

Response options: very satisfied, somewhat satisfied, somewhat dissatisfied, very dissatisfied.

System Satisfaction: Taking everything we’ve talked about into account, how satisfied were you overall with the manner in which the legal system operated for your case? Were you:

Response options: very satisfied, somewhat satisfied, somewhat dissatisfied, very dissatisfied.

Evaluation of Case Outcome: Compared to what you expected when the case was first filed, was the final outcome:

Response options: better than you expected, worse than you expected, just about what you expected.

Evaluation of Case Duration: Considering what had to be done, do you think the time it took for your case to get resolved was:

Response options: very reasonable, somewhat reasonable, somewhat unreasonable, very unreasonable.
[Asked if response to above was not “Very reasonable”) Did it take too much time to resolve the case, or was there not enough time?
Response options: too much time, not enough time.

Evaluation of Litigation Cost: All things considered, do you think you got your money’s worth from your attorney or not?
Response options: yes, no.

Perceived Control, Outcome Control: How much control did you feel you had over the outcome of your case?
Response options: a great deal, some, a little, not much.

Process Control: Overall, thinking about your dealings with the court and with your lawyer, how much control would you say you had over the way your case was handled?
Response options: a lot, some, a little, not much.

Evaluation of Counsel: People have different opinions and experiences with lawyers. Thinking about your lawyer and the way he/she handled the case, do you think his/her knowledge of the facts in your case was:
Response options: more than adequate, adequate, not adequate.
How much could you trust him/her to make decisions that were in your best interest?
Response options: a lot, some, not much.

Participation: Thinking back over the whole experience, how much would you say you participated in the process of disposing of your case?
Response options: a lot, some, a little, not much.

Dignity: Which word best describes your (hearing/settlement conference/trial/experience [settlement])?
Response options: dignified, undignified.

Formality and Rule Strictness: Was the (hearingconference/trial): [not asked in cases that settled prior to any third-party procedure]
Response options: very formal, somewhat formal, somewhat informal, very informal.
Would you say there were:
Response options:

Arbitration: Very strict rules about how people should behave at the hearing, loose or flexible rules, or no rules at all.
Settlement conference: Very strict rules about how the judge and lawyers should behave at the conference, loose or flexible rules, or no rules at all.
Trial: Very strict rules about how people should behave at the hearing, loose or flexible rules, or no rules at all.

Comfort: Which word best describes your (hearing/settlement conference/trial/experience [settlement]):
Response options: comfortable, uncomfortable.

Comprehension: While your case was proceeding, how well did you feel you understood what was going on?
Response options: a lot, some, a little, not at all.

Privacy:
Arbitration: Was the hearing public, or was it private?
Settlement conference: Could other people have attended, or was it private?
Trial: Was the trial public, or was it private?
Response options: private, public.

Procedural Care: Which word best describes your (hearing/settlement conference/trial/experience [settlement])?
Response options: careful, casual.
Which word best describes your (hearing/settlement conference/trial/experience [settlement])?
Response options: superficial, thorough.

Procedural Bias: Which word best describes your (hearing/settlement conference/trial/experience [settlement])?
Response options: unbiased, biased.
Arbitration: During the hearing, did you think the arbitrators treated both sides equally, or did you think they favored one side over the other?
Trial: During the trial, did you think the judge treated both sides equally, or did you think he favored one side over the other?
Settlement conference: During the conference, did you think the judge treated both sides equally, or did you think he favored one side
over the other?  [Not asked in cases that settled prior to any third-party procedure.]

Response options: equal treatment, favored respondent, favored opponent.  [Both “favored” options were coded as favoritism for analyses reported here.]

Arbitration: Did you think the arbitrators paid equal attention to both sides, or did you think they paid more attention to one side or the other?

Trial: Did you feel the (judge/jury) paid equal attention to both sides, or do you think he/she paid more attention to one side or the other?

Settlement conference: Do you think the judge paid equal attention to both sides, or do you think he/she paid more attention to one side or the other?  [Not asked in cases that settled prior to any third-party procedure.]

Response options: equal attention, paid more attention to one side.
## Appendix B

### UNADJUSTED MEANS FOR MAJOR DEPENDENT VARIABLES

<table>
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<tr>
<th>Cell</th>
<th>Procedural Fairness Index</th>
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**NOTE:** BC = Bucks County, PG = Prince Georges County, FF = Fairfax County.
REFERENCES


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A special bibliography (SB 1064) provides a list of other RAND publications in the civil justice area. To request the bibliography or to obtain more information about The Institute for Civil Justice, please write the Institute at this address: The Institute for Civil Justice, The RAND Corporation, 1700 Main Street, P.O. Box 2138, Santa Monica, California 90406-2138, (213) 393-0411.