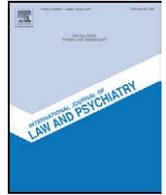




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Procedural justice and the mental health court judge's role in reducing recidivism

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ABSTRACT

Based on qualitative observation and quantitative data from eight mental health courts (MHCs), this article argues that observed reductions in recidivism from participation in MHC are caused in part by the role of the judge in conveying elements of procedural justice. Specifically, the judge provides: (1) a heightened level of interpersonal treatment of participants that accords them dignity, respect, and voice; (2) accountability for participants and service providers alike; and (3) transparency for decisions reached through an open negotiation process. Procedural justice theory predicts that participants will thereby be more likely to see legal decisions as legitimate and incorporate the court's values and goals as their own. Preliminary qualitative and quantitative data are presented from interviews of a sample of participants in the Superior Court of the District of Columbia's Mental Health Diversion Court (DCMHDC) that support these hypotheses. DCMHDC participants hold strongly positive views about the procedural justice they receive from their court experience and of the judge's role in providing justice.

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1. Introduction

Evidence is mounting that mental health courts are able to reduce criminal recidivism among persons with mental illness both during and after participation in the court. Although the [Council of State Governments' \(2009\)](#) listing of essential elements of mental health courts is suggestive of causal hypotheses – including, most prominently, the provision of monitoring and coordinated treatment and services – empirical studies have not tested the precise mechanisms by which mental health courts produce this outcome. In this paper, we propose that the mental health court judge holds a pivotal position in bringing about reduced recidivism by pursuing a procedural regimen that conveys legitimacy to participants and invites internalization of the law's norms.

We draw from our observations of mental health court team meetings and open court sessions of a convenience sample of eight mental health courts across the United States over the past seven years. These courts represent rural, urban, metropolitan and inner-city jurisdictions. They include felony and misdemeanor courts, and pre-plea and post-plea regimes. Five of them have shown, by one measure or another, reductions in recidivism, at least during the period participants are in mental health court ([Broner et al., 2005](#); [Broner, Lang, & Behler, 2009](#); [Hiday, Gurrera, Lamoureaux, & DeMagistris, 2005](#); [McNiel & Binder, 2007](#); [Moore & Hiday, 2006](#); [O'Keefe, 2006](#)),

and two have shown reductions for two years post-exit ([Hiday & Ray, 2010](#); [McNiel & Binder, 2007](#)).

From these observations and building on the extensive literature on procedural justice, we hypothesize that the role of the judge is a significant contributory cause of observed reductions in recidivism. Three aspects of that role that constitute procedural justice combine to further participants' increased compliance with the law during court supervision and after supervision has ended: (1) the judge provides a quality of interpersonal treatment of participants that accords them dignity, respect and voice, builds trust by showing a concern for their best interests, and repeatedly emphasizes their control over their choice to participate; (2) the judge holds participants, attorneys and service providers alike accountable for their respective roles in participants' rehabilitation and resolution of their legal problems; and (3) the judge provides transparency, carefully explaining the reasons for all decisions. All three aspects contribute to conveying to participants a sense of legitimacy for decisions reached and an alliance of the values and interests of both participants and the law. These, in turn, lead to compliance with court mandates to cooperate with treatment and service providers and to desist in offending behavior.

2. Procedural justice

Traditionally, criminal law has aimed to achieve compliance with the law's commands through the mechanism of deterrence – inducing in the potential offender the fear that he or she will experience more cost (the pain of apprehension and punishment) than benefit from illegal activities ([Robinson & Darley, 1997](#); [Tyler, 2009](#)). Yet recidivism data, at least for some segments of the offending

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population, suggest that deterrence is often an ineffective and alienating strategy (Pratt, Cullen, Blevins, Daigle, & Madensen, 2006; Tyler, 2009). Substantively, the law casts blame and punishes, making the law the antagonist of the offender. And the fact that most offenses are not detected, much less prosecuted, makes the law an inconsistent and apparently arbitrary antagonist (Tyler, 2009). Procedurally, criminal law is characterized by a distancing and opaque “adversarial legalism” (Kagan, 2001). Lawyers control the process, most cases are resolved by plea bargain, and the judge occupies a limited and largely passive role (Boldt, 1998; Dixon, 1995; Feeley, 1992).

Procedural justice theorists, by contrast, propose that a more effective compliance strategy is to induce voluntary acceptance of the law's decisions and values and to motivate habits of self-regulation (Tyler, 2009; Robinson & Darley, 1997). Thus the aim of law enforcement in its interactions with law-breakers should be to convey legitimacy, “the property that a rule or an authority has when others feel obligated to voluntarily defer to that rule or authority” (Fagan, 2008; Skogan & Frydl, 2004, 297). Empirical comparisons of deterrence and legitimacy show that the latter is a better predictor of compliance than the former (Sunshine & Tyler, 2003; Tyler, 2005, 2006; Tyler & Fagan, 2008; Tyler, Sherman, Strang, Barnes, & Woods, 2007), and that procedural justice is the primary factor shaping legitimacy (Tyler, 2009; Tyler & Fagan, 2008; Tyler & Huo, 2002).

The two components of procedural justice are: (1) the quality of decision-making; and (2) the quality of interpersonal treatment (Tyler, 2009). Empirically, both have been shown to matter (Tyler & Huo, 2002), but the latter is the more important influence on legitimacy (Tyler & Fagan, 2008). Persons insecure about their status or from stigmatized groups are especially likely to respond positively to polite and respectful treatment (Lind & Tyler, 1992). In settings comparable to those of MHCs, perceptions of procedural justice have been associated with reductions in recidivism for participants in drug courts (Gottfreson, Kearley, Najaka, & Rocha, 2007; McIvor, 2009; Senjo & Leip, 2001) and with positive effects on judicial and police interactions with persons with mental illness (Cascardi, Poythress, & Hall, 2002; Poythress, Petriola, McGaha, & Boothroyd, 2002; Watson & Angell, 2007; Watson, Angell, Morabito, & Robinson, 2008).

Applied to our observations of mental health courts, the quality of decision-making is enhanced when responsibility for the complex task of equipping participants with the tools and services they need to lead law-abiding lives is apportioned fairly. This requires holding participants accountable for the behaviors which they can control, and connecting them with assistance to in fact control them. It also requires holding service providers accountable for the services they can reasonably be expected to provide, and apportioning service obligations among providers fairly. Successful judges explain the reasoning behind these decisions and in so doing, demonstrate impartiality and fairness.

As for interpersonal treatment, a successful judge treats participants as well as service providers politely and with respect for their rights and interests, as demonstrated by addressing them directly, asking about their concerns, and then listening to them. The judge emphasizes problem-solving over blame, and gives encouragement and praise for their efforts. In these interactions, the judge gives voice and validation to participants and allows providers and prosecutors to vet the challenges facing them as they attempt to fulfill their obligations. Through these interactions, the judge seeks consensus judgments that include and respect the interests of participants and all stakeholders, again demonstrating fairness.

In taking participants' concerns into account, making allowances when participants fall back to their old ways, giving second chances, being generous with encouragement and praise, and explaining use of positive and negative sanctions, the judge advances perceptions of procedural justice by creating trust — a trust built on a collaborative mission of addressing and advancing the long-term best interests of the participant.

2.1. Perception of coercion

The perception that one's behavior is being coerced is closely related to procedural justice, but is analytically distinct. Both the fact and the perception of coercion may be present in a legal decision that is perceived by the losing party as legitimate, and in which all the indicia of procedural justice are met — as in a prison sentence meted out fairly, accurately, transparently, and with the accused having been accorded dignity, respect and voice. Yet studies of admissions to mental hospitals show that perceptions of procedural justice — a high quality of interpersonal treatment — correlate with patients feeling less coerced (Hiday, Swartz, Swanson, & Wagner, 1997; Lidz et al., 1995; McKenna, Simpson, & Laidlaw, 1999). Further, perceptions of coercion don't always match the fact of legal coercion or lack thereof (Hiday, Swartz, Swanson, Borum, & Wagner, 2002; Monahan et al., 1996).

Although not literally a case of coercion (Wales & Hiday, 2006), the choice between the intrusive monitoring and treatment of mental health court and ordinary criminal court processing (including jail, fines, and probation) is typically not one participants would prefer to have to make. Almost all have had prior criminal processing, involuntary hospitalization, or both, and most have experienced those occasions as the legal system doing something to them rather than for them (Broner, Mayrl, & Landsberg, 2005, 2009; Moore & Hiday, 2006). If participants in mental health court can become persuaded not only of the legitimacy of decisions reached, but of their voluntary adoption of the norms expressed in those decisions, we would expect their greater commitment to collaboration with the court's goals both during their participation and after court supervision has ended.

Thus a continuing dialogue between the judge and participants during their time in mental health court that emphasizes participants' ability to make choices about their treatment, as well as their voice in affecting what treatment decisions are made, should be reflected in heightened perceptions of both procedural justice and voluntariness. A choice to participate, hazily understood and perceived as forced at the outset of mental health court (Redlich, Hoover, Summers, & Steadman, 2010), may be transmogrified as the relationship between judge and participant evolves. Dose (repeated emphasis on choice) should correlate with response (enhanced perception of procedural justice) and both should correlate with reduced recidivism.

In this paper we take the initial step of examining MHC participants' perceptions of procedural justice and the judge's role in it, leaving to later analyses the question of whether these perceptions are a mechanism by which MHCs reduce criminal recidivism. We use interview data from participants in one mental health court to examine their subjective experience of procedural justice on both entry into the court and their treatment by the judge. We hypothesize that they will indicate high levels of procedural justice in both instances.

3. Setting

The Superior Court of the District of Columbia's Mental Health Diversion Court (DCMHDC) accepts competent mentally ill arrestees charged with misdemeanors who have no pending charge or recent past conviction of dangerous or violent felonies. It monitors participants for treatment and behavior compliance at required monthly status hearings. Upon consecutive four to six months of following court mandates, participants graduate and have their charges dismissed. Those who repeatedly fail to meet the court's conditions are returned to regular court for prosecution. Every DCMHDC participant is represented by an attorney in all court appearances and in the ongoing negotiation (with participant present) with the prosecutor (U.S. Attorney).

DCMHDC is a metropolitan court with high caseloads, relatively short periods of court supervision (4–6 mos. vs. >1 year for most others), and more limited judicial involvement in monitoring (no pre-court team meetings to review each case and to allow judicial

monitoring of community providers/case managers). DCMHDC benefits from a pretrial services agency (PSA) that screens all arrestees; recommends release of those not threatening to public safety; and supervises release conditions. It also benefits from PSA's Specialized Supervision Unit (SSU) for persons with mental illness that provides case management and linkage to mental health service agencies, and drug testing and treatment for those dually diagnosed with both mental illness and substance abuse/dependence, who represent a large proportion of participants. DCMHDC relies on SSU for reports on participants in its monthly open court review of participants.

4. Methods

4.1. Sample

For this analysis, we report data from structured interviews with a subsample of a larger study comparing all participants in the DCMHDC during its first two years of operation with all other mentally ill participants arrested in the same time period who were eligible for but not processed in DCMHDC. These treatment-as-usual participants receive from SSU the same screening, case management, drug testing and treatment, and mental health services referral as the DCMHDC participants. The subsample in this analysis consists of participants interviewed while they were still in DCMHDC in the last three months of the sampling period (September to December 2009). There were 182 such participants, of whom we interviewed 80 (44.0%) in the courthouse after their court hearings and one to six months under DCMHDC and SSU supervision; 13.7% refused. We were either unable to contact the others to request their participation or they agreed to be interviewed at a later time which did not materialize (42.3%). Of the 140 we were able to contact, the refusal rate was 17.9% ($N=25$).

We interviewed the subsample in the waiting area outside of the DCMHDC after at least two appearances in DCMHDC, asking a set of forced-choice questions about their view of various aspects of DCMHDC, among which were their perceptions of procedural justice.

4.2. Measures

We measured participant perception of procedural justice with two scales. The first is one that we employed in a civil commitment study (Hiday et al., 1997), modified for use in MHC. Its four forced-choice items, originally from the MacArthur Admission Experience Interview on hospital admission (Gardner et al., 1993; McKenna et al., 1999; McKenna, Simpson, Cloverdale, & Laidlaw, 2001), tap voice and validation on the decision to participate in MHC. The second scale measuring participant perception of procedural justice has four forced-choice items that tap voice and validation plus fairness and beneficence concerning their treatment in court by the judge. This scale was used in two earlier MHC studies (O'Keefe, 2006; Poythress

Table 1
Demographic characteristics.

	SSU defendants		MHC participants		MHC interviewees	
	M (SD)	N (%)	M (SD)	N (%)	M (SD)	N (%)
Age	39.5 (11.9)		40.3 (11.3)		41.3 (11.4)	
Gender						
Female		605 (36.8)	247 (48.7)		40 (50)	
Male		1040 (63.2)	260 (51.3)		40 (50)	
Race						
Black		1541 (92.4)	460 (88.5)		66 (90.4)	
White		121 (7.3)	59 (11.3)		7 (9.6)	
Other		5 (0.3)	1 (0.2)		0 (0)	
Total		1669	527		80	

Table 2
Procedural justice on entry responses.

	Strongly agree and agree	Strongly disagree and disagree
	N (%)	N (%)
I had enough of a chance to say whether I wanted to go to MHC	58 (72.5)	16 (20.0)
I got to say what I wanted about going to MHC	59 (73.8)	14 (17.5)
My opinion about going to MHC didn't matter	18 (22.5)	57 (71.3)
No one seemed to want to know whether I wanted to come into MHC	13 (16.3)	56 (70.0)

et al., 2002). Following the MacArthur MHC study (Redlich et al., 2010), we also asked two open-ended questions on what MHC participants liked best and least about DCMHDC, which yielded qualitative data to allow a deeper understanding of participant perception of procedural justice in MHC.

5. Results

5.1. Sample description

Table 1 presents the demographic characteristics of our sample compared with those of all MHC participants in the 1st two years of the court's operation and with all other SMI participants who were supervised and served in the same two years by the same Special Service Unit (SSU), which, as previously mentioned, provides case management and connection with mental health services plus drug testing and treatment for the dually diagnosed to both those in MHC and those not referred to MHC. Our interviewed sample is not significantly different from all MHC participants in age, sex, and race; but both our interviewed sample and all MHC participants have significantly more females than those in SSU who were not referred to MHC ($p<.05$). Steadman, Redlich, Griffin, Petrila, and Monahan (2005) also found more females referred to MHCs than their proportion among all mentally ill defendants. But unlike Steadman and colleagues, we found no difference in age and race between mentally ill persons referred and not referred to MHC.

5.2. Procedural justice

Table 2 presents the four items of the first procedural justice scale that taps participant perceptions of having voice and validation in the process of entry into MHC. One can see that the great majority of participants, almost three-fourths, agreed or strongly agreed (two items reversed) that they had both voice and validation in the decision to enter MHC.

Fig. 1 presents the distribution of participant responses on this full scale, which ranges from 1 to 5, with a normal curve superimposed. One can see how participant perception of procedural justice is skewed to the high end, indicating that the great majority of participants found voice and validation in the process of entering MHC. There was no difference in their perceptions by age, sex or race.

Table 3 presents the four items¹ of the second measure of procedural justice that taps voice, beneficence, respect, and fairness during their monthly MHC hearings. Again each item shows a strong

¹ We omitted one item from the five item procedural justice scale used by Poythress et al. (2002) because it refers to outcome (Are you satisfied with how the judge treats you and deals with your case?) rather than process. With four items, Cronbach's Alpha and the mean were slightly lower (.76 vs. .83, and 5.48 vs. 5.5 respectively) and the standard deviation was slightly larger (.91 vs. .89).

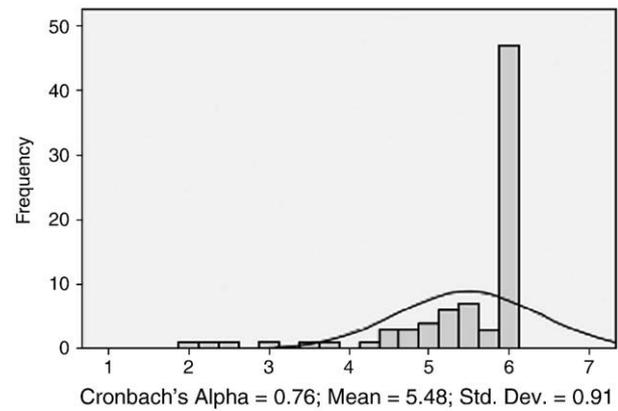
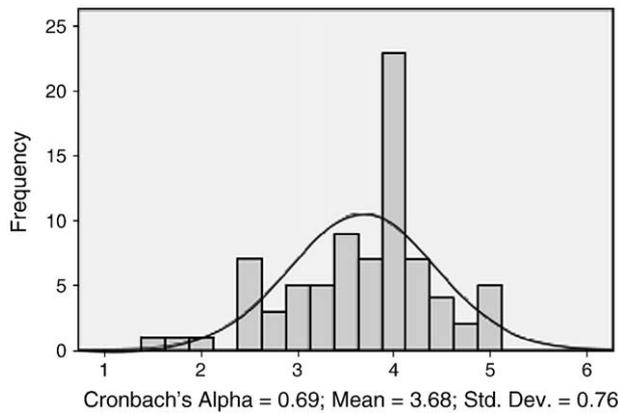


Fig. 1. Distribution of procedural justice on entry scale. Cronbach's Alpha = 0.69; Mean = 3.68; Std. Dev. = 0.76.

Fig. 2. Distribution of procedural justice with judge scale. Cronbach's Alpha = 0.76; Mean = 5.48; Std. Dev. = 0.91.

sense of procedural justice among participants. Except for the first item, we see an even stronger sense of procedural justice in the court proceedings themselves than in the process of entry into the court; more than four-fifths answered in the strongest possible way, 'definitely'.

Fig. 2 presents the distribution of participant responses on this full scale, which ranges from 1 to 6, again with a normal curve superimposed. In this scale one can see an even greater skew to the high end, indicating that participants rate interactions with the judge at the highest level of procedural justice.

5.3. Qualitative analysis

The two open-ended questions at the end of the forced-choice items were: 1. What have you liked best, so far, about MHC? and 2. What have you liked least, so far, about MHC? We recorded responses and prompts verbatim.

5.4. The first question

The largest category of responses to the first question of what they liked best about MHC consisted of instrumental reasons, that is, statements concerning what they had gained from participation in various aspects of the MHC program. There were 40 instrumental responses such as:

"It's helped me get the services I need, especially medications."

"I need my doctors and medication to make me a better citizen. I like group settings. You learn discipline. It's always good to learn from people. It's good to grow, move up the ladder, to be a productive citizen and fit in. The help has made me a more successful person."

"They're about to elp me with housing."

Table 3
Procedural justice with judge responses.

	Definitely N (%)
Do you have enough opportunity to tell the judge what you think she needs to hear about your personal and legal situation?	52 (65.0)
Does the judge seem genuinely interested in you as a person?	65 (81.3)
Does the judge treat you respectfully?	70 (87.5)
Does the judge treat you fairly?	66 (82.5)

"It helps you stay on your meds."

"It was an alternative to incarceration, and they worked with me to get resources I needed and time to get my life in order."

"It brings attention to help you need (sic). I am 49 and I've needed the attention since elementary. It helps you get help."

"They give me an opportunity not to be a criminal. They give me opportunity to get my case dismissed."

"It helped me stay clean, get control of my life again, stay focused, and letting (sic) me realize what's more important."

"It helped me to get my life back together. It helped me to do something I didn't think I could do. I'm back on the road again."

"Help you with your problem and tell you what not to do, like not to smoke. I don't have to go to jail."

The other categories of responses all referred to aspects of MHC that had to do with procedural justice.

Beneficence was second with 34 participants mentioning it with comments such as:

"They show concern about my well-being and I believe that they really care about me."

"They not only concerned (sic) with your habit but your personal life too. They try to help."

"The treatment I got was human and lovely. She complimented me every time I came and gave me the courage to keep going."

"They try to help you."

"She seems like a concerned individual, and I think that a plus (sic) with people who need help and she also congratulates, she says positive things."

Voice and validation comprised the next most frequently mentioned category of answers, with 17 participants making statements such as:

"You get to make your own decisions."

"Gives you a chance to explain your circumstances or explain why you did some of the dumb things you did."

“Basically you can speak and she listen (sic). It’s not like the other judges. It matters what you think.”

“It gives another struggling individual a chance to express their feelings in mental health court and in the community.”

“It’s much easier than going through the regular courts. You get more time. It’s not rushed. People pay attention to you and they accept your mental illness.”

Impartiality, neutrality and fairness comprised the fourth most mentioned category, with 9 participants making statements such as:

“It’s fair.”

“They was (sic) fair.”

“It’s fair and honest.”

“The fairness.”

Respect was mentioned five times with comments such as:

“The respect and honest (sic) of the judge.”

“She’s considerate about my mental illness and how important it is that I take my medication.”

“Judge X is respectful.”

“She treated me well. (prompt: Anything else?) She treated me well.”

Taken together, responses naming some aspect of procedural justice out-numbered instrumental responses naming tangible benefits (65 vs. 40).

The “she” mentioned in the comments was one of the two dedicated judges who presided over all MHC hearings. Once assigned to one of them, a participant always appeared before that judge. In responding to the open-ended questions, participants made positive statements about the DCMHDC judge either by name, title or pronoun 16 times. Many statements referred to more than the judge or more than the court hearings; they encompassed the full MHC program including case management, mental health treatment and services, and drug testing and treatment, as well as court proceedings.

Two of the 80 interviewed participants responded negatively to this first question saying:

“I totally disagree with the methods. I don’t see no (sic) good.”

“Clean ain’t (sic) the answer.”

“Nothing. (Prompt) I don’t understand what’s really going on.”

5.5. The second question

To the second question, What have you liked least, so far, about MHC? The single most frequent response was a statement saying *Nothing*, or its equivalent such as:

“Nothing. (Prompt: Nothing?) I like everything.”

“Wouldn’t change a thing. (Prompt: There’s nothing that you would change?) No, wouldn’t change a thing.”

“I ain’t (sic) dislike it. I loved it. (Prompt: Nothing?) Nothing at all.”

Twenty-five participants responded this way; while 15 other participants added or answered with positive statements such as:

“They good. They fair (sic). They treat you good. They give you lots of chances.”

“I like the whole thing. Like I said, she gave me breaks, like three or four.”

“It’s helping me out a lot. I was already going to be clean, but this was a good start. (Prompt: Have you not liked anything?) Everything’s been good.”

“I don’t have one complaint. They have really helped me. I didn’t know I could be this responsible for my own recovery.”

Twenty-two participants answered that they did not like the time MHC required either in its frequency, span of months, hearing length, or time of day. They said:

“Takes up a lot of your time.”

“The time it takes and the amount of people down here at court.”

“Having to come here so often.”

“Coming once a month. (Prompt: Anything else?) No. The long waits of others being called.”

“The only thing I didn’t like was it took six months. That was the only thing. I don’t think it should be so time consuming. (Prompt: Anything else?) No, that’s all.”

“Going at 1 o’clock. I’m an early bird. Get it over with. I think it should be in the morning, especially when it’s hot; twelve or one is baking time.”

Five participants disliked the role of the prosecutor saying:

“I don’t like the prosecutor.”

“I don’t have any problems. The prosecution keeps threatening me. It seems like they don’t really understand...it’s like ‘why are you even here?’ This guy wasn’t the original and I wasn’t sure where he came from.”

“The people on the other side. Instead of just me and my lawyer and the judge, you got...what are they on the other side? (Prompt: the prosecutor?) Yeah, the prosecutor. Why do we need them there?”

Eleven participants named various aspects about MHC which they did not like, no two of which fell into the same category:

“Stigma of being looked at as mentally ill, but I can overcome that. Fair people make me happy. I had an especially mild crime.”

“Mistreatment of the patients.”

“The fact the participants never get a chance to explain what got them there in the first place.”

“When I had to be told what I had to do.”

“The only thing is that I'm not getting what I want when I want it. Housing, especially at my age, is a big concern. But it seems like they're more concerned to stop using, not the housing.”

6. Summary and discussion

The results of our empirical study support our hypotheses concerning mental health courts derived from our observations of multiple courts and procedural justice theory: MHC participants hold strongly positive beliefs about the procedural justice they experience in MHC and the role of the judge in establishing procedural justice. Their responses to forced-choice items indicate a higher level of procedural justice on the entry process than that held by persons with mental illness in involuntary hospital admission ($\bar{X}=3.68$ vs. 2.09 [Hiday et al., 1997](#)). And our sample reported as high a level of procedural justice in treatment by the judge as participants in the one other MHC study employing this measure, which was a much higher level than that of comparable participants in traditional criminal court ([Poythress et al., 2002](#)). Participants' answers to the open-ended questions reinforced these quantitative findings, with participants naming specific qualities that they liked, even in response to the question asking what they did not like about MHC. The majority of responses concerned aspects of procedural justice and often mentioned the role played by the judge in those aspects. Their sense of procedural justice extended outside of the court hearings to other aspects of the MHC program which included treatment, services, and program requirements.

The strength of participants' sense of procedural justice and identification with the court's goals surprised us, given the small dose – relative to other MHCs we have observed (typically >one year; more frequent court appearances; more time per appearance) – of judge–participant interaction experienced. It should be remembered, however, that most participants were veterans of traditional court processing. Thus our results may say more about the impersonality and alienation of traditional court for this population. Whether such a brief dose of procedural justice will translate into significant reductions in recidivism will be determined at a later stage of our study.

We have not wholly disentangled, at this stage of our study, the relative effects of the quality of the judge's decision-making from the quality of the judge's interpersonal treatment on the participants' overall perceptions. The ten essential elements put forth by the [Council of State Governments \(2009\)](#) emphasize that obtaining for participants' effective and coordinated mental health and supportive services is a critical, if not the critical, piece in changing participants' patterns of behavior. As procedural justice theorists concede, the substantive outcomes of judicial decisions matter, as 40 of our interviewees stated. Even if interpersonal treatment has independent effects, as others have found ([Tyler & Fagan 2008](#); [Tyler & Huo, 2002](#)), in the case of MHC participants, those effects may be swamped if services fail.

But would the converse be true? Would the provision of collaborative mental health and supportive services, together with monitoring by service providers, by itself produce the desired reductions in recidivism? Is the active participation of a judge, in negotiating and adjusting the terms of participation and monitoring through status hearings, necessary or worth the cost? To address that question, we will be comparing outcomes for DCMHDC participants with those of persons eligible for DCMHDC but supervised by SSU alone. Our hypothesis, reinforced in some measure by the results of the interviews with our subsample, is that the judge's role will have independent effects on outcomes.

First, from the perspective of participants, the judge possesses the authority of the law, specifically society's norms as expressed in the criminal law. To obtain the allegiance of the participants with those norms, it is important that society's official articulator of those norms engages participants in a collaborative, respectful, and individualized

negotiation to provide the tools and motivation to allow them to see those norms as attainable and in their own interest. The elements of procedural justice that we propose as elements in that negotiation, reflected in our interviewees' responses, may create in participants a sense of individualized commitment, to that judge, to adopt and pursue those norms.²

Second, from the perspective of MHC team members, the judge, again through the mechanisms of procedural justice, has the authority and institutional prestige to negotiate compromise between the disparate interests of legal players and balkanized service providers, and to keep their focus on longer term solutions of the problems of individual participants. The judge can bring more of the stakeholders to the table, enable them to express their institutional interests, and help them to see how those interests can be advanced in a collaborative plan for their common client.

6.1. Limitations

It should be remembered that our interviewee sample is not random. We attempted to interview all participants going through this MHC in the last three months of the first two years of the court's existence ($N=182$); however, because of IRB requirements and a change of courtroom with loss of a pre-hearing waiting area conducive to interviews, we were not able to reach all such participants to explain the study and request their participation. We interviewed 44.0% ($N=80$) after their having two or more MHC hearings and at least one month under MHC and SSU supervision; and 13.7% refused. We were either unable to contact the others to request their participation or they agreed to a later time which did not materialize (42.3%). Many of these were those whom we could only reach after they had spent much of the afternoon in the courtroom and were rushing to meet their ride, return to work, or make another appointment. Some of these could represent passive refusals. How much bias arises from refusals and misses is unknown now. Although we found no difference in age, race and gender between the interviewed subsample and all MHC participants, we may find bias when we have access to the rest of the socio-economic, clinical and criminal history data.

It is possible that bias arose from the circumstances of eliciting participant perceptions of the court. Interviewee responses to the two open-ended questions may have been influenced by the fixed-choice items which preceded them. On the other hand, where the items may have suggested procedural justice categories of fairness, respect, interest and voice, they neither determined the direction of evaluation of those categories nor limited the topics mentioned. Nonetheless, it would be appropriate in future studies to vary the placement of these questions. More problematic is the possibility that interviewing participants immediately after DCMHDC status hearings may have caused them to think – despite instructions to the contrary – that they had to make positive comments to avoid negative consequences from the court.

6.2. Future work

Our next step is to examine demographic, clinical and criminal history factors that may affect participant perceptions of procedural justice. More interestingly, we want to ascertain how they affect successful completion of MHC, that is, how they affect compliance with court mandates for behavioral change and treatment cooperation, and how they affect recidivism after participants are no longer participating in MHC and no longer receiving court support, services and supervision. We want to know whether the procedural justice of

² The judge of one MHC we observed. Judge Brent Moss, founder of the Bonneville County MHC (Idaho Falls) in 2002, died June 24, 2010. At the standing room only funeral, one side of the church was composed of current and past MHC participants. Personal communication on file with the authors.

MHC, especially that embodied in the role of the MHC judge, leads to mentally ill persons obeying the law.

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