The Fairness of Proposed Stipulations in NYC Housing Court

I) Project Description & II) Proposal Narrative

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I.
Project Description

Non-technical description

The decision of the US Supreme Court, in *Turner v. Rogers* (2011), has prompted consideration of the role of judges in cases in which a party, or parties, are not represented by counsel. In *Turner*, the Court held that judges in child support cases have a specific duty to ensure that judicial processes are fair to parents who are not represented by counsel. *Turner* has given rise to debate about how judges can fulfill the duty to ensure that judicial processes are fair to parties without counsel while at the same fulfilling the duty to apply the law neutrally to all parties.

The question has considerable currency. In communities across the country, state courts are inundated by millions of people unable to afford private counsel and unable to secure the limited free services made available by the civil legal aid bar. Communities are therefore weighing a range of options for helping to assure the fair resolution of cases for people without lawyers. Many states have modified their respective codes of judicial conduct, or have developed other guidance for judges, to provide that a judge may take steps to ensure that judicial processes are fair to unrepresented parties without violating the judge's duty to apply the law neutrally to all parties. Yet, how these changes will be realized on the ground is a complicated matter.

Two studies will examine different aspects of the question of whether and how judges can fulfill their duty to ensure that judicial processes are fair to unrepresented parties while at the same fulfilling their duty to ensure that the law is applied neutrally to all parties. Both studies will be carried out in the New York City Housing Court, specifically focusing on the role of Housing Court Judges in reviewing the fairness of proposed stipulations of settlement in cases in which a landlord has brought an action seeking recovery of an apartment from an unrepresented tenant based on the tenant's alleged nonpayment of rent.

The first study asks whether training judges to preserve procedural fairness in cases involving unrepresented parties can a) increase judicial engagement with the unrepresented party, b) help

the unrepresented party understand the information needed in the case, and/or c) increase the unrepresented party's perception of procedural fairness and of the legitimacy of the court.

The second study asks whether educating all the parties about the role of judges in preserving procedural fairness for unrepresented parties can minimize the parties' possible perception of judges as biased in favor of unrepresented parties.

The two studies are expected to cast light on additional underlying questions, including the following: a) do unrepresented parties' views on the treatment they deserve have a bearing on their perceptions of whether the judicial processes are fair, and b) is procedural fairness as important to the parties as it is to the judges?

Technical Description

In 2011 the US Supreme Court, in *Turner v. Rogers*, held that trial court judges must preserve the due process rights of a parent proceeding without a lawyer in a child support case, to the point of notifying the parent of legal and evidentiary matters potentially dispositive in the case. This decision raised the profile of Model Rule 2.2 of the American Bar Association's Model Code of Judicial Conduct which specifies that judges must uphold the law fairly and impartially. A comment to Model Rule 2.2 asserts that it is not a violation of this rule for a judge to assure that a pro se litigant has the opportunity to have their matters fairly heard. Many states have adopted rules reflective of the content of this comment in their respective state codes of judicial conduct.

However, a question remains whether engaged judges can assure due process rights for all parties without challenging the lawyers' and the parties' notions of neutrality. Two studies -- one a courtroom experiment and the second a controlled experiment with litigants will address this question. Both studies will be carried out in the New York City Housing Court, specifically focusing on the role of Housing Court Judges in reviewing proposed stipulations of settlement in cases in which a landlord has brought an action seeking recovery of an apartment from an unrepresented tenant based on the tenant's alleged nonpayment of rent.

Field experiment 1 will train 40 judges in procedural fairness and survey the judges (and litigants and attorneys in their cases) on five trials prior to the judges' training and five trials after training (thus permitting controlled testing of training effects). 400 target cases will be observed and the behaviors of the participants and outcomes systematically coded (with the above dependent variables in mind). The case files will be coded by a team of trained law students.

Experiment 2 involves a 3 (Party Representation Balance: Balanced, Neither party represented vs. Imbalanced, tenant represented vs. Imbalanced, landlord represented) x 2 (Judge is engaged as per training vs. passive) x 2 (Party: Tenant vs Landlord) x 2 (Outcome: Favors landlord vs. favors tenant) x 2 (Procedure Overview: Present vs. absent).

The Procedure Overview manipulation tests the hypothesis that providing an overview of courtroom procedures enhances the likelihood that parties in cases where representation is

imbalanced will interpret the judge's intervention on behalf of the unrepresented party as a bid for greater fairness, and minimize perceived bias.

The questions addressed in the two studies include: (1) Does training increase judges' proactive engagement with unrepresented litigants? (2) Does training assist unrepresented litigants to understand what information is critical to the disposition of their case? (3) Does training increase litigant perceptions of procedural fairness, and legitimacy? (4) Does judicial framing of the procedure minimize the likelihood that proactive judging is interpreted as biased?

Among the basic questions related to procedural justice theory are: (5) Does a judge's intervention on behalf of the rights of an unrepresented litigant introduce tension among the justice criteria of rights and neutrality? (6) Do beliefs about deservingness account for variance in procedural justice judgments that cannot be accounted for by the group value theory? (7) Is procedural fairness more important for decision recipients than decision makers?

II.
Proposal Narrative

Legal Background and Study Context

Two experiments are proposed in the New York City Housing Court: a judicial procedural justice training experiment initiative and a video simulation designed to examine the conditions under which judges' proactive engagement with unrepresented litigants best maximizes perceptions of neutrality, trust, and respect among litigants, attorneys, and neutral observers. The enormous challenges to fairness in this court make it an ideal setting to test the efficacy of procedural justice training. This court is among the busiest courts in the country, with 246,460 actions filed in 2012, and with 124,970 warrants of eviction issued. Just 50 judges preside over this massive flow of disputes among landlords, tenants, roommates, city agencies. The outcomes of Housing Court proceedings are important. Following an eviction, tenants may become homeless, lose their jobs, lose custody of their children, experience domestic violence, or encounter other harms.

Tenants commonly find Housing Court overwhelming. Very few tenants ever have a lawyer – just 1% -- even though almost 90% of the landlords have a lawyer. The proceedings are often complex. The civil legal aid bar turns away as many as seven potential clients for each one that approaches it to request representation. Many tenants who would want private counsel find the cost of legal assistance prohibitive. These factors – the complexity of proceedings for those without counsel, the volume of cases and the number of litigants, the vulnerability of the tenants – present extraordinary challenges not only for the tenants themselves, but also for the Housing Court staff and judges, and for the Unified New York Court System which, as an institution, is committed to delivering justice.

A 2013 report on surveys of housing court parties in the Bronx (CASA, 2013) summarized research on the effects of non-representation as follows (citations omitted):

> In general, studies show that tenants with legal representation are more likely to have favorable stipulations, win at trial and are less likely to default. Lack of legal counsel presents a significant disadvantage to the vast majority of tenants in court. Even when tenants have the substantive law on their side, they lose in Housing Court with "stunning regularity," in part due to their inability to articulate their claims and defenses in the cryptic rules of the adversarial court system. By contrast, ... landlords ... generally can afford lawyers to appear in their place. ...these lawyers offer their landlord clients the benefits of their past Housing Court experience in terms of legal precedent and tactics, as well as the benefit of their relationships with court personnel, all of which can impact cases in court.

In the CASA study in the Bronx, 27% of tenants reported that no one explained the stipulation to them, 27% reported no one asked them if they agreed with the stipulation they signed, 77% did not help write the stipulation, 85% reported no one told them

they had a right to object to legal fees; 56% reported no one explained their options if the landlord failed to make repairs as promised in the agreement.

The Evolving Role of Judges

As the number of unrepresented litigants in the state courts has grown, the courts and other justice system stakeholders have increasingly recognized the importance of developing best practices to guide the activities of judges in cases in which a party (or parties) is proceeding without a lawyer. A decision of the United State Supreme Court in 2011 has helped to raise the profile of the issue and to deepen the dialogue around it. In *Turner v. Rogers*, the Supreme Court held that trial court judges must preserve the due process rights of a parent who is proceeding without a lawyer in a case in which the parent is accused of willful failure to pay child support. The Court ruled that it is the responsibility of the judges in such cases to notify the unrepresented party of the legal issues and the evidentiary materials that are potentially dispositive in the case.

In a section titled Impartiality and Fairness, the ABA Model Code of Judicial Conduct, at Model Rule 2.2, states "A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially." Comment No. 4 to Model Rule 2.2 addresses the tension that is inevitable in cases involving unrepresented parties, stating: "It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard." A comprehensive analysis of Model Rule 2.2, with its protection for judges who take steps to ensure that unrepresented parties is provided by Engler (2008).

On January 24, 2013, the New York Court invited public comment on a proposed rule that, if adopted, would explain to judges that it is not a violation of the Code of Judicial Conduct in New York "for a judge to make reasonable efforts to facilitate the ability of unrepresented litigants to have their matters fairly heard." (*Memorandum re Proposed Amendment of New York's Code of Judicial Conduct*) (*Memorandum re Proposed Amendment of New York's Code of Judicial Conduct*) The proposed rule has not yet been finalized.

The New York Court System's Efforts to Guide Judges in Housing Court

Recognizing that 90 to 95% of the cases in Housing Court are resolved by settlement, and that the fairness of these settlements is vital to the integrity of the court and to the well-being of the parties, Hon. Fern A. Fisher, the Deputy Chief Administrative Judge for NYC Courts, issued an Advisory Notice that provides Housing Court judges with guidance as to the importance of ensuring that settlement proceedings are fair (Fisher, 2007). Judge Fisher's Advisory Notice states that "the following is strongly advised": "No stipulation in which any party is pro se should be approved by the Court unless the Judge is convinced that a pro se litigant understands the terms of the stipulation and an allocution is conducted on the record." The Advisory Notice then outlines nine minimum standards to guide allocutions. For example, the judge must be convinced

that “the litigants’ claims and/or defenses are discerned and understood,” and that “the litigant understands all options available to them in light of their claims and defenses.”

Overview of Basic and Applied Questions

The invitation from the Court for the PI”s to implement a procedural justice training initiative among their judges and to examine its impact on the judges’ behavior as well as the consequences for lawyer and litigant perceptions of fairness, satisfaction, and legitimacy is an excellent opportunity to address numerous additional applied and basic questions about procedural justice that go well beyond the question of training. Below we summarize briefly what we propose as the primary questions to be addressed by our two studies.

Applied questions

(1) Does procedural justice training in a courtroom setting increase judges’ proactive engagement with unrepresented litigants?

This study will be one of only a few studies to have examined the potential of a training intervention designed to increase procedural justice. In an early test of a training initiative Skarlicki and Latham (1996) employed a non-equivalent control groups design to study the effects of four 3-hour PJ training sessions administered to 11 public service union leaders at one local union location, and withheld them from another location with 9 union leaders. Subsequent pre- and post-training measures including union leader fairness, interactional justice, and organizational citizenship behaviors (OCB’s) from union members at both shops were collected. This study found that perceptions of procedural and interactional fairness (combined into a single scale), and OCB’s increased among union members at the location where training was present. A follow-up study (Skarlicki & Latham, 1997) at a private sector union replicated the training effects on measures of fairness and OCB’s.

We are unaware any published studies testing the effects of justice training in a courtroom, or even a legal context. The NYC housing court context is different in ways that are beneficial for understanding the generalizability of the findings. Among the differences: the union leaders were presumably interacting with individuals who considered themselves members of a stable ingroup; they were interacting with an ingroup union leader who they likely identified with highly, and who shared their concerns about the conflict of interest with a clearly identifiable outgroup. In contrast, the litigants’ interacting with judges in housing court will be interacting only briefly with a virtual stranger who is not an advocate for their welfare, but rather an advocate for a neutral application of the law.

(2a) Does PJ training assist unrepresented litigants to understand what information is critical to the disposition of their case and to communicate that information to the judge? (2b) Does training lead to more favorable outcomes for unrepresented litigants?

Thibaut and Walker's (1975; 1978) original procedural justice theory claimed disputants would judge their treatment as fair to the extent that they perceived that they had process control, or voice (Folger, 1977), and decision control. When Lind and Tyler (1988; 1989) proposed the group value theory, trust, neutrality, and standing somewhat replaced control as the theorized procedural justice concerns (though Thibaut and Walker included neutrality in their theorizing, and respect was a reinterpretation of the basis for the effect of process control on justice judgments). In our training, we will discuss the potential contribution to justice judgments stemming from control as well as from group value concerns. However, as an applied matter, it is an open question whether increasing the judges' administration of even all five treatment concerns will have the intended impact of increasing the unrepresented litigant's understanding and success at communicating the relevant information to the judge. In a multi-study paper, Heuer, Penrod, & Hafer, and Cohn (2002) advanced the claim ***that the group value theory, which claims that justice judgments stem exclusively from the satisfaction of symbolic concerns, might be conflating the effects of symbolic concerns and resource concerns.*** In two field surveys, they showed that this is the case. We expect that justice training might also increase the resources flowing to unrepresented litigants (more favorable decisions), and that this particular consequence of justice training might have considerable impact on litigant justice judgments, independent of either control or perceptions of group standing, and if so, it is important to know.

(3) Does training increase litigant perceptions of procedural fairness, distributive fairness, and perceptions of legitimacy?

It is abundantly clear that when authorities are perceived to enact fair procedures, the targets of these procedures report that they have been treated more fairly, that they think their outcomes are fairer, and that they perceive a greater obligation to comply with the authority's decision. However, It is not established that training initiatives directed at judicial authorities with an exceedingly high caseload will be an effective means of producing these desirable outcomes.

Research Methods

We propose to carry out two studies that address important applied and basic questions that are raised by *Turner v. Rogers*, as well as NYC Housing Court Deputy Chief Administrative Judge Fisher.

Study 1: Training judges to interact with litigants and lawyers in a procedurally fair manner.

Study 1 is an experiment that that tests the effect of training judges to be proactive and engaged while maintaining their neutrality and the appearance of neutrality to litigants and courtroom observers. This training will be guided by a judicial curriculum devised by the Self-Represented Litigants Network, which appears on the web site of the

National Center for State Courts, an organization that has had a leading role in creating and carrying out training for judges on how to preserve their neutrality while ensuring that pro se litigants have the opportunity to be heard. Its curriculum for judges, according to the description on the Access to Justice page of the National Center for State Courts' web site, "highlights tools and techniques to help judges run their courtrooms effectively, comply with the law, maintain neutrality, and increase access to justice." ("Ensuring the right to be heard for self-represented litigants: Judicial curriculum," August 8, 2013). See the substantive description below for details.

The "Ensuring the right to be heard for self-represented litigants" teaching modules prepared by the National Center for State Courts are five in number. Each is accompanied by a Powerpoint presentation and notes for the speaker. Some of the modules include suggested videos, readings, and breakouts sessions for the participants to engage in brainstorming sessions, discuss key issues, and bring thoughts back to the full group. Each of these 5 sessions might take up to 90 minutes to complete. There is considerable overlap between the key points in these training sessions and the key insights that have emerged from social psychological research on procedural justice (e.g., the parties want to feel in control of their case, they want to have a clear opportunity to tell their side of the story, they want to believe that what they say matters, they want to be treated with respect, by unbiased judges who care about them). The National Center's modules emphasize the value of explaining the hearing procedures to the parties in advance—including procedures the judge will employ to assure that the trial is actually a neutral and unbiased forum (one in which both sides' relevant evidence and concerns are communicated to the judge). A particularly important question to be examined in both studies is whether it is possible for judges to frame their intervention on behalf of unrepresented litigants so as to assure *both parties* that their legal rights are respected and their concerns are communicated. Below we review claims that judges should explain to the relevant parties that s/he will often need to devote more attention to one or the other party, emphasizing that this is an effort to create actual neutrality by permitting the judge to make decisions based on a full accounting of the issues.

For the purposes of this project, five 90 minute training sessions are probably more than is necessary or easily managed. Instead, we propose one 4-hour session that combines an overview of the justice research that examines the benefits of these procedures (e.g, both perceived neutrality, perceived fairness, disputants' perceptions that the judge and the court s/he represents are legitimate sources of authority, and the commitment of both parties to abide by the judge's decision).

Our proposal is that Professor Heuer create and implement this modified training module (he has regularly taught related sessions on procedural justice issues). In collaboration with Judge Fisher and David Udell, executive director of the National Center for Access to Justice (a national leader in research and advocacy that responds to concerns of self-represented litigants in state courts) we will recruit an experienced housing court judge who is well-versed in the general issues of engaged judges striving

to assure due process for both parties in these cases, and who is well versed in the reactions to this initiative that are likely to emerge from the judges we will be training. We believe that having this judge engaged in the training session with Professor Heuer will greatly enhance the trainee's confidence in the message. Also, In light of Skarlicki and Latham's successful intervention, we will adopt training procedures that they argue were important for their success. In addition to instruction about the established benefits of implementing procedures in a fair manner, our session will include discussion periods where the trainees have opportunities to discuss their concerns or reservations with the other judges and the instructor (Heuer) and a legal scholar who works closely with the housing court (Udell) and an experienced housing court judge (to be determined). Furthermore, we will use role plays in order that judges have an opportunity to enact these procedures and observe other judges do so as well, followed by a group discussion facilitated by the three training leaders. Skarlicki and Latham (1997, 2005) have also published additional discussion of specific training pitfalls, and additional procedures to avoid them (e.g., focus on expected outcomes, reduce defensive behavior) that we plan to implement in our training regimen.

In a review of our prior proposal of this grant, Reviewer 2 suggested that we "sort of assume" that judges will change their behavior after training, and suggests we might need to generate more observations in light of some variance in judges' responses to our initiative. Of course we don't assume that judges will change, rather we propose to test that training will lead to change, and we are guardedly optimistic about this in light of the Skarlicki studies we cite to in the proposal. **This study yields power of .85 for effect sizes of r=.15** (to test the training effect with 200 observations/cell). If we examine critical variables involving a subset of the data (e.g. only trained cases) with 100 observations/cell to compare 100 represented tenants to 100 unrepresented tenants, the power wd be .8 for r=.2 effects (all of above are α =.05).

Study 2: A controlled simulation experiment designed to produce converging evidence concerning the benefits of proactive judging.

Study 2, a controlled experiment, will employ brief video simulations of a housing court hearing to provide a test of whether judges' can minimize the likelihood that litigants (particularly those who are represented in a case where the other party is not) perceive the judge's intervention on behalf of unrepresented litigants as biased. The variables manipulated in this study are driven by arguments by Zorza (2003-2004) that **providing a proper overview of courtroom procedures can enhance the likelihood that parties in cases where representation is imbalanced will interpret the judge's intervention on behalf of the unrepresented party as a bid for greater fairness, and minimize the likelihood of perceived bias.** Zorza proposes that if judges explain to the parties that their goal is to maintain their neutrality, and that actual neutrality stems from both parties being equally successful at having their legal rights fully exercised, they will be less likely to perceive the judge's more extensive attention to the unrepresented party as evidence of bias. Although our training of judges in Study 1 will include coverage of this seemingly important procedure, we expect that even the most successful training will not result in all judge's implementing

the trained procedures. We expect Study 2 to provide a particularly good test of whether an effectively implemented framing of the procedure enhances the likelihood of perceived fairness from both parties, regardless of their legal representation.

The design of Study 2 is a 3 (Party Representation Balance: Balanced, Neither party represented vs. Imbalanced, tenant represented vs. Imbalanced, landlord represented) x 2 (Judge is engaged vs. passive) x 2 (Party: Tenant vs Landlord) x 2 (Outcome: Favors landlord vs. favors tenant) x 2 (Procedure Overview: Present vs. absent). In this design, the third factor (tenant vs. landlord) is nested within the Imbalanced condition of factor 1. This 48 cell study will be conducted by creating 24 variants of a brief (approximately 8-minute) videotape of a mock hearing designed to emulate a typical case from the field experiment cases we have been observing. Four individuals will act out the role of the judge, the two tenants, and the lawyer (in the imbalanced conditions). Our proposal is to invite litigants who are waiting for their cases to be called to spend 25-30 minutes to watch a video and complete a questionnaire in exchange for $10. Participants will watch a random one of the 24 videos on a tablet while imagining themselves as either the tenant or the landlord. We can create all 48 conditions with 24 videos by instructing the tenant and landlord parties of their role prior to their watching the videos. The tablets will also be programmed to administer the questionnaire immediately after the video. The Deputy Chief Administrative Judge for NYC Courts has assured us that a room in the Courthouse can be set aside where participants can complete this study.

In the judge-engaged conditions, the judge will always solicit an important piece of information from an unrepresented party. Thus the judge will solicit information from both parties (in the balanced, no representation condition) or from one party (in the imbalanced conditions) that is pre-tested to show that both parties will recognize as beneficial to the party to whom the judge directed the question.

Among the key hypotheses of this study are (1) judicial engagement on behalf of unrepresented parties might raise tensions between the justice concerns of neutrality and rights protection; and (2) proper framing will moderate the extent to which judicial engagement leads to tension between neutrality and rights protection, so that perceptions of bias will be minimized with a proper fairness-based procedural overview, or even reversed compared to the no-overview condition.

Study 2 is a 48-cell design for which we will target 10 participants per cell for a final N = 480. This sample permits tests of main effects with 240 participants per condition, 2-way interaction simple effects testing with 120 participants per condition, and 3-way tests with 60 participants per condition. The critical portion of this research design concerns: represented/not x winner/loser x judge engaged/not x overview provided/not. **This is a 2x2x2x2 16-cell design with 30 observations per cell for testing simple effects within the 4-way interaction [which is .8 power for effects of r=.35]. The 3-way interactions involving represented x win x procedure (engagement or overview) are of most interest and those have 60 observations/per cell for power of .8 of r = .25 for simple effects.**

The Applied Importance of the Studies

In an era in which millions of people flood into the courts without legal representation, it is critically important to the courts to develop methodologies that help to preserve access to justice and basic fairness for parties that do not have lawyers. The two studies will help to answer such questions as the following: i) are judges engaged, proactive, and neutral during the "allocution" process when reviewing proposed stipulations of settlement in eviction cases involving unrepresented tenants; ii) does an engaged, proactive and neutral approach to allocution increase the fairness of proceedings, the fairness of outcomes, and the perception by the parties that the proceedings and the court itself are fair; and, iii) if the judges are not engaged, proactive and neutral in these proceedings, can we learn why?

Findings from this study will help the New York Court System to guide judicial decision making not only during the review of proposed stipulations of settlement in the New York Housing Court, but also in many other types of courts and cases. The study has national and international implications too. Courts virtually everywhere are struggling to handle increased numbers of cases involving unrepresented parties and are searching for reliable approaches to make proceedings fairer in the absence of counsel.

Procedural Justice Theory-Based Questions

In addition to the numerous applied benefits expected to result from this intervention, this study also offers an opportunity to examine multiple questions concerning procedural justice theory. Although the study of distributive and procedural justice in legal contexts has well established that fairness, both distributive and procedural, enhances disputants' satisfaction with outcomes and procedures (Colquitt, Conlon, Wesson, Porter, & Ng, 2001; Tornblom & Vermunt, 2007; Tyler, 2009, 2012) and their assessments of the legitimacy of legal authorities and legal institutions (Tyler, 2006, 2011), numerous important questions about justice judgments that have received relatively little attention are raised by this study of training judges to ensure due process for unrepresented litigants (a goal that overlaps considerably with the group value theory's justice criterion of looking out for the unrepresented litigant's welfare). Below we consider three questions raised by the procedural protections called for by *Turner v. Rogers:* (1) Does charging judges with the task of looking out for a defendant's welfare pose a threat to the justice criterion of neutrality? (2) What is the effect of judgments of deservingness for litigant perceptions of fair treatment? (3) What is the effect of one's role as the decision maker versus the decision recipient in influencing the importance of fair outcomes versus fair treatment for judgments of satisfaction and legitimacy?

Tension between justice criteria (neutrality versus rights protection): Justice Theory Perspectives

In *Turner v.Rogers* the Court charged judges with the responsibility of notifying unrepresented parties of legal issues that are potentially dispositive in their case. Since then, numerous states have adopted the Court's exact language or variants of it that are designed to enhance due process for unrepresented litigants. At the same time, numerous US justice institutions have become concerned with finding ways to guide judges to be proactive without sacrificing neutrality. The Court's characterization of due process— ensuring pro se litigants the opportunity to have their matters fairly heard, is one we think overlaps considerably with what group value theorists refer to as the justice criterion of trustworthiness (Tyler, 1989), or trust in benevolence (Lind, Tyler, & Huo, 1997; Tyler, 1991), and which also overlaps with the group value criterion of standing, which is often characterized as including a concern for an individual's rights (Tyler, 1989, 1994, 2001).

In essence, what the legal institutions referred to above are focusing on is what justice scholars would characterize *as* ***tension between the procedural justice criteria of trustworthiness and neutrality, criteria that are generally characterized as ones that operate in synchrony to enhance judgments of procedural fairness.*** To our knowledge, the potential for tension between these justice criteria has received virtually no attention from procedural justice scholars. In fact, **in *studies that examine reports of trustworthiness and neutrality, the correlations among these two justice criteria (when they are reported) are generally positive and quite strongly so***. For example, Tyler (1989) reported that the mean correlation among the three group value criteria of trust, neutrality, and standing among respondents recalling an encounter with a legal authority was r = .58, and Lind, Tyler, and Huo (Lind et al., 1997) reported the correlation between neutrality and trust among respondents surveyed about an interpersonal encounter was r = .53 among American respondents, r = .65 among German respondents, and r = .63 among Chinese respondents). Furthermore, group value researchers have also created a single relational index, in which multiple indicators of trust, neutrality, and respect are combined in a single highly reliable measure (Tyler, Degoey, & Smith, 1996; Tyler, Lind, & Huo, 2000).

The proposed study, by virtue of comparing hearings administered by judges who are trained versus not trained to be vigilant in protecting the due process rights of unrepresented litigants*, is expected to provide a* ***strong test of whether the due process mandate articulated in Turner v. Rogers produces tension between the group value justice criteria of neutrality and trustworthiness (due process or rights protection)***. This tension might be revealed in at least two ways. The least likely manner for the tension to be revealed would be that both the unrepresented litigants (mostly tenants) and the represented litigants (mostly landlords) would both perceive the judge's intervention on behalf of the unrepresented litigant to increase the judge's trustworthiness at the same time as it decreases the judge's neutrality; the more likely result is that this effect will be moderated by the respondent's role in the case, such that unrepresented litigants (who benefit from the judge's intervention) will perceive trustworthiness and neutrality to be positively correlated, but represented litigants (who stand to fare more poorly to the extent that the unrepresented litigant is perceived to

benefit from the judge's intervention) will perceive the judge's trustworthiness and neutrality to be positively related.

Deservingness

Thibaut and Walker's (1975, 1978) theory of procedural justice proposed that a key determinant of satisfaction would be the manner in which legal procedures allocated control between disputants and the third-parties who administered the legal procedures. Their theory proposed, and their research generally supported the notion that the optimal allocation of process control (e.g., opportunity to provide input to the decision maker) and decision control (deciding the outcome) between self-interested disputants and the third parties who administered the dispute resolution procedures was an important determinant of disputants' judgments of fairness, and in turn, their satisfaction with their treatment and outcomes.

Subsequently, Lind and Tyler (1988) proposed a group value model of fairness. Drawing on social identity theory (Tajfel & Turner, 1986) they proposed that voice was important because it communicated a symbolic message about one's standing in valued groups. The group value theory also proposed that trustworthy decision makers (ones who looked out for the disputant's welfare) and unbiased decision making were also important predictors of procedural fairness. This theory has been exceedingly well supported in legal (Casper, Tyler, & Fisher, 1988; Tyler, 1989, 2006) as well as in numerous other settings.

More recently, Heuer, Blumenthal, Weinblatt, and Douglass (1999) argued that the group value theory had overlooked a justice standard that had played a central role in much distributive justice theorizing. According to these authors the group value theory's assertion of a direct positive effect of trustworthy, neutral, and respectful treatment on perceptions of fairness was more akin to a hedonic theory of about what people want than a fairness theory about what people deserve. They proposed that fairness theories are compelling precisely because they assert that fairness concerns—independently of purely hedonic ones--are important for fairness and satisfaction. Drawing on theorizing concerning the role of deservingness for distributive justice (Boeckmann & Feather, 2007; Feather, 1992, 1993, 1996), they proposed that respectful treatment would be judged fair according to the extent that there was a match between a person's (positive or negative) behavior or attributes and that person's subsequent (positive or negative) treatment by another individual.

The ***matching hypothesis permitted a prediction that does not follow from the group value theory*****:** *disrespectful* treatment would be judged fair if the target of the treatment had negative attributes or had behaved in a negatively valued manner. In two vignette studies and one field survey, this deservingness hypothesis was well supported; in one, disrespectful treatment of a protagonist who had behaved negatively was judged as more fair than respectful treatment—a prediction that cannot readily be explained by the group value theory. Subsequently, Sunshine and Heuer (2002)

surveyed civilians about a recent encounter with a New York City police officer. This study also provided strong support for the deservingness hypothesis.

More recently, Heuer, Sivasubramaniam, & Ray (2014) conducted a vignette study that contrasted the predictive utility of deservingness versus group values for judgments of procedural justice, distributive justice, and procedural satisfaction. Participants read a fictitious news story modeled on the 1989 Central Park jogger assault, and a description of the police interrogation of a suspect. This study varied the police interrogation tactics so that half of the participants read that the police employed tactics advocated by the Reid manual (Inbau, Reid, Buckley, & Jayne, 2013), tactics we argue are biased, untrustworthy, and disrespectful, such as lying about the evidence, and discouraging the defendant from having a lawyer present during the interrogation. The other half of the participants read that the police treated the suspects with greater respect, trustworthiness, and respect. The analyses of the observers' judgments of procedural fairness, outcome fairness, and satisfaction with treatment included measures of group value criteria (trust, neutrality, and respect) as well as participants' judgments that they had received the treatment they deserved. In order to pit these two models against one

Usefulness model with 2 mediators: GV, Deserve (Heuer, Sivasubramaniam, Ray, 2014)

Independent Variable	**Procedural Justice**		**Procedural Satisfaction**		**Distributive Justice**	
	Alone (%)	**Unique (%)**	**Alone (%)**	**Unique (%)**	**Alone (%)**	**Unique (%)**
Group value (T, N, S)	.20	.03	15	01	.17	.01
Deserve	***.35***	***.18***	***42***	***28***	***.51***	***.35***

another, we employed a "usefulness" analysis, analogous to one employed by Tyler (1989) to compare the predictive validity of competing theories. In Tyler's (1989) analyses, he compared the variance accounted for by competing models (absolute outcomes, relative deprivation, process and decision control, and group values) when each models' critical variables were entered alone in a regression equation, and when each model's critical variables were entered in the last step of the regression equation predicting procedural satisfaction. The table below reports a summary of our use of the same procedure to pit the deservingness model against the group value model for predicting procedural justice, procedural satisfaction, and distributive justice. The table clearly shows that the deservingness construct is accounting for a considerable portion of the variance in these models, leaving rather little unique contribution for the group value variable.

The **neglect of this deservingness view in procedural justice theories** is particularly striking in light of its centrality in thinking about justice throughout history, and throughout much of the post-World War II theorizing about distributive justice in psychology. The study of social exchanges moved from Stouffer, Suchman, DeVinney, Star, & William's (1949) relative deprivation analysis to equity theories of fairness that distinguished between the outcomes people wanted and those they thought they deserved (Adams, 1965; Homans, 1961; Walster, Berscheid, & Walster, 1976; Walster, Walster, & Berscheid, 1978). Likewise, relative deprivation theorists (e.g., Crosby, 1976; Davis, 1959; Gurr, 1970; Runciman, 1966) consistently included feelings of deservingness as crucial to the negative reactions stemming form relative deprivation. In fact, Crosby's (1982) study of working women led her to conclude that only two preconditions were essential for relative deprivation: lesser outcomes than one wants and lesser outcomes than one deserves.

The proposed study of judicial behavior in housing disputes includes measures necessary to compare the predictive validity of a deservingness theory with Thibaut and Walker's (1975, 1978) control theory and the group value theory. We note here that a reviewer of a previous submission of this proposal expressed skepticism concerning the plausibility of a housing court litigant admitting to negative behaviors that would lead them to agree that they were less deserving of respect than others who reported positive behaviors. Our own evidence in numerous studies is that we have routinely captured sufficient variance in respondents' reports of the value of their behavior (VOB) to show that matches between their behavior and their treatment are deserved, and fair. For example, in a vignette study (Heuer et al., 1999) actually found that respondents who imagined themselves as having behaved in a negative manner reported disrespect was fairer than respect. The same paper showed that matches between self-reported social self-esteem and respectful treatment by the police accounted for significant variance in their reports of how fairly they had been treated. Sunshine and Heuer's (2002) survey of New York civilians concerning an encounter with a NYC police officer captured sufficient variance in their reports of the value of their behavior to support the hypothesis that matches of the valence of their behavior and the treatment the received from the police officer were strongly predictive of their judgment of the fairness of the police officer's behavior. In light of these prior findings, we are optimistic that surveys of housing court litigants will reveal sufficient variability in their reports of the value of their behaviors that led to their litigation, and their responsibility for those behaviors to allow us to detect a similar pattern in this courtroom setting.

Decision maker versus Decision recipients concern with procedural fairness

Research has repeatedly shown that procedural justice influences satisfaction with procedures and outcomes, and that procedural justice judgments are based on procedural, rather than distributive criteria. Numerous studies have also shown that fair treatment is a better predictor of satisfaction with the courts than either absolute outcome or outcome fairness (Tyler, 1984, 1989) and that procedural justice judgments are more responsive to relational concerns such as respect, than to instrumental concerns such as decision control (Tyler, 2001). This finding is sufficiently well

established that Brockner and colleagues (2001) referred to it as “one of the most robust findings in the justice literature” (p. 301). However, this research has focused almost exclusively on the targets of treatment.

In a departure, Heuer, Penrod, and Kattan (2007) surveyed federal appellate court judges in two studies. Judges in both studies read a fictitious appellate case in which an airline passenger challenged the constitutionality of a search prior to boarding a commercial flight. The results of both of these studies of decision makers stood in stark contrast to the vast majority of the research on decision recipients: of the manipulated variables of the search procedure (respectful versus disrespectful) and search outcome (finding a stolen credit card versus a concealed weapon), ***only the outcome manipulation influenced the judges’ decision in this case; neither the procedure manipulation nor the measures of respect or bias added significantly to the prediction of the judges report of fair procedures or fair outcomes (despite the fact that the effect size of the procedure manipulation was considerably greater than the effects size of the outcome manipulation)***. ***A second survey of judges produced nearly identical results.***

These findings suggest considerably different justice standards for decision makers than for decision recipients. However, additional studies have not been reported in the published literature. Our proposed courtroom study permits an opportunity to re-examine the importance of one’s role in a conflict for shaping concerns with procedures versus outcomes. The present study permits an opportunity, by surveying both judges and litigants, and posing questions to both parties concerning their judgments of the way they treated the other (decision maker) and of the way the other treated them (decision recipient), to test the replicability of this finding in an actual courtroom proceeding.

Research Methods

With assistance from the Chief Judge (see letter of support) a sample of 40 judges will be recruited from the New York City Housing Court to provide data on ten proceedings each (five prior to training and five following training)—for a total of 400 cases. At the conclusion of the proceedings the judges, the attorneys, and one or more parties per side will be asked to complete a post-proceeding questionnaire before being dismissed. The questionnaire (rendered in multiple languages) will be constructed to address the issues raised above and below. Portions of the questionnaire will ask the judges to provide a synopsis of the most significant charge/complaint advanced in the proceeding together with their interpretation and evaluation of the case, the evidence, and the law applicable to the complaint. The method thus not only permits direct comparison of responses from alternative proceeding sources, it also makes use of direct evaluations of responses by the proceeding judge. The completed questionnaires and follow-up evaluations will serve as the basis for examining the impact of relevant variables on the major outcomes.

Greiner & Pattanayak (2011) report the results of a study of the effects of offering legal representation in employment cases. In the article they roundly criticize prior studies on the effects of representation. Those prior studies have largely been case-file observational studies (no randomization of assistance and no interventions). They note:

> The 2006 Boston unemployment study, the seven juvenile delinquency studies, and the other non-randomized studies referenced above, all relied on the same "design," namely, a review of case files to determine the success rate for cases with representation versus the success rate for cases without representation. A few of these studies included regressions in an attempt to "control for" certain variables.
>
> Our claim here is that this design cannot at present succeed in this area. More specifically, case-file-based observational studies referenced above generally suffer from three sets of methodological problems: the failure to define an intervention being studied, the failure to account for selection effects (which come in multiple layers), and the failure to follow basic statistical principles to account for uncertainty."(p. 57)

Several elements of our design permit us to avoid these problems. First, we will have a standard training intervention--the components of which can be readily identified and implemented elsewhere. The training is broad in scope which should help to assure that if training can affect judges' behavior (and perceptions of their fairness), our training program should accomplish that. If effects are demonstrated, subsequent research can be undertaken to determine which aspects of the training produce which changes in behavior and perceptions of their fairness.

By using a before and after design in which cases are randomly assigned to judges whose cases prior to and after training can be compared (judges serve as their own controls) we eliminate almost all the selection effects that dog observational studies (we cannot coerce judges into participating in the training -- though we expect that everyone selected (at random) will do so -- thus there is the slight possibility that training could have different effects on judges who more inclined to take the training as opposed to those who are not so inclined. Random selection for participation eliminates regression-to-mean selection effects and there is no reason (or opportunity) for reporting effects to arise. Our design can also address the more common threats to before-after studies. Because we anticipate running training in three groups over a period of several months, we will have training cohorts which allow us to test and control for history effects. We can have a randomly-selected portion of each training group (e.g., 25%) from whom we collect data only on post-training cases which will permit us to test for testing effects. Instruments will be the same pre- and post-training. We do not anticipate drop-out effects though it is not unreasonable to think there could be maturation effects in the form of reversion to past practices -- the time-frame for the study will not allow a sensitive test of such changes though it will be possible to test whether length-of-time-since-training is related to outcomes.

Observation of Proceedings

Proceedings are relatively short—the public portions may average 10 minutes each with a range of between 5 and 20 minutes. We will send a trained observer to code a number of aspects of the public proceedings of the 400 cases which will constitute the focus of the study. The observer will coordinate their observations with the court clerks to assure that the observational and survey data are aligned. We have budgeted 50 days observation time in order to assure that 400 cases can be covered.

Survey of Participants

The survey methodology to be used is an adaptation of methods Heuer, and Penrod have used in field experiments in Wisconsin, California, Minnesota and nationally. This methodology was also employed in a widely-cited nationwide experiment (Heuer & Penrod, 1993a; 1993b). In that project, judges were recruited and asked to undertake random assignment of proceedings to allow jurors to ask questions or take notes. At the conclusion of each proceeding jurors, attorneys and the judge were asked to complete questionnaires and were given stamped, preaddressed envelopes in which to return the questionnaires. Many judges who agreed to random assignment of cases had the participants complete their questionnaires while they were still in the courtroom, a procedure which produces a very high response rate (and which we will endeavor to emulate for this study). The mixture of in-court and post-proceeding mail-backs produced an overall response rate from jurors of 81%. Response rates for judges and attorneys were also high (94% and 69%, respectively). Although recruitment for participation in that study (which required agreeing to random assignment of cases to procedures that many judges feel uncomfortable with) was slow due to the length and infrequency of full trials, the project clearly demonstrated that judges and court personnel can manage the distribution and completion of questionnaires.

A similar methodology was successfully employed by Munsterman, Munsterman, and Penrod (1990) in an experimental study of 8- versus 12-person juries in municipal courts in Los Angeles County, CA. In that study proceedings were randomly assigned with pre-proceeding questionnaires being completed by prospective jurors, a questionnaire completed by the court clerks while the proceeding progressed (designed to assess the time devoted to various aspects of the proceedings), and questionnaires completed by the judge and the attorneys during deliberation (to secure predicted outcomes) and after deliberation (to secure evaluations of the jury verdict). The same individuals and the jurors also completed questionnaires after the verdict was rendered. There were very high completion rates for questionnaires: all court clerks for the 117 completed proceedings, 90% of jurors, judges, and attorneys, and 50% of the litigants.

It should be emphasized that the questionnaires employed in prior studies have been fairly long (sometimes as long as 20 pages and over 125 items). Nonetheless, it is clear that proceeding participants are interested in reporting their experiences and questionnaire completion rates have consistently been very high, particularly when, as

in the proposed study, the questionnaires are mostly completed in the courtroom at the end of the proceeding.

Dependent Measures (Similar items will be used across both studies for measuring comparable constructs)

Evaluations of the judges' engagement, proactivity, and perceived neutrality. The NY guidelines for judges yield a number of apt measures including whether the following were ascertained by the judge:

The identity of the parties.
The authority of the signatory to the stipulation.
If the pro se litigant understands and agrees to the terms of the stipulations.
If the litigant understands the effect of non-compliance of the stipulation by either side.
Whether the litigant understands that he or she may try the case.
Whether the litigant's claims and/or defenses were discerned and understood.
If the litigant understands available options.
If the litigant indicates that he/she intends to apply for public assistance benefits that an appropriate rent breakdown is included in the stipulation.
If the litigant understands the implication of a non-satisfied judgment.
Whether a pro se litigant's claims or defenses were adequately addressed prior to ordering any stipulation.
Whether the judge used a court attorney to assist in determining litigants' claims and defenses and their understanding of all available options
Whether the conference was satisfactory and helpful in reaching an agreement.
Whether there are areas in which additional guidance to judges would aid judges in conduct settlement reviews. (Major Sources: Observer, Judge, Attorneys, Parties)

Fairness. Example items--drawing on Heuer & Penrod prior and related research (NCAJ litigant survey 2012)—these variables are also particularly relevant to Study 2—the multifactor experiment:

Procedural Fairness: The judge treated me fairly during this hearing. The procedures employed in this hearing were fair.
Trustworthiness: The judge was concerned about my welfare. The judge cares about me. The judge tried hard to be fair to me.
Neutrality: The judge was neutral and unbiased. The judge was impartial.
Respect: The judge treated me respectfully. The judge treated me with dignity. The judge was polite to me. The judge looked out for my rights.
Outcome Fairness: The judge's decision was a fair one. The outcome of this case was fair.
Deservingness (Treatment): Given my behavior and my character over the course of my relationship with the other party in this case, I think the judge's treatment of me was (better than I deserved....exactly as I deserved....worse than I deserved). Overall in this hearing, I think I was treated (better than I deserved....exactly as I deserved....worse than I deserved)

Procedural Satisfaction: I am satisfied with the hearing procedures that were employed in my case. I am satisfied with the way this hearing was conducted.
Beliefs about Legitimacy/Obligation to Obey: I feel obligated to obey the judge's decision. I think I should do what the judge ordered, even if I think the judge is wrong. I am confident that NY Housing Court judges do their job well. I think that people's basic rights are well protected by the judges in this court.
Outcome Satisfaction: I am satisfied with the judge's decision in my hearing. I am pleased with the outcome of my case. (Major Sources: Observer, Judge, Attorneys, Parties)

Case characteristics. Measures of proceeding characteristics (drawing upon the measures employed by Heuer and Penrod, 1993a, 1993b) will include; nature of complaint, numbers of witnesses and exhibits, length of proceeding; types of evidence offered; evaluations of the proceeding evidence (e.g. consistency, strength, relative balance across parties, clarity, etc.); evaluations of the proceeding witnesses; perceptions of witness credibility, seriousness of the case, and assessments of evidence and legal clarity, completeness, helpfulness. (Major Sources: Observer, Judge)

Outcome Measures. Following Greiner, Pattanayak & Hennessy (2012): which party ends up in possession at the end of the dispute, the amount of time given to those who had to move out, evictor's months of lost rent, amount of any money judgment, case length in days, number of times judge interacted with case, number of times judge issued a contested ruling, number of pre-judgment and total number of motions filed, compliance. (Observer, Parties)

Participant characteristics. All respondents will be asked for a limited amount of standard demographic information and especially about their legal, educational and work experience. Only characteristics thought to bear on basic questions will be assessed. (Major Sources: Observer, Judge, Attorneys, Parties)

Process Ratings. Parties/attorneys will be asked to report on and evaluate various aspects of their own decision making process including: judgments about the most significant complaint advanced in the proceeding, the most compelling evidence offered by both sides, interpretation of critical elements of law applicable to this charge/complaint; assessments of the extent of compromise in resolutions; perceptions of the fairness of the law; perceptions of fairness in the proceedings; primary rationales for resolutions; and ratings of the major proceeding participants by one another on dimensions such as effectiveness and bias (attorneys, and judge). We will also assess the extent to which parties relied on guidance by the judge (with particular attention to the question of whether such reliance increases the likelihood that the proceedings were perceived as fair by the parties).

Respondents will also complete standard, structured questions about the resolutions (including ratings of the reasonableness of resolutions and speculations about reasons for unreasonable resolutions). The completed questionnaires will serve as the basis for

assessments of agreement among lawyers, judges, and parties about critical aspects of the evidence, procedures and the law and exploration of the impact of procedure variables on perceptions of the fairness of procedures and outcomes. Whenever questions are open-ended, they will be highly structured in order to elicit highly relevant responses. (Major Sources: Attorneys, Parties)

Sample. Data on a total of 400 cases will be sought. An effort will also be made--within the limits of research resources--to collect data on additional cases from judges who are willing to continue participation.

This methodology permits direct comparisons of judge, attorney, and party assessments of the same proceeding (outcomes, fairness, evidence, witnesses, law, etc.) and **n's for many analyses will exceed 1000.** Furthermore, we anticipate that we and other researchers can build on this sample with further studies employing similar methods and instruments.

Coding of Case Files. An important resource supporting the study is the pool of law students and lawyers made available by the National Center for Access to Justice through its affiliation with the Pfizer Legal Alliance -- a consortium of 15 top law firms that handles the general commercial legal work for the Pfizer Corp, and that is also committed on a pro bono basis to supporting initiatives with significant potential to increase access to justice.

Through this affiliation, approximately 50 law students and/or attorneys can help to carry out important parts of the proposed study, including the following:

i) Observe Allocutions: observing housing court eviction allocutions to determine whether presiding judges are engaged and proactive in this phase of the case in which they are obligated to review proposed stipulations for fairness;

ii) Assess Development of Legal Claims. The students and attorneys are particularly well-situated to review case files to determine whether certain legal claims and defenses were available to the litigant but not articulated in the settlement review by either the litigant or the judge,

iii) Review Stipulations. Reviewing the final stipulations of settlement to determine whether claims or defenses were included,

iv) Interview litigants – Complement surveys with interviews assessing perceptions of fairness.

Participating students and attorneys will receive training on the nature of housing court eviction proceedings and on the responsibilities of judges to ensure fairness of those proceedings for litigants who are not represented by counsel. They will be specifically trained on how to perform each of the four tasks described above. The training will include presentation of a role-playing scenario in which they will learn how to determine

whether settlement proceedings are fair and whether judges are appropriately engaged in assuring fairness. Training will be provided prior to the commencement of the students' roles in the study. An additional training session will be provided a third of the way through the students' participation in the study, so that questions can be surfaced and addressed. The training will be carried out by housing court judges, housing court lawyers, and coordinated by the National Center for Access to Justice.

Major Project Tasks

Task A. Advisory Panel: The advisory panel will be constructed in consultation with the National Center for Access to Justice and the New York Courts and composed of a mixture of experienced court researchers, a judge, and a proceeding lawyer. The panel will consult at three phases of the research project. Once the panel is assembled, members will receive a copy of the full-scale proposal together with a set of well-developed research plans. The panel will have as its principal tasks: 1. Settling the final details of the research designs, with particular attention to the scientific strengths of the final designs, including a consideration of such issues as the internal validity of the study and the generalizability of findings. 2. Establishing the final dependent measures to be used in the study.

Once the data are collected, the panel will once again be consulted during the data-analysis and write-up phases. The panel will receive summaries of on-going data-analysis results and their suggestions for additional analyses and interpretations will be solicited. The panel members will also receive copies of write-ups for commentary and suggestions for revisions. (200 hours)

Task B. Design of Dependent Measures and Observation and Survey Instruments: As in similar studies the PI and consultants have conducted in the past, the instruments will be designed to assure comparability across different respondents (i.e. to the extent possible we will ask the same questions of judges, attorneys, and parties). Furthermore, all the instruments will include critical questions designed to address the questions raised in each of the topic areas we have noted above. (150 hours)

Task C. Solicitation and Training of Judges: We anticipate little difficulty in securing cooperation insofar as the study does not require random assignment of cases to experimental conditions (a factor that somewhat impeded recruitment of judges in our earlier studies). The Chief Judge will facilitate recruitment and it is likely all judges will ultimately undergo training. The plan is to have training staggered to assure there is time to collect data on cases prior to and after training. (120 hours)

Task D. Courtroom Observations: (400 hours)

Task E. Distribution and Return of Survey Instruments: The survey study will be built around packets of questionnaires distributed to participating judges and their clerks in advance of their proceedings. The standard procedure will entail distribution to and completion of questionnaires in the courtroom at the conclusion of the proceeding. In

proceedings where this may not be possible, questionnaires will be distributed at the conclusion of the proceeding and respondents will receive prepaid return envelopes in which to return questionnaires. (200 hours)

Task F. Data Analyses. As in previous studies, a variety of multivariate techniques will be used. First, in order to minimize redundancy in variables and maximize the reliability of the measures actually employed in final analyses, interrelated sets of variables will be subjected to principal component analyses designed to guide construction of a smaller number of scaled indices. This data analytic strategy is well-illustrated in the reports on the Heuer and Penrod (1993b) study and in other publications in peer-reviewed journals. We are acutely aware of the problems of multi-collinearity that can appear in data with large numbers of measures. However, we value parsimony and elegance as much as the next data-analyst/theorist and we are fully prepared to employ multivariate strategies such as principal component analysis, scale construction, and hierarchical analyses to reduce our data sets to their essentials in order to minimize Type I errors. We are also sensitive to the differences among statistical, practical, and theoretical significance and believe that we can educate our readers to those differences in our analyses and write-ups. In any event, we are delighted (even mandated) to share our data with anyone who might wish to second-guess us in analysis and interpretation. (data coding: 20 hours, analysis and write-up: 200 hours)

The PIs are experienced survey and experimental researchers. Heuer has conducted surveys in court settings (Heuer & Penrod, 1988, 1994a, 1994b), and with police officers (Sunshine & Heuer, 2002), and with civilians in naturalistic contexts (Heuer et al., 2002), and Penrod has used the survey methods employed here in research dating back to his dissertation (1979), he has taught graduate courses in research design (including questionnaire construction, sampling, and telephone and mail techniques) regularly over the past thirty years. In addition, in his consulting work he has frequently conducted surveys in support of change of venue motions, generated survey evidence for proceeding presentation, and has conducted surveys for several courts—e.g., a survey of attorneys in 500 cases from the Federal District Court of Minnesota as part of its mandated cost and delay study (a double-mailing study with a 65% response rate to a 120 question questionnaire).

Products and Evaluation.

We anticipate preparing a series of research papers that will focus on each of the principal issues addressed in the study. Each research report will include a short overview of the problem, recount prior research and writings on the topic, explain our methods and report findings in a manner that can be understood by judges, court administrators, legislators, and business leaders.

Broader Impact. The implementation of issue-specific eyewitness jury instructions is clearly gaining popularity with the court systems; however, such instructions are relatively new and not all states have yet adopted the use of such instructions. Researchers have the opportunity to be on the forefront of legal policy by examining

various forms of these instructions and can provide the courts with valuable information about whether issue-specific eyewitness instructions are effective and if so, the method and content of specific instructions that will be most effective in sensitizing jurors to eyewitness evidence. This research will also add to the body of psychological literature on safeguards against misidentifications. Proper methods of sensitizing jurors to eyewitness evidence have become all the more imperative in light of emerging statistics about the high percentage of eyewitness misidentifications contributing to wrongful convictions. The results from this research will also provide attorneys with valuable information when preparing requests for the administration of proper safeguards, such as the admittance of eyewitness expert testimony and/or issue-specific eyewitness jury instructions.

The project will add to our research infrastructure through the training of PhD students (the PI's prior PhD students have won a total of 11 dissertation prizes for their research and many of his MA-level students have chosen to pursue PhDs). The PI is the recipient of APA's 2005 Raymond D. Fowler Award for outstanding contributions to the professional development of students. The PI has regularly shared his stimulus materials, measures and data sets with other researchers. We will disseminate the results from this research at annual psychology-law conferences, scientific journals geared toward psychology and law, and law reviews.

John Jay College is a senior college within the City University of New York (CUNY). Over sixty percent of the undergraduates are minority students. The College is a Minority and a Hispanic Serving Institution (HSI). The undergraduates originate primarily from lower income families living within the 5 boroughs of New York City, New Jersey, and lower New York State. The undergraduate major in Forensic Psychology annually awards the third-largest number of psychology bachelor degrees to Hispanic students--in the nation. There is a strong interest among undergraduate and masters students in the department in gaining experience in this area of research.

Prior NSF Support (Penrod):

NSF 0921633--Factors influencing plea bargaining decisions by prosecutors and defense attorneys. ($93,200, 09/09-08/11).
Intellectual Merit. 256 practicing defense and prosecuting attorneys and 128 undergraduate student mock jurors evaluated an eyewitness identification case file (attorneys) or trial scenario (jurors) in which cross v. same race, duration of exposure, stress, witness confidence, lineup instruction bias, lineup fairness, sequential v. simultaneous and presence of a non-identifying co-witness were manipulated. Attorneys were mostly insensitive to the manipulations. Jurors' verdicts were sensitive to eyewitness confidence and they were more likely to find the eyewitness identification believable if the lineup was presented in sequential format. In a second study 256 attorneys evaluated a case crossing good v. poor eyewitness identification conditions*, witness confidence, the presence of other evidence*, crime seriousness, prior offenses*, media coverage*, defendant claim of innocence* and defendant desire to take a plea*. Prosecutor judgments were influenced by variables denoted with *.

Broader Impacts. The graduate research assistants gained experience in research design, web page construction, participant recruitment, data analysis, conference presentations and preparation of manuscripts for publication. Dr. Jennifer Beaudry (USC-Beaufort, now at Swinburne Univ) received a related Supplemental Research Opportunity Award Program which allowed her to spend several weeks at John Jay College during which time she learned new web-programming skills as part of a new study. Undergraduate students at USC-Beaufort learned important skills regarding participant recruitment, web page construction, and data analysis.
Products. Three conference presentations and manuscript under review.

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