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Great Expectations? Comparing Litigants' Attitudes Before and After Using Legal Procedures

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Objective: To examine whether litigants' initial attraction to legal procedures (e.g., mediation, hearings, jury trials) predicted their postexperience evaluations of the procedures and whether attendance moderated this relationship. ***Hypothesis:*** Litigants' initial attraction to the legal procedure that later resolved their case would better predict postexperience satisfaction and fairness for litigants who adjudicated versus settled. I also explored whether the predicted relationship would vary as a function of litigants' attending the procedure and when case duration, lawyer involvement, and litigants' repeat player status were included in the models. ***Method:*** Four hundred-twelve state court litigants rated their attraction to different legal procedures at the start of their cases and 335 (81.3% retention) rated their satisfaction with, and fairness of, the procedure that ultimately resolved their case. ***Results:*** Initial attraction to and ex post evaluations of legal procedures were more strongly related among litigants who adjudicated versus settled, but this association did not hold when the covariates were included. Instead, lawyer involvement and shorter duration were associated with increased ex post satisfaction and fairness. For litigants who personally attended their procedure, initial attraction was unrelated to later evaluations of fairness and those who settled evaluated their procedure as fairer compared to those who adjudicated. By contrast, for litigants who did not attend, initial attraction was positively related to later fairness evaluations and there was no fairness difference between settlement and adjudication. The same attendance patterns emerged irrespective of whether the covariates were included. ***Conclusions:*** Lawyer involvement and shorter case duration better predicted litigants' evaluations of legal procedures than their initial attraction to procedures. Attendance was associated with increased fairness evaluations for settlement relative to adjudication and initial attraction was positively related to fairness only when litigants did not attend their procedure.

Public Significance Statement
Lawyers may wish to consider educating their clients as to what might be possible in different legal procedures, potentially increasing the fit between initial attraction and later evaluations. Because clients are more likely to misunderstand what settlement procedures entail, client education can be especially valuable with respect to settlement options. Decisions to attend legal procedures should be informed, in part, by the type of legal procedure that is contemplated because attendance was associated with more positive fairness evaluations for settlement than adjudication. Future research should more closely examine the interplay between lawyer involvement, initial attitudes, and attendance to better understand and predict how litigants evaluate legal procedures.

Keywords: litigants, procedural justice, courts, dispute resolution, field study

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This work is part of a multiyear study that produced a large dataset intended for multiple projects. None of the analyses presented in this article appear in other publications. Some of the dataset produced the following: Shestowsky, D. (2014). The psychology of procedural preference: How litigants evaluate legal procedures ex ante, *Iowa Law Review, 99*, 637–710; Shestowsky, D. (2016). How litigants evaluate the characteristics of legal procedures: A multi-court empirical study. *University of California Davis Law Review, 49*, 793–841; Shestowsky, D. (2017). When ignorance is not bliss: An empirical study of litigants' awareness of court-sponsored alternative dispute resolution programs. *Harvard Negotiation Law Review, 22*, 189–239; Shestowsky, D. (2018). Inside the mind of the client: an analysis of litigants' decision criteria for choosing procedures. *Conflict Resolution Quarterly, 36*, 69–87.

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Many judges and lawyers believe that disputants primarily care about objective metrics of winning or losing (Hensler, 2002; National Center for State Courts, 2005; Relis, 2007). Yet, one of the most striking discoveries from the procedural justice literature is that laypeople's subjective perceptions are strongly related to their postexperience evaluations, as well as their compliance with case outcomes and the law more generally (McEwen & Maiman, 1984; Tyler, 1990; Umbreit, Coates, & Vos, 2004). Despite these long-established findings, legal scholars and researchers have overlooked one potentially important aspect of subjective assessments: initial attraction to legal procedures. Does litigants' initial (ex ante) attraction to legal procedures predict their postexperience (ex post) evaluations?

To answer this question, I conducted the first prospective study of the relation between litigants' ex ante attraction to legal procedures and their ex post fairness and satisfaction assessments of the same procedures. This project responds to a call from scholars to improve the dispute resolution literature by integrating research from multiple disciplines (Arnold & Carnevale, 1997; Hensler, 2000). The analysis draws on the fields of social psychology, social justice, and law to create a more nuanced understanding of the litigant perspective on litigation. In the literature review, I discuss the relevant procedural justice research, emphasizing the work that distills procedural preferences. I then review the field studies that examine how litigants evaluate procedures, which I relied on to formulate the hypotheses.

The Evolution and Limitations of Procedural Justice Theory

Early research concerning how laypeople form justice judgments focused on distributive fairness issues, rather than procedural ones, by examining how people evaluate outcomes and resource distribution (Tyler, 2000). Thibaut and Walker's (1975) ground-breaking empirical research, which shifted the focus from distributive to procedural justice, revealed why the emphasis on outcomes was incomplete. They argued that people's subjective perceptions of process (i.e., how outcomes are determined) were equally, if not more, important predictors of satisfaction as the outcomes themselves. Using laboratory experiments, their early work revealed that disputants' judgments about procedural fairness influence their evaluation of dispute resolution, and that they prefer fair procedures (Thibaut, Walker, LaTour, & Houlden, 1974). Disputants also value procedures that allow them (as opposed to third parties) to have process control by having "voice" or the opportunity to share one's story or side of the dispute (Thibaut & Walker, 1975). Their insights sparked a second wave of justice research, which shifted the focus away from distributive issues and toward procedure. This work revealed that individuals perceive procedures as fairer when they have the opportunity to present information relevant to the outcome (Folger, 1977; Lind, Kanfer, & Earley, 1990; Thibaut & Walker, 1975).

Thibaut and Walker's framework motivated hundreds of studies on the antecedents and consequences of procedural justice judgments, and how fairness evaluations predict preferences for procedures. Studies within this paradigm have used different dependent measures, including satisfaction and fairness. Further, some researchers treat satisfaction and fairness as equivalent concepts, whereas others argue that they are distinct (Shestowsky & Brett, 2008; van den Bos, Wilke, Vermunt, & Lind, 1998).

These variations notwithstanding, one goal of procedural justice research has been to determine which procedures disputants tend to prefer. And yet, this literature has reached different conclusions regarding procedural preferences, even on the broad issue of whether disputants generally prefer settlement to adjudication. Some studies conclude that disputants prefer adjudicative procedures to nonadjudicative (i.e., settlement) options, whereas others suggest the opposite (Shestowsky, 2008). Shestowsky argued that methodological differences amongst studies may explain this apparent contradiction. A close analysis reveals that preexperience research (typically, laboratory studies) tends to find a preference for adjudicative procedures, whereas postexperience research (primarily field studies) generally points to a preference for settlement. Thus, disputants' attraction to various alternatives may depend on the stage of litigation at which researchers assess their perceptions (Shestowsky, 2008; Shestowsky & Brett, 2008). This analysis highlights the importance of investigating litigant attitudes across the entire trajectory of their disputes.

The dearth of research attempting to clarify the inconsistent findings regarding preferences exemplifies earlier critiques that procedural justice studies fail to capture the contextual factors that characterize real disputes (Hayden & Anderson, 1979). The literature has, for example, overlooked a potentially important predictor of litigants' ex post satisfaction and fairness evaluations: their initial attraction to those procedures. These attitudes have great significance from a practical standpoint because litigants do not always use their favored procedures—in fact, for a variety of reasons, they may end up using options that they find unattractive. For example, litigants may be subject to predispute agreements that require them to use a specific alternative (e.g., arbitration clauses). Alternatively, in courts with mandatory alternative dispute resolution programs, litigants often have no choice of procedure, with the court directing them to a specific option such as mediation or nonbinding arbitration, based on the legal issues involved or the amount of money at stake. In these cases, litigants may proceed to trial only if the procedure fails to settle the dispute. Although some courts have policies that allow litigants to opt out of their mandatory program with the consent of all parties or offer voluntary programs that simply encourage the use of alternative dispute resolution, in these instances the party with more bargaining power might dictate which procedure is used. Moreover, litigants who dislike the idea of a trial might become involved in one only because the opposing party refuses to settle. Given that some litigants ultimately experience their preferred procedures while others use options that they disfavor, and due to the fact that many courts mandate or encourage settlement, it is important to understand the relation between litigants' initial attraction to legal procedures and their ex post satisfaction and perceptions of fairness.

It is also critical to understand the relation between ex ante and ex post attitudes because of the practical consequences associated with favorable ex post evaluations. Research has shown that people's subjective perceptions of dispute resolution experiences animate their compliance with case outcomes (McEwen & Maiman, 1984; Umbreit et al., 2004), meaning that we would expect fewer breach of contract claims from settlement procedures, and fewer appeals from adjudication, when litigants use procedures they

deem just. Moreover, when people regard procedures as fair, they view the legal system as more legitimate and are more willing to respect the law (Murphy, Tyler, & Curtis, 2009; Tyler, 1990). It would be useful to discover whether ex ante attraction to procedures predicts ex post attitudes, and what variables might influence or shift that predictability. Examining this issue requires a prospective study design that measures litigants' attitudes toward procedures both before and after using them. To my knowledge, this project is the first such investigation.

Prospective Research Refining Procedural Justice Theory

To date, only two empirical projects have examined litigants' perceptions regarding legal procedures ex ante as well as ex post (Shestowsky & Brett, 2008; Tyler, Lind, & Huo, 1999). The first investigated whether litigants prioritize different evaluation criteria at these two timepoints (Tyler et al., 1999). Across four studies, Tyler and his colleagues found that instrumental factors relating to the desire to maximize self-interest (usually monetary gain) better predicted laypeople's ex ante (and hypothetical) procedure preferences compared to relational factors (e.g., respect and fair treatment). However, the relative importance of these factors reversed for postexperience assessments (e.g., how likely participants indicated they were to use the same procedure for a similar future dispute). Thus, evaluation criteria differed depending on whether they made their assessments after resolving their dispute or at some point earlier (or based on ex ante evaluations vis-à-vis hypothetical disputes). While one of their studies (Study 3) compared ex ante and ex post impressions of procedures for real-life conflicts, none compared ex ante and ex post data from the same sample, and thus the observed temporal switch might have resulted from differences in the disputes or participants studied at each timepoint.

The second relevant study assessed ex ante and ex post impressions across the same litigants and cases (Shestowsky & Brett, 2008). Within two weeks of their case-filing date, the researchers asked state court litigants to rate their initial attraction to 14 legal procedure characteristics in the context of their specific case. Each of these characteristics pertained to one of three aspects of case administration: (a) who determines the outcome of the dispute and how (e.g., the parties decide on their own, a neutral third person decides but either party can reject the decision); (b) how the process evolves (e.g., the parties speak freely to each other, the parties speak only in response to a question from a third party); and (c) what substantive rules or norms resolve the case (e.g., court rules, standards or norms that the parties choose for themselves).

Shestowsky and Brett found that litigants tended to group these characteristics in terms of how much control they offered to the litigants themselves versus third parties. This finding aligns with laboratory research demonstrating that laypeople distinguish amongst procedures based on their party control versus third-party control attributes (Conlon, Lind, & Lissak, 1989; Shapiro & Brett, 2005; Tyler, Rasinski, & Spodick, 1985), where control is generally defined in terms of the ability to shape the outcome or the process used to reach that outcome. After their cases ended, Shestowsky and Brett surveyed litigants again and determined whether they resolved their disputes through adjudicative or nonadjudicative (i.e., settlement) options. Though litigants' initial attraction to third-party control positively related to ex post satisfaction with adjudication, initial attraction to party control was not associated with how satisfied they were with settlement. The researchers operationalized satisfaction by combining postexperience procedure satisfaction and fairness ratings.

Litigants who settle might not experience the party control they expected their settlement procedure to provide, which could explain the observed lack of a significant positive relation between ex ante attraction to disputant control and satisfaction with settlement (Shestowsky & Brett, 2008). Laboratory research that has manipulated expectations for voice—a key feature of party control—supports this view. Despite procedural justice studies consistently finding a strong relation between the opportunity for voice and satisfaction with dispute resolution procedures, people who expected a voice procedure or were not led to expect a particular type of procedure judged procedures that offered the opportunity for voice as more fair than procedures that did not, but those who expected a no-voice procedure judged voice options as less fair than no-voice options (van den Bos, Wilke, & Vermunt, 1996). These findings highlight the importance of understanding ex post evaluations in the context of ex ante perceptions.

A misalignment between ex ante attraction to party control and ex post satisfaction with settlement could also be caused by the relatively greater predictability of adjudication compared to settlement. Settlement options such as negotiation and mediation are more flexible and informal compared to adjudication, making the difference between what actually occurs in settlement and what litigants believe it will be like potentially greater than the difference between what parties envision adjudication looks like and what actually occurs in adjudication.

The limited research comparing litigant attitudes toward procedures at different timepoints paints a complex picture. Some pre- versus postexperience evaluation work suggests that initial attraction to procedures might not predict ex post judgments (Tyler et al., 1999). If litigants use different evaluation criteria at the two timepoints, as proposed by Tyler and his colleagues, alternatives that fare better on ex ante versus ex post metrics might produce muted ex post satisfaction, whereas ones that perform worse or the same on ex ante criteria versus ex post criteria might produce different patterns, making predictions challenging unless procedures are differentiated analytically. Shestowsky and Brett's (2008) findings suggest that procedure type might be one source of difference and raise the possibility that litigants' initial attraction to procedures will better predict ex post evaluations for adjudication compared to settlement. If litigants' initial attraction to legal procedures better predicts ex post attitudes for adjudication compared to settlement, it would be valuable to explore whether litigants' attendance at procedures moderates the effect of procedure type on the association between initial attraction and ex post evaluations.

The Potential Moderating Effect of Attendance on the Relation Between Ex Ante and Ex Post Attitudes Toward Legal Procedures

Courts and major legal organizations often pitch settlement procedures such as mediation and negotiation on the basis that,

relative to trial, they offer greater opportunities for parties to attend and participate directly in the resolution of their case (American Arbitration Association, 2013; Dispute Resolution Processes, n.d.; Judicial Council of California, n.d.). However, litigants are often excluded from these procedures (Barkai & Kent, 2014; Lind, MacCoun, et al., 1990; Hensler, 2002). The key research in this area is a large-scale field study by the RAND Corporation that examined how personal injury litigants compared trial and two forms of settlement: court-sponsored arbitration (i.e., nonbinding arbitration) and judicial settlement conferences (RAND, 1989). Contrary to the dominant view, litigants whose cases went to trial typically reported greater participation in their procedure than those who used judicial settlement conferences. Litigants' perceptions of the carefulness and neutrality of the third party and the dignity of the process (rather than their own direct participation) shaped their procedural fairness assessments. Attendance presumably helped litigants to form those perceptions, which suggests that attendance might play a crucial role in shaping ex post evaluations of procedures regardless of how much litigants directly participate while they attend. Litigants were almost always excluded from judicial settlement confrerences and ultimately perceived these procedures as unfair: "[S]itting outside the judge's chambers, [the litigants] wondered what was going on behind closed doors, and sometimes distrusted their lawyers' descriptions of the proceedings" (Hensler, 2002, p. 90). Thus, attendance can matter because it can help litigants to assess aspects of the procedures that are important to them.

Relatedly, the results obtained by Shestowsky and Brett (2008) may have been due, in whole or in part, to attendance differences across procedures: if those who used adjudication attended their procedure, they may have been able to confirm their expectations regarding third-party control, leading to a positive relation between ex ante and ex post attitudes, and if those who settled were absent, that could explain a lack of association between initial interest in party control and ex post satisfaction. Their study, however, did not measure participant attendance.

Following this logic, if adjudication and settlement differ in how well initial attraction predicts ex post perceived fairness or satisfaction, the level of this incongruity might depend on whether litigants attend their procedure. Attendance might "draw back the curtains" and give a vantage point for litigants to observe and form opinions—positive or negative—of the proceedings. These observations may or may not match the conceptions they had when formulating their initial impressions. Attendance in adjudication could allow litigants to confirm whether it has the traits that they envisioned when making their initial evaluations. Attendance in settlement procedures could facilitate the party control that they might expect to experience, but it could also augment satisfaction and fairness perceptions among those who do not value these elements ex ante. Understanding the value of procedure attendance is especially important in light of recent court efforts mandating party attendance in alternative dispute resolution (Cal. Rules of Court, Rule 3.894; N.C. Settlement Conf. Rule 4; W.D. Wash. CR 39.1).

Current Study and Hypothesis

The current study examined whether litigants' ex ante attraction to legal procedures predicts their ex post attitudes and what variables might influence that predictability. Based on my review of the relevant literature, I hypothesized that litigants' initial attraction to legal procedures that later resolved their cases would better predict ex post satisfaction and fairness for litigants who adjudicated versus settled. I also conducted exploratory analyses to test whether the predicted relationship would vary as a function of litigants' attendance at the procedure and when case duration, lawyer involvement, and litigants' repeat player status were included in the models. The three covariates, and their attendant analyses, are described in the online supplemental materials.

Method

Participants

Four hundred and twelve state court litigants completed an ex ante survey. Because of the unique methodology used to identify litigant contact information (Shestowsky, 2014), it was not possible to precisely calculate a traditional response rate. An extremely conservative estimate, based on the number of surveys received and the number of litigants the research team tried to reach, is 10.0%. This rate is fairly typical for unsolicited mail surveys sent to litigants concerning their lawsuits (Kakalik, 1996; Shestowsky & Brett, 2008; Stallworth & Stroh, 1996). Three hundred thirty-five litigants completed the ex post survey, reflecting a 81.3% retention rate. Their cases opened as early as May 2010 and closed as late as November 2014. Table 1 presents background and case information for participants who completed both surveys, as well as a break-down of the legal procedures that resolved their cases.

Several important metrics suggest that the final sample is representative of the broader population of state court litigants in the United States. First, among the study participants, cases took, on average, nearly 9 months to close (M = 8.65 months), which mirrors the average duration of 10 months in national samples generated by the National Center for State Courts (2015). Second, the distribution of the prominent case types in the focal sample compares favorably with a parallel distribution from a national sample (National Center for State Courts, 2015). Third, the percentage of cases that resolved through trial (3.6%) resonates with recent national statistics in state courts (3.5%; National Center for State Courts, 2015).

I assessed whether the sample was skewed in favor of litigants who obtained favorable outcomes by comparing the proportions of winners and losers among litigants whose cases resolved through adjudication (e.g., trials or hearings). Although many cases comprised multiple causes of action, every relevant participant either "won" or "lost" each cause of action. I created a binary variable to indicate whether the participant won their case (0 = no; 1 = yes). The difference in proportions between the "winning" (56.8%, n = 42) and "losing" groups (43.2%, n = 32) was not statistically signifcant ($z = -1.66$, $p = .10$).

Materials and Measures

Initial attraction. At the start of their cases, litigants read brief descriptions of eight legal procedures—attorney negotiation without clients present, attorney negotiation with clients present, mediation, nonbinding arbitration, binding arbitration, judge trial, jury trial, and judge decides without trial—to ensure a common

Table 1
Participant Characteristics as a Percentage of Their Respective Procedure Type (Adjudication Versus Settlement)

Characteristic	Adjudication (n = 79)	Settlement (n = 187)
Procedure type		
Binding arbitration	2.5	
Judge trial	5.1	
Judicial settlement conference		8.0
Jury trial	8.9	
Negotiation		59.9
Nonbinding arbitration		7.0
Mediation		21.9
Motion/hearing[a]	83.5	
Other		3.7
Attendance		
No	53.2	40.1
Yes	39.2	58.3
Missing	7.6	1.6
Lawyer involvement		
No	27.8	13.4
Yes	72.2	86.1
Missing	0.0	0.5
Role in case		
Defendant	40.5	37.4
Plaintiff	59.5	62.6
Repeat player status		
No	40.5	47.1
Yes	51.9	41.7
Missing	7.6	11.2
Party type (individual)		
No	39.2	23.5
Yes	60.8	75.4
Missing	0.0	1.1
Party type (company)		
No	64.6	79.1
Yes	35.4	19.8
Missing	0.0	1.1
Party type (group/organization)		
No	96.2	94.7
Yes	3.8	4.3
Missing	0.0	1.1

Note. All percentages have been rounded to nearest tenth of a percent.
[a] 16.4% resolved through a motion to dismiss; 26.9% resolved through a motion for summary judgement; 10.4% resolved through default judgement; 13.4% resolved through an (unspecified) hearing; and 9.0% indicated "other," with the remaining 23.9% not indicating how their case resolved.

understanding of their basic structure. These descriptions appear in the Appendix. Litigants indicated their attraction to each procedure for their own case ("How attractive do you find each alternative for your particular case?") using scales ranging from 1 (*not at all attractive*) to 9 (*extremely attractive*), with 5 (*somewhat attractive*) as the midpoint. This question was included in an extensive survey of litigants' perceptions of the legal system that was designed to provide data for multiple projects. Using the ex post survey, I determined which procedure successfully resolved their case. I then imported litigants' ex ante attraction rating for that procedure to create the initial attraction variable.

Procedure type. Following Shestowsky and Brett's (2008) approach, I collapsed these procedures according to whether they were adjudicative or nonadjudicative in nature. I labeled this variable *procedure type* (0 = settlement; 1 = adjudication). As in this past work, the adjudication category included those who resolved their cases via binding arbitration, judge trial, jury trial or a motion/hearing (i.e., judge deciding without trial). In all of these procedures, a third-party neutral determines the outcome of the case, using strict rules of procedure. The settlement category included litigants whose cases resolved via negotiation, judicial settlement conference, mediation or nonbinding arbitration. In all of these procedures, outcomes emerge only through the mutual consent of the parties and there is greater flexibility in how the process evolves.

Attendance. The attendance measure was based on litigants' answers to the question concerning whether they personally attended the procedure that resolved their case (0 = no; 1 = yes).

Satisfaction and fairness. During the ex post survey, litigants were asked two questions about the procedure that resolved their case: "Overall, how satisfied are you with this [name of procedure]?" on a scale ranging from 1 (*not at all satisfied*) to 9 (*extremely satisfied*) and "Overall, how fair do you think this [name of procedure] was?" on a scale ranging from 1 (*not at all fair*) to 9 (*extremely fair*). These ratings constituted the satisfaction and fairness variables, respectively.

Procedure

After securing institutional review board approval from the University of California, Davis, the research team recruited litigants from courts that allowed us to keep the availability of procedures as consistent as possible across participants. Trial is an option in every case properly filed in a U.S. court. In addition, litigants are theoretically free to opt out of the court system to pursue binding arbitration or settle through negotiation or private alternative dispute resolution outside the courts. We recruited from courts that offered litigants a choice between arbitration and mediation for the same types of cases: The Third Judicial District Court, Salt Lake County, in Utah; the Superior Court of California, County of Solano, in California; and the Circuit Court of the State of Oregon for Multnomah County, Fourth Judicial District, in Oregon. These courts also had case-tracking systems that allowed us to remotely monitor case developments.

For six two-week periods from May 2010 to May 2011, I identified litigants in each court whose cases were eligible for both court-sponsored mediation and nonbinding arbitration. For the Oregon and Utah courts, I used the RANDBETWEEN function in Excel to randomly select a predetermined number of litigants. To minimize the risk that litigants on the same side of a case would discuss the survey and affect each other's responses, I retained only the lead plaintiff or defendant. When a litigant was named in multiple cases, I retained only the litigant with the first numerically listed case number. Because the California court had significantly fewer filings, both the first-listed defendant and first-listed plaintiff for every case were eligible for recruitment.

Research assistants used online resources to research addresses for each member of the initial sample because the courts did not systematically collect litigant contact information, except for self-represented litigants. They undertook this labor-intensive task in order to minimize the data contamination that might result from sending surveys to attorneys along with a request to redirect them to their clients. They rated their "level of certainty" that they had identified contact information for each litigant, ranging from 1

(*little to no certainty*) to 5 (*absolute certainty*) and attempted to recruit those with a rating of 3 or higher. It is possible we failed to identify a correct address for some litigants we attempted to recruit; nonresponses may have also been due to lack of eligibility for the study. This feature of the methodology makes it impossible to precisely calculate a traditional response rate.

We mailed surveys and prepaid return envelopes to litigants within three weeks of their cases being opened. The surveys asked litigants to rate their attraction to eight legal procedures and to provide demographic and case information. The surveys also inquired about other case-relevant information intended for another project. Participants also received an introductory letter identifying the case that was of interest to the research team, along with a consent form explaining that they would be compensated for completing one survey at the start of their case and another at its conclusion. The initial compensation was $25. To maximize recruitment, later recruits were compensated $50 through their choice of check or an Amazon gift card and were told that they would be entered into extra incentive drawings to win $500 or $750 Amazon gift cards.

Law student research assistants used court databases to track the cases of litigants who returned the ex ante survey. Each week, they identified cases that ended and called litigants for the ex post survey within three weeks of their case disposition date. The research assistants completed a rigorous training to code and input responses in Survey Monkey in a uniform manner. They read each litigant a list of legal actors (e.g., arbitrator, judge) and procedures (e.g., jury trial, hearing, mediation) that might have ended their case, and were instructed to note which applied in each instance. They classified the procedures as arbitration, judge decides without trial (e.g., a hearing for a motion for summary judgment), judicial settlement conference, judge trial, jury trial, negotiation, mediation or other. To classify negotiation subtypes, I relied on follow-up questions asking litigants who attended the procedure. If a participant indicated that they and the other party attended along with their attorneys, I categorized them as using "attorney negotiation with clients present." If a participant indicated that he or she did not attend, their negotiation was classified as "attorney negotiation without clients present." To classify arbitration subtypes, research assistants asked whether litigants could veto the arbitrator's outcome (no = binding arbitration; yes = nonbinding arbitration) and we used casefiles to verify responses.

Research assistants rehearsed the survey scripts with the PI and other members of the research team to ensure delivery consistency. In order to qualify to conduct the ex post survey, they were required to pass written tests concerning procedure definitions and response coding and perform to specification in multiple practice surveys with the PI.

Results

Overview of Analyses

For both of the primary outcomes (satisfaction and fairness), I used moderated multiple regression (MMR) models to test hypotheses which included the interaction of the categorical × quantitative (or quantitative × quantitative) product term (Aguinis, 2004; Cohen, Cohen, West, & Aiken, 2003). A hierarchical/sequential approach tested the incremental variance explained by the interaction term (r^2_{inc}) after controlling for the individual variables that made up the interaction term. Mean centering of the quantitative predictor(s) was used to decrease nonessential collinearity (Cohen et al., 2003). I report both unstandardized (*B*) and standardized (β) regression coefficients and effect sizes (correlations, partial correlations, etc.) for all analyses (using $\alpha = .05$), and examine all regression assumptions (linearity, leverage, influence, etc.; Darlington & Hayes, 2017). Tables reporting the results include the unstandardized regression coefficient and their concomitant 95% confidence intervals (CI).

Based on Cohen's (1988) taxonomy for the full fit of regression models, I used R^2 values of .01/.13/.26 (expressed as proportions) as thresholds for small/medium/large effects, respectively. For analysis of variance, I used η^2 statistics of .01/.059/.138 as thresholds for small/medium/large effects, respectively. Notably, sample sizes vary across models depending on selection criteria and/or patterns of missing data. I tested models using multiple imputation and full information maximum likelihood to handle missing data (Enders, 2010; Graham, 2009). Parameter estimates from models using these methods were not significantly different from the estimates in the default listwise deletion models, and thus I report the latter. All analyses were conducted using SPSS v. 24.0.

The Relation Between Initial Attraction and Ex Post Procedure Evaluations as a Function of Procedure Type

Satisfaction. In the MMR models with listwise deletion (n = 164), at the first step of variable entry, which included initial

Table 2
Moderated Multiple Regression (Initial Attraction × Procedure Type): Dependent Variable = Satisfaction

Step	β	95 % CI [lower, upper]	*p*	r_p
Step 1				
Initial attraction	0.30	[.13, .47]	<.001	0.26
Procedure type	−0.31	[−1.22, .59]	.50	−0.05
Step 2				
Initial attraction	0.10	[−.13, .32]	.40	0.07
Procedure type	−0.31	[−1.20, .58]	.49	−0.05
Initial Attraction × Procedure Type	0.47	[.13, .82]	.01	0.21

Note. CI = confidence interval; r_p = partial correlations.

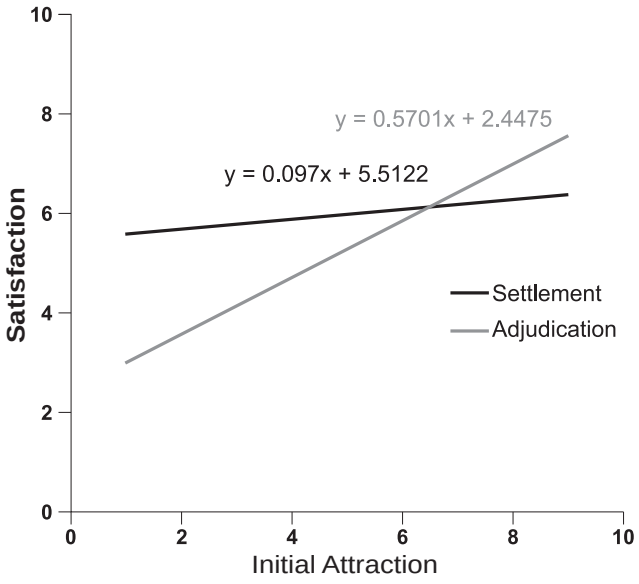

Figure 1. Relation between initial attraction and satisfaction as a function of procedure type.

attraction and procedure type, significance was obtained: $F(2, 161) = 6.06$, $p = .003$ ($r^2 = .07$). At the second step of variable entry, which also included the Initial Attraction × Procedure Type interaction, the increment to model fit via the interaction term was significant: $F(1, 160) = 7.40$, $p = .007$ ($r^2_{inc} = .04$). In the full model, $R^2 = .11$ was significant, $F(3, 160) = 6.67$, $p < .001$, reflecting a medium effect size.

An examination of the partial regression coefficients (and the partial correlations: r_p) at the second step of variable entry revealed that the interaction term was significant ($B = .47$, $\beta = .26$, $p = .007$, $r_p = .21$), supporting the hypothesis. Neither of the individual predictors were significant at the final step of variable entry: procedure type ($B = -.31$, $\beta = -.05$, $p = .49$, $r_p = -.05$); initial attraction ($B = .10$, $\beta = .08$, $p = .40$, $r_p = .07$).

Table 2 reports the unstandardized coefficients and 95% CI. Mean initial attraction ratings were $M = 5.83$ ($SD = 2.44$) for settlement and $M = 5.81$ ($SD = 2.71$) for adjudication; and mean ex post fairness ratings were $M = 6.08$ ($SD = 2.65$) for settlement and $M = 5.76$ ($SD = 3.35$) for adjudication.

The sign, magnitude, and significance of the interaction coefficient indicate that, among litigants with low levels of initial attraction, those who used adjudication were less satisfied than those who settled, while among litigants who gave higher initial attraction ratings, those who used adjudication were more satisfied than those who settled (see Figure 1, which includes the regression line for each group). As predicted, there was more congruence between initial attraction ratings and ex post satisfaction for those who adjudicated compared to those who settled.

Fairness. The models for the fairness measure produced similar results. In the MMR models with listwise deletion ($n = 160$), at the first step of variable entry, which included initial attraction and procedure type, significance for the main effects model was obtained: $F(2, 157) = 5.93$, $p = .003$ ($r^2 = .07$). At the second step of variable entry, which added the Initial Attraction × Procedure Type interaction term, the increment to model fit via the interaction term was significant: $F(1, 156) = 13.72$, $p < .001$ ($r^2_{inc} = .08$). In the full model, $R^2 = .15$ and was significant, $F(3, 156) = 8.85$, $p < .001$, reflecting a medium effect size.

An examination of the partial regression coefficients (and the partial correlations: r_p) at the second step of variable entry indicated that the interaction term was statistically significant ($B = .59$, $\beta = .36$, $p < .001$, $r_p = .28$) supporting the hypothesis. Neither of the individual predictors reached significance: procedure type ($B = -.13$, $\beta = -.02$, $p = .75$, $r_p = -.03$); initial attraction ($B = .03$, $\beta = .03$, $p = .78$, $r_p = .02$).

Table 3 provides the unstandardized coefficients and 95% CI. Mean initial attraction ratings were $M = 5.82$ ($SD = 2.45$) for settlement and $M = 5.75$ ($SD = 2.70$) for adjudication; mean ex post fairness ratings were $M = 6.54$ ($SD = 2.32$) for settlement and $M = 6.38$ ($SD = 3.23$) for adjudication.

These results demonstrate that, for litigants who resolved their cases through adjudication, perceptions of fairness were consistent with their initial attraction to the procedure they used, whereas for those who settled, ex post fairness perceptions were unrelated to initial attraction (see Figure 2). Compared to those in the settlement group, the initial attraction ratings of those who adjudicated better predicted their ex post fairness ratings. Thus, the data support the hypothesis.

Although unrelated to the hypothesis, it is worth noting that those who settled exhibited relatively stable ex post impressions regardless of their initial attraction to the settlement procedure that resolved their case. Moreover, descriptively, the postexperience evaluations of those who settled were, in the aggregate, highly

Table 3
Moderated Multiple Regression (Initial Attraction × Procedure Type): Dependent Variable = Fairness

Step	β	95 % CI [lower, upper]	*p*	r_p
Step 1				
Initial attraction	0.28	[.12, .44]	<.001	0.26
Procedure type	−0.14	[−.98, .70]	.74	−0.03
Step 2				
Initial attraction	0.03	[0.18, .23]	.78	0.02
Procedure type	−0.13	[−0.94, .68]	.75	−0.03
Initial Attraction × Procedure Type	0.59	[.27, .90]	<.001	0.28

Note. CI = confidence interval; r_p = partial correlations.

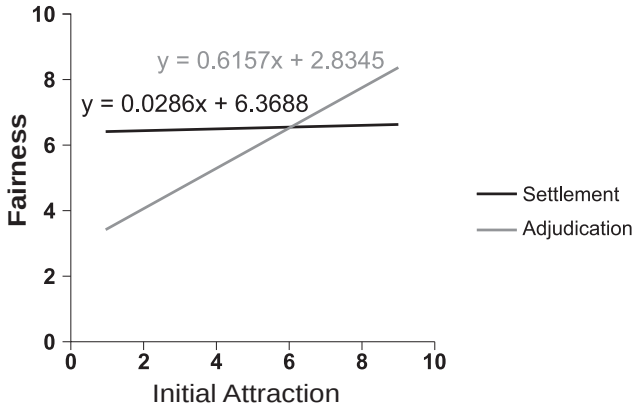

Figure 2. Relation between initial attraction and fairness as a function of procedure type.

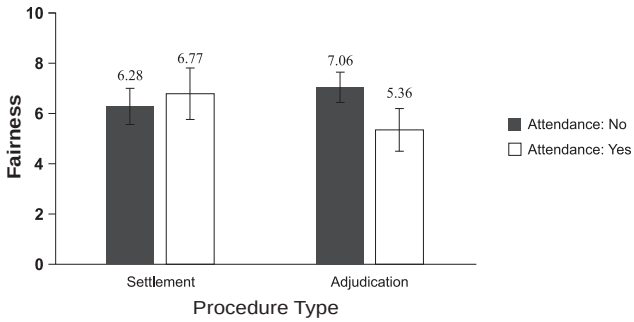

Figure 3. Interaction of procedure type and attendance (dependent variable = fairness).

favorable: ($M_{satisfaction}$ = 6.08 and $M_{fairness}$ = 6.54, on 9-point scales).

The Role of Attendance

To test whether attendance moderated the Initial Attraction × Procedure Type interaction for litigants' evaluations of procedure satisfaction and fairness, I ran a regression model that included a three-way Initial Attraction × Procedure Type × Attendance interaction term with three steps of variable entry: (a) individual predictors; (b) two-way interactions; and (c) a three-way interaction.

Satisfaction. In the MMR models with listwise deletion (n = 160), at the first step of variable entry, which included procedure type, initial attraction, and attendance, significance for the main effects model was obtained: $F(3, 156) = 3.43$, $p = .02$ ($r^2 = .06$). At the second step of variable entry, the increment to model fit via the group of two-way interaction terms (i.e., Initial Attraction × Procedure Type, Initial Attraction × Attendance, Attendance × Procedure Type) was significant: $F(3, 153) = 4.0$, $p = .009$ (r^2_{inc} = .07). At the final step of variable entry, when the Initial Attraction × Procedure Type × Attendance interaction term was added, significance was not obtained $F(1, 152) = .35$, $p = .56$ (r^2_{inc} = .002). For the full model (i.e., individual predictors, two-way interactions terms, and three-way interaction), $r^2 = .13$, and the full model is significant: $F(7, 152) = 3.30$, $p = .003$.

The partial regression coefficients (and the partial correlations) revealed that the three-way interaction term was not significant ($b = .21$, $\beta = .08$, $p = .56$, $r_p = .05$). Thus, the observed two-way interaction (i.e., Initial Attraction × Procedure Type) did not depend upon attendance. Further, at the final step of variable entry, neither the two-way interactions nor the individual predictors were significant. Table 4 reports the unstandardized coefficients and 95% CIs.

Fairness. Different results for the two-way interaction terms at the final step of variable entry emerged for the fairness measure.

Table 4
Moderated Multiple Regression (Initial Attraction × Procedure Type × Attendance): Dependent Variable = Satisfaction

Step	β	95 % CI [lower, upper]	p	r_p
Step 1				
Attendance	−0.11	[−1.01, 0.78]	.80	−0.02
Initial attraction	0.28	[0.10, 0.45]	<.01	0.24
Procedure type	−0.36	[−1.29, 0.57]	.45	−0.06
Step 2				
Attendance	0.45	[−0.64, 1.54]	.42	0.07
Initial attraction	0.27	[−0.02, 0.55]	.07	0.15
Procedure type	0.24	[−1.00, 1.47]	.71	0.03
Initial Attraction × Procedure Type	0.40	[0.05, 0.75]	.03	0.18
Initial Attraction × Attendance	−0.34	[−0.68, 0.01]	.06	−0.16
Attendance × Procedure Type	−1.39	[−3.20, 0.43]	.13	−0.12
Step 3				
Attendance	0.45	[−0.64, 1.55]	.42	0.07
Initial attraction	0.31	[−0.01, 0.64]	.06	0.15
Procedure type	0.25	[−0.99, 1.49]	.69	0.03
Initial Attraction × Procedure Type	0.30	[−0.19, 0.79]	.23	0.10
Initial Attraction × Attendance	−0.42	[−0.87, 0.03]	.07	−0.15
Attendance × Procedure Type	−1.38	[−3.20, 0.44]	.14	−0.12
Initial Attraction × Procedure Type × Attendance	0.21	[−0.49, 0.91]	.56	0.05

Note. CI = confidence interval; r_p = partial correlations.

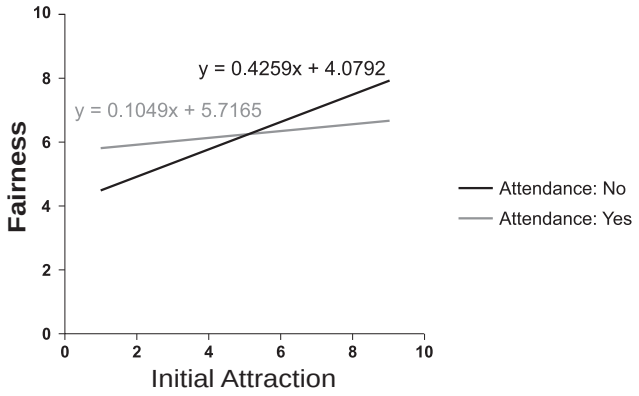

Figure 4. Relation between initial attraction and fairness as a function of attendance.

In the MMR models with listwise deletion ($n = 157$) predicting perceived fairness of the procedure, at the first step of variable entry, which included procedure type, initial attraction, and attendance, significance for the main effects model was obtained: $F(3, 153) = 3.64$, $p = .01$ ($r^2 = .07$). At the second step of variable entry, the increment to model fit via the host of two-way interaction terms (i.e., Initial Attraction × Procedure Type, Initial Attraction × Attendance, Attendance × Procedure Type) was significant: $F(3, 150) = 6.90$, $p < .001$ ($r^2_{inc} = .11$). Finally, at the final step of variable entry, which included the three-way interaction term (i.e., Initial Attraction × Procedure Type × Attendance), significance was not obtained, $F(1, 149) = 1.29$, $p = .26$ ($r^2_{inc} = .007$). For the full model, $R^2 = .19$ and was significant, $F(7, 149) = 4.89$, $p < .001$ (i.e., a medium-to-large effect size).

At the final step of variable entry, the partial regression coefficients (and the partial correlations) revealed that the three-way interaction term did not reach significance ($b = .37$, $\beta = .15$, $p = .26$, $r_p = .09$) but that two of the lower-order terms did: the two-way interaction for Attendance × Procedure Type ($b = -1.75$, $\beta = -.24$, $p = .04$, $r_p = -.17$) and the two-way interaction for Initial Attraction × Attendance ($b = -.45$, $\beta = -.30$, $p = .03$, $r_p = -.18$). These interactions are reported graphically in Figures 3 and 4, respectively. Table 5 catalogues the unstandardized coefficients and 95% CI.

The subgroup graph (with fit lines) in Figure 4 indicates that, among litigants with lower initial attraction ratings, those who attended ultimately rated their procedure more favorably on fairness than those who did not, whereas among those with higher initial attraction ratings, nonattenders rated their procedure as fairer than those who attended.

The observed significant Initial Attraction × Attendance interaction effect provided preliminary evidence that the relation between initial attraction and fairness differs depending on attendance status. To further explore the nature of the interaction, I conducted a simple slope analysis to examine, and test for significance, each of the individual slopes (Cohen et al., 2003). A simple linear regression analysis for each of the two levels of attendance revealed that, for litigants who did not attend the procedure that resolved their case, perceptions of fairness were consistent with their initial attraction to the procedure they used ($b = .43$, $p < .001$, accounting for 15.8% ($r = .40$) of the variance), whereas for those who did attend, perceptions of fairness were unrelated to their initial attraction ($b = .11$, $p = .39$, accounting for 1% ($r = .10$) of the variance). A substantive difference in the effect size (i.e., r^2 and r) emerged.

To further examine the Attendance × Procedure Type interaction effect, I conducted a simple effects analysis to test the difference between procedure types (adjudication vs. settlement) for each level of attendance (yes vs. no). This analysis revealed a significant difference between procedure types for those who attended, $F(1, 153) = 4.72$, $p = .03$ ($\eta^2 = .03$), with those who

Table 5
Moderated Multiple Regression (Initial Attraction × Procedure Type × Attendance): Dependent Variable = Fairness

Step	β	95% CI [lower, upper]	*p*	r_p
Step 1				
Attendance	−0.24	[−1.08, 0.59]	.57	−0.05
Initial attraction	0.27	[0.10, 0.43]	<.01	0.25
Procedure type	−0.21	[−1.08, 0.65]	.63	−0.04
Step 2				
Attendance	0.50	[−0.49, 1.49]	.32	0.08
Initial attraction	0.19	[−0.08, 0.45]	.16	0.11
Procedure type	0.58	[−0.54, 1.70]	.31	0.08
Initial Attraction × Procedure Type	0.52	[0.20, 0.84]	<.01	0.26
Initial Attraction × Attendance	−0.30	[−0.61, 0.02]	.06	−0.15
Attendance × Procedure Type	−1.80	[−3.45, −0.15]	.03	−0.17
Step 3				
Attendance	0.50	[−0.49, 1.49]	.32	0.08
Initial attraction	0.27	[−0.03, 0.56]	.08	0.14
Procedure type	0.61	[−0.51, 1.73]	.29	0.09
Initial Attraction × Procedure Type	0.34	[−0.10, 0.78]	.13	0.12
Initial Attraction × Attendance	−0.45	[−0.85, −0.04]	.03	−0.18
Attendance × Procedure Type	−1.77	[−3.42, −0.12]	.04	−0.17
Initial Attraction × Procedure Type × Attendance	0.37	[−0.27, 1.00]	.26	0.09

Note. CI = confidence interval; r_p = partial correlations.

Table 6
Fairness by Attendance and Procedure Type: Simple Effects

Type	*n*	*M*	*SD*	*F*	*df*	*p*	η^2
Attendance: No							
Settlement	47	6.28	2.46	1.68	1,153	.20	0.01
Adjudication	33	7.06	3.00				
Attendance: Yes							
Settlement	52	6.77	2.19	4.72	1,153	.03	0.03
Adjudication	25	5.36	3.39				
Settlement							
Attendance: No	47	6.28	2.46	0.84	1,153	.36	0.01
Attendance: Yes	52	6.77	2.19				
Adjudication							
Attendance: No	33	7.06	3.00	5.79	1,153	.02	0.04
Attendance: Yes	25	5.36	3.39				

settled viewing their procedure as significantly fairer than those who adjudicated. Significance was not obtained for the simple effect for those who did not attend, $F(1, 153) = 1.68$, $p = .20$ ($\eta^2 = .01$), meaning there was no significant difference in fairness ratings between those who adjudicated versus settled for those who did not attend their procedure. Table 6 reports the relevant descriptive statistics.

I also ran a simple effects analysis to examine the difference between attendance levels (yes vs. no) for each level of procedure type (adjudication vs. settlement). This analysis revealed a significant difference between the levels of attendance for those who adjudicated: $F(1, 153) = 5.79$, $p = .02$ ($\eta^2 = .04$), with those who did not attend reporting a significantly higher mean for fairness compared to those who attended. Significance was not obtained for the simple effect for those who settled, $F(1, 153) = .84$, $p = .36$ ($\eta^2 = .005$), suggesting there was no significant difference in fairness ratings between those who attended versus did not attend their settlement procedure.

For the nonsignificant three-way interaction terms, a post hoc power analysis was conducted using G*Power (Faul, Erdfelder, Buchner, & Lang, 2009) with the following set parameters: desired power of $1 - \beta = .80$ and $\alpha = .05$. For satisfaction, $n = 3409$ would be necessary to achieve significance for the increment of $r^2 = .002$ and for fairness $n = 941$ would be necessary to achieve significance for the increment of $r^2 = .007$. Thus, the current study was underpowered to adequately test the three-way interaction.

Discussion

This research examined the circumstances under which litigants' initial attraction to legal procedures predicts their postexperience satisfaction and fairness evaluations of those procedures. Results that did not include the covariates suggest that the initial attraction ratings of those who used adjudication better predicted ex post satisfaction and fairness compared to the initial attraction ratings of those who settled. Intriguing effects for attendance emerged: for those who attended the procedure that resolved their dispute, the subgroup who settled regarded their procedure as fairer compared to those who adjudicated, and initial attraction was unrelated to ex post fairness ratings. Among those who did not attend, settlement and adjudication did not significantly differ in terms of fairness and there was a significant positive association between initial attraction and fairness ratings. The exploratory results using duration, lawyer involvement, and litigants' repeat player status as covariates produced parallel results except that the hypothesized Initial Attraction × Procedure Type interaction no longer reached statistical significance; instead lawyer involvement and shorter case duration were positively associated with litigants' satisfaction and fairness evaluations (see the online supplemental materials).

The Interaction Effect of Initial Attraction and Procedure Type on Ex Post Procedure Evaluations

The hypothesis that initial attraction would better predict ex post satisfaction and perceptions of fairness when cases resolved via adjudication compared to settlement was supported, when covariates were not included in the model. The observed Initial Attraction × Procedure Type interaction effect aligns with Shestowsky and Brett's (2008) finding of a significant positive correlation between ex ante attraction to third-party control and ex post satisfaction among those who adjudicated, but no significant relation between ex ante attraction to disputant control and ex post satisfaction among those who settled. Importantly, litigants rated procedures at both timepoints (unlike the previous study, wherein participants evaluated specific attributes of legal procedures ex ante but legal procedures ex post). The increased consistency in what litigants evaluated supports the idea that ex post impressions of procedures are related to litigants' views of those same procedures earlier in time.

There are at least two possible explanations for the finding that litigants' ex ante attraction to legal procedures better predicted their ex post views for adjudication compared to settlement (when covariates were not included in the model). First, expectations that underlie early impressions might be easier to meet in adjudication where there is more formality (and therefore less discretion given to the parties and greater predictability) compared to settlement. In adjudication, litigants might be more likely to experience what they expected, making their ex post evaluations better align with ex ante perceptions. These expectations might derive from numerous sources, including their lawyers, the courts, or the media. Trials and hearings—which made up most of the adjudication category—are commonly depicted in TV, movies, and similar forms of entertainment. By contrast, expectations regarding settlement might be more likely to stem from misinformation. Some forms of settlement—specifically, mediation—suffer notoriously inaccurate media portrayals (Schulz, 2014). Moreover, because of how settlement procedures are sometimes pitched (American Arbitration Association, 2013; Dispute Resolution Processes, n.d.; Judicial Council of California, n.d.), litigants may be led to expect party control (i.e., the ability to shape outcomes or the process or rules used to achieve outcomes), but not ultimately experience it. Second, it is possible that litigants evaluate some procedures using different standards ex ante versus ex post. For example, litigants often have higher opinions of mediation after they have experienced it (Tyler et al., 1999). Litigants might change their criteria as a result of their experience with certain procedures.

If lawyers adequately inform their clients regarding what settlement options entail or shape those procedures so that their clients' expectations are not frustrated (e.g., by ensuring opportunities to attend, if the client desires), we would expect to observe greater alignment between ex ante and ex post perceptions for settlement

and a muted Initial Attraction × Procedure Type interaction effect. That is in fact what I observed when lawyer involvement (along with duration and repeat player status) was factored into the model (see the online supplemental materials).

This pattern of findings suggests the important role that lawyers might play in shaping client perceptions of, and experiences with, legal procedures. Lawyers can educate their clients as to what might be possible in given procedures, reducing the gap between initial attraction and ex post evaluations. Because clients are more likely to misunderstand what settlement procedures entail (e.g., unrealistic party control expectations), client education might be especially valuable with respect to settlement options. Moreover, because of the informality and flexibility offered by settlement options, experienced settlement attorneys can often shape what happens in those procedures to meet clients' expectations. Lawyers might also influence their clients' ex post interpretations of procedures, and the criteria used to formulate those interpretations, in ways that affect their ex post satisfaction and fairness perceptions, which aligns with the finding that litigants reported higher ex post satisfaction and fairness when they experienced lawyer involvement. It is certainly in lawyers' professional self-interest to set expectations for procedures and then help their clients perceive how these expectations were realized.

The Interaction Effect of Attendance and Procedure Type on Ex Post Fairness Evaluations

Attendance did not moderate the Initial Attraction × Procedure Type interaction effect that emerged when covariates were included. The data did, however, demonstrate an intriguing Attendance × Procedure Type interaction effect for fairness ratings whether or not the covariates were included. Specifically, settlement procedures fared better on fairness than adjudication when parties attended the proceedings, but not when they were absent. This pattern suggests that, relative to those who adjudicated, those who settled better liked what they observed in regards to fairness. Future research might distill the specific attributes of settlement versus adjudication experiences that account for these fairness differences.

Moreover, although attendance was not associated with differences in fairness perceptions for litigants who settled, attendance was associated with significantly lower perceived fairness for those who used adjudication. This pattern emerged irrespective of whether the covariates were included. The latter finding suggests that, to maximize ex post fairness perceptions on the part of their clients, lawyers might suggest that clients not attend adjudication (unless they are required to by law). The former finding is surprising given prior research indicating that litigants value opportunities for voice and party control (e.g., litigant control over the outcome and process) that are theoretically associated with settlement procedures, and the marketing that perpetuates this perception. Litigants who attended their procedure may not have participated in ways that provided these benefits while the lawyers of nonattenders may have given them that voice and control (albeit indirectly) or may have reported what transpired in ways that persuaded litigants that the procedure was fair. The former possibility suggests that recent court efforts to require party attendance at settlement procedures may not produce some of the benefits we would expect such policies to realize. Lawyers might take better advantage of the informality and flexibility of settlement procedures to provide experiences that will augment their clients' fairness perceptions.

Field studies such as this one, while providing much-needed ecological validity to the literature on litigant psychology, cannot control third variables that might provide rival explanations for the findings. It is possible that among litigants who adjudicated, those who believed they had a weaker case (i.e., lower chances of winning) at the time of their procedure were less likely to attend compared to those who perceived their case as stronger (and were then more likely to report it as less fair). Researchers should test such interpretations using controlled laboratory experiments to isolate the effects of attendance on fairness as a function of procedure type. Future work should also examine specific forms of participation (e.g., how much speaking the litigants do or how much litigants control the issues that are discussed) to deepen our understanding of the observed interaction effect and discover how litigants can better derive value from attending settlement procedures.

The Interaction Effect of Initial Attraction and Attendance on Ex Post Fairness Evaluations

Among litigants who rated their legal procedure more negatively ex ante, those who attended rated their procedure as fairer than those who did not attend, but the opposite pattern materialized for litigants who rated their procedure more favorably ex ante. This pattern, which emerged irrespective of whether the covariates were included in the model, suggests that less favorable initial perceptions might turn around, to some degree, when litigants attend their procedure. In contrast, attendance at procedures that litigants initially find more attractive might open the door for expectancy violations that damage their impressions.

For litigants who did not attend, how much they initially liked the procedure predicted their ex post fairness ratings of that procedure, suggesting that their initial perceptions went unchallenged when they were absent from their procedure. There was no significant relation between initial attraction and fairness among those who attended, suggesting that litigants may be as likely to confirm whatever expectations they had when formulating their initial attraction as they are to disconfirm them. Because field studies such as this one cannot control third variables (e.g., strength of the case) that might help to explain the attendance results, future quasi-experimental research should include participants with either low or high levels of initial attraction to a procedure and randomly assign them to attend (or not attend) a simulated version of that procedure. This type of research could help to distill the value of attendance.

These findings also raise questions about the role that lawyers play in shaping client perceptions of their litigation experience. Attorneys presumably influence how educated their clients are about various procedure options, and, consequently, their impression formation. They often guide decisions about which procedures to use (Shestowsky, 2018), as well as what happens during those procedures. They might also shape clients' interpretations of the procedures they use in ways that affect their postexperience evaluations. In this context, it is easy to imagine that lawyers play a particularly crucial role in shaping their clients' ex post assessments of the procedures that their clients do not attend. The

observations lawyers share about what transpired are likely to relate to how their clients evaluate the procedure. Lawyers might also propose reference points or other criteria on which clients base their ex post evaluations; research in other contexts has shown that by manipulating the reference points against which study participants evaluate outcomes, winners can be made to feel less happy than losers (Boles & Messick, 1995). The present study sets the stage for research on how lawyers' case debriefings with clients differ depending on whether or not the clients attended the procedure, and the degree to which clients' initial procedure attraction serves as a reference point for these discussions.

Limitations

When interpreting the results of this field study, one should heed key aspects of the methodology that was used. First, participants conducted ex post evaluations only for procedures that ultimately resolved their cases. In this way, the study controlled for a procedure's success in resolving disputes. Future research should explore the relation between litigants' ex ante attraction and ex post satisfaction and fairness for settlement procedures that attempted, but ultimately failed, to resolve their cases. Second, although the primary hypothesis involved grouping procedures into settlement and adjudication categories, this work would have been enhanced by follow-up analyses that examined the effects for each of the individual procedures represented in the dataset. However, the actual distribution of legal procedures that litigants ultimately used (often infrequently) did not permit this type of granular analysis. Third, because the study was underpowered to examine the hypothesized Initial Attraction × Procedure Type × Attendance interactions for fairness and satisfaction, those null results should be interpreted with caution. Fourth, given that litigants' perceptions of the fairness of, and their satisfaction with, the *legal procedure* that ended their case were my dependent measures, I did not isolate how litigants' attitudes were affected by their perceptions of the *process* versus the *outcome* of their procedure. Similarly, I analyzed initial attitudes vis-à-vis legal procedures rather than characteristics of legal procedures. The literature would benefit from analyses that isolate the effects of different procedure attributes on litigants' initial attraction to, and ex post evaluations of, legal procedures. Fifth, although participants were provided with descriptions of procedures ex ante, the current research was not intended to examine (nor could it control for) the specific ex ante expectations litigants had about procedures that might help to explain their ex post evaluations. The field would benefit from future studies that explore this important issue by measuring what litigants know about their options and the sources of their knowledge.

Conclusion

The present study offers novel findings concerning how litigants' perceptions of their litigation experiences relate to their initial attraction to the legal procedures that resolved their case. By relying on data from actual litigants and using a prospective design to explore the connection between initial and postexperience perceptions of legal procedures, this work stands as a unique contribution to the literature. This project also sheds light on the important role that procedure attendance might play in shaping litigants' ex post attitudes, depending on their initial attraction to the procedure and whether it involves adjudication or settlement. This project lays the foundation for future research concerning how litigants' experience with litigation might be influenced by efforts that encourage or mandate settlement attempts, and protocols that help litigants make informed decisions about which procedures to use given their initial attraction to the procedures and their ability or interest in attending them. Field and laboratory work examining these issues could greatly advance the efforts of lawyers and policymakers who strive to improve legal procedures from the litigant perspective.

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(*Appendix follows*)

Appendix

Descriptions of Procedures Used in Ex Ante Survey

Attorneys Negotiate With Clients Present

The lawyers negotiate with each other on behalf of their clients, in order to settle their clients' case. The negotiations may be done in person (face-to-face) with lawyers and clients present, or by phone, with lawyers and clients on the phone at the same time. The clients are present and may participate in the negotiation discussions. The outcome could be based on the law, or it could be based on some other rules or principles that the clients and/or their lawyers find relevant or important. If the clients agree on an outcome that they both find acceptable, that is the outcome for the case.

Attorneys Negotiate Without Clients

The lawyers negotiate with each other on behalf of their clients, in order to settle their client's case. The negotiations may be done in person (face-to-face), but are more often done by phone, fax, or email. The clients are never present at any of the negotiation discussions. The outcome could be based on the law, or it could be based on some other rules or principles that the clients and/or their lawyers find relevant or important. If the lawyers agree on an outcome that their clients find acceptable, that is the outcome for the case.

Binding Arbitration

The clients and lawyers select an arbitrator (or group of arbitrators). Arbitrators are neutral third parties who are not actual judges, but who will have the authority to decide the outcome of the case. The clients will also decide among themselves what the rules for presenting evidence to the arbitrator will be. These rules are generally less formal than the rules used at trial. The lawyers, their clients, and client's witnesses present evidence. Often, the clients testify. After the evidence has been presented, the arbitrator(s) decide(s) the outcome of the case. This outcome is typically based on legal rules or principles, but it could be based on other rules or principles that the clients agree in advance should be used to decide the outcome, such as industry standards. Arbitrators typically report the outcome in writing, without explaining why they decided as they did. Because this type of arbitration is "binding," it is extremely difficult to appeal their decisions.

Judge Decides Without Trial

Sometimes a judge can decide a case early on, so that a trial is never required. This is because the judge has determined there is no question about the facts, and the case can be decided on the basis of law alone. The lawyers submit documents to the court and may make a presentation to the judge at a hearing. Clients rarely attend and, if they do, they do not speak during the hearing. The judge later announces the outcome in writing and explains why they decided as they did. This outcome is based on legal rules or principles. A party who is dissatisfied with the outcome can appeal it to a higher court, which will require additional time and proceedings.

Judge Trial

A judge hears the lawyers' arguments and witnesses' answers to the lawyers' questions and reviews physical evidence. Often, the clients testify. The plaintiff's (party making the claim) lawyer presents his/her case first and then the defendant's lawyer presents his/her case. After the evidence has been presented, the judge decides the outcome in private and announces it in writing and explains why they decided as they did. This outcome is based on legal rules or principles. A party who is dissatisfied with the outcome can appeal it to a higher court, which will require additional time and proceedings.

Jury Trial

A jury hears the lawyers' arguments and witnesses' answers to the lawyers' questions and reviews physical evidence. Often, the clients testify. The plaintiff's (party making the claim) lawyer presents his/her case first and then the defendant's lawyer presents his/her case. The judge instructs the jurors about the law they must apply to the evidence they have seen and heard. After the evidence has been presented, the jurors decide the outcome in private and then announce it in court, without explaining why they decided as they did. This outcome is based on legal rules or principles. A party who is dissatisfied with the outcome can appeal it to a higher court, which will require additional time and proceedings.

(*Appendix continues*)

Mediation

A mediator (a neutral third person) facilitates the discussion between opposing lawyers and clients to help them settle the case. The mediator has no power to decide the outcome. Instead, the mediator helps the lawyers and clients communicate their different perspectives, discuss their needs and interests, and explore ways to resolve the case in a way that is acceptable to both clients. The outcome could be based on the law, or it could be based on some other rules or principles that the clients and/or their lawyers find relevant or important. If the clients agree on an outcome that they both find acceptable, that is the outcome for the case.

Nonbinding Arbitration

The clients and lawyers select an arbitrator (or group of arbitrators). Arbitrators are neutral third parties who are not actual judges, but who will have the authority to decide the outcome of the case. The clients will also decide among themselves what the rules for presenting evidence to the arbitrator will be. These rules are generally less formal than the rules used at trial. The lawyers, their clients, and client's witnesses present evidence. Often, the clients testify. After the evidence has been presented, the arbitrator(s) decide(s) the outcome of the case. This outcome is typically based on legal rules or principles, but it could be based on other rules or principles that the clients agree in advance should be used to decide the outcome, such as industry standards. Arbitrators typically report the outcome in writing, without explaining the reasons why they decided as they did. Afterwards, because this type of arbitration is "nonbinding," either of the clients may reject the outcome and go to trial.

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