

University of Nebraska - Lincoln

DigitalCommons@University of Nebraska - Lincoln

Theses, Dissertations, and Student Research:
Department of Psychology

Psychology, Department of

5-2014

Procedural Due Process in Modern Problem-Solving Courts: An Application of the Asymmetric Immune Knowledge Hypothesis

Leah C. Georges

University of Nebraska-Lincoln, lskovran@gmail.com

Follow this and additional works at: <http://digitalcommons.unl.edu/psychdiss>

 Part of the [Courts Commons](#), [Jurisprudence Commons](#), [Law and Psychology Commons](#), [Public Law and Legal Theory Commons](#), and the [Social Psychology Commons](#)

Georges, Leah C., "Procedural Due Process in Modern Problem-Solving Courts: An Application of the Asymmetric Immune Knowledge Hypothesis" (2014). *Theses, Dissertations, and Student Research: Department of Psychology*. 64.
<http://digitalcommons.unl.edu/psychdiss/64>

This Article is brought to you for free and open access by the Psychology, Department of at DigitalCommons@University of Nebraska - Lincoln. It has been accepted for inclusion in Theses, Dissertations, and Student Research: Department of Psychology by an authorized administrator of DigitalCommons@University of Nebraska - Lincoln.

PROCEDURAL DUE PROCESS IN MODERN PROBLEM-SOLVING COURTS:
AN APPLICATION OF
THE ASYMMETRIC IMMUNE KNOWLEDGE HYPOTHESIS

by

Leah C. Georges

A DISSERTATION

Presented to the Faculty of
The Graduate College at the University of Nebraska
In Partial Fulfillment of Requirements
For the Degree of Doctor of Philosophy

Major: Psychology

Under the Supervision of Professor Richard L. Wiener

Lincoln, Nebraska

May, 2014

PROCEDURAL DUE PROCESS IN MODERN PROBLEM-SOLVING COURTS:
AN APPLICATION OF
THE ASYMMETRIC IMMUNE KNOWLEDGE HYPOTHESIS

Leah C. Georges, Ph.D.

University of Nebraska, 2014

Adviser: Richard L. Wiener

Problem-solving courts, such as drug and mental health courts, function under the model of therapeutic jurisprudence—the idea that legal policies and procedures should help and not harm clients, within the confines of the law (Winick & Wexler, 2002). Although it would seem that the lack of procedural due process in most problem-solving courts is in direct opposition to the best interests of a client, it is possible that observers find this more of a problem than do the court clients themselves. This two-experiment study applied Igou's (2008) AIK hypothesis to problem-solving courts' practice of sanctioning in the absence of due process. Specifically, it is possible that observers find problem-solving courts' lack of procedural due process more of a problem than do the clients themselves because of differences in perspective and discordant knowledge of the coping strategies that problem-solving court clients utilize. This research sought to test these ideas. Experiment 1 manipulated the perspective from which participants considered a drug or mental health court sanction proceeding, with or without due process present. Experiment 1 also explored the moderating and mediating effects of participants' coping knowledge and perceived similarity as it related to their anticipated affect and well-being as a result of the sanction. Experiment 2 manipulated coping directly to determine whether a discordant coping knowledge would explain the

perspective effects identified in Experiment 1. Taken together, the findings of these experiments provided mixed support for traditional self-other effects in affective forecasting (Gilbert, Pinel, Wilson, Blumberg, & Wheatley, 1998; Hsee & Hastie, 2006; Igou, 2004; 2008; Van Boven & Lowenstein, 2003; Wiener, Gervais, Allen, & Marquez, 2013) and even less support for Igou's asymmetric immune knowledge hypothesis (2008). However, several important, legally relevant findings provide an opportunity to inform future psycholegal research in the area of procedural fairness, due process, and the inherent differences between drug and mental health courts and their clients.

Dedication

For Ithaca.

When you set out on your journey to Ithaca,
pray that the road is long,
full of adventure, full of instruction.
The Laistrygonians and the Cyclops,
angry Poseidon – do not fear them:
such as these you will never find
as long as your thought is lofty, as long as a rare
emotion touch your spirit and your body.
The Laistrygonians and the Cyclops,
angry Poseidon – you will not meet them
unless you carry them in our soul,
unless your soul raise them up before you.

Pray that the road is long.
At many a summer dawn to enter
with what gratitude, what joy-
ports seen for the first time;
to stop at Phoenician trading centres,
and to buy good merchandise,
mother of pearl and coral, amber and ebony,
and sensuous perfumes of every kind,
sensuous perfumes as lavishly as you can;
to visit many Egyptian cities,
to gather stores of knowledge from the learned.

Have Ithaca always in your mind.
Your arrival there is what you are destined for.
But don't in the least hurry the journey.
Better it last for years,
so that when you reach the island you are old,
rich with all you have gained on the way,
not expecting Ithaca to give you wealth.
Ithaca gave you a splendid journey.
Without her you would not have set out.
She hasn't anything else to give you.

And if you find her poor, Ithaca hasn't deceived you.
So wise you have become, of such experience,
that already you'll have understood what these Ithacas mean.

-Constantine Cavafy (1863-1933)

Acknowledgements

This dissertation is a celebration of the efforts of many. I am grateful to Richard Wiener, my advisor, for your guidance and commitment to my development as a researcher and as a grown-up. Your insights about life and the academe will stay with me well beyond my time at the University of Nebraska. Many thanks to my supervisory committee members, Sarah Gervais, Cynthia Willis-Esqueda and Anna Shavers for your professional, practical, and emotional support. It has been my pleasure working with you. I am also grateful to my supportive Creighton University colleagues, namely Matthew Huss. You have opened to me the door to your office and the door to your home for nearly a decade. I am a better teacher and better human for knowing you. I have also been fortunate to collaborate with many outstanding undergraduate and graduate student colleagues during my time at Creighton University and the University of Nebraska, especially Stacie Keller. Thank you for being “my person”. I was also blessed to work with four years of Research Experience for Undergraduate Scholars. Each of you gave me reason to believe that our future is in beautiful, competent, and willing hands. You have made me so proud. To the late Bruce Winick—thank you for showing the field of psychology and law how to conduct research from the heart and for teaching me how to think about the law not for what it is, but what it ought to be.

I owe a profound thank you to my family for your gracious understanding and perpetual support during my time in graduate school. Words cannot do justice to your patience, love, and simple tolerance of my difficult schedule.

Finally, I am especially grateful to my husband, Jesse. You have been with me since the first day of this journey and this dissertation is as much yours as it is mine.

Grant Information

This research was funded in part by the Carl John Warden Graduate Fellowship in Psychology.

Table of Contents

| | |
|---|----|
| Introduction..... | 1 |
| CHAPTER 1: REVIEW OF THE LITERATURE..... | 4 |
| Problem-Solving Courts: A Brief History..... | 4 |
| Therapeutic Jurisprudence..... | 6 |
| Therapeutic jurisprudence: A thoughtful critique..... | 8 |
| Procedural Due Process: What Process <i>is</i> Due?..... | 11 |
| Due process in the juvenile court..... | 14 |
| Due Process in Modern Problem-Solving Courts..... | 16 |
| Due process in termination proceedings..... | 16 |
| Due process in sanction proceedings..... | 23 |
| Affective Forecasting..... | 29 |
| The impact bias..... | 31 |
| The durability bias..... | 34 |
| Sources of the impact and durability biases..... | 37 |
| Self-Other Effects in Social Psychology..... | 43 |
| Self-Other Effects in Affective Forecasting..... | 47 |
| The asymmetric immune knowledge hypothesis..... | 51 |
| Modern Problem-Solving Courts: A Problem of Perspective?..... | 56 |
| The Current Study: An Overview..... | 58 |
| CHAPTER 2: EXPERIMENT 1..... | 61 |
| Hypotheses..... | 61 |
| Hypothesis 1..... | 61 |
| Hypothesis 2..... | 61 |

| | |
|--|----|
| Hypothesis 3..... | 62 |
| Hypothesis 4..... | 62 |
| Hypothesis 5a..... | 63 |
| Hypothesis 5b..... | 64 |
| Exploratory Hypotheses..... | 64 |
| Hypothesis 6..... | 65 |
| Method..... | 65 |
| Design..... | 65 |
| Participants..... | 65 |
| Materials for Experiment 1 Overall..... | 66 |
| Preliminary Analyses..... | 72 |
| Attention check..... | 72 |
| Scale construction and reliabilities..... | 72 |
| Experiment 1a – Drug Court..... | 75 |
| Method..... | 75 |
| Participants..... | 75 |
| Materials..... | 76 |
| Design and Procedure..... | 80 |
| Results..... | 82 |
| Overview..... | 82 |
| Section I: Measurement and Variable Construction..... | 83 |
| Section II: Basic, Moderation, and Mediation Analyses for Experiment 1a..... | 84 |
| Section III: Familiarity with Drug Use..... | 94 |

| | |
|--|-----|
| Section IV: Exploratory Procedural Fairness Mediation Analyses..... | 95 |
| Experiment 1b – Mental Health Court..... | 97 |
| Method..... | 97 |
| Participants..... | 98 |
| Materials..... | 98 |
| Design and Procedure..... | 101 |
| Results..... | 101 |
| Overview..... | 101 |
| Section I: Measurement and Variable Construction..... | 102 |
| Section II: Basic, Moderation, and Mediation Analyses for Experiment 1b..... | 103 |
| Section III: Familiarity with Mental Illness..... | 117 |
| Section IV: Exploratory Procedural Fairness Mediation Analyses..... | 118 |
| Experiment 1 Overall – Drug and Mental Health Court..... | 119 |
| Method..... | 119 |
| Design and Procedure..... | 119 |
| Results..... | 119 |
| Overview..... | 119 |
| Experiment 1 Discussion..... | 123 |
| Hypotheses..... | 122 |
| Hypothesis 1..... | 123 |
| Hypothesis 2..... | 127 |
| Hypothesis 3..... | 128 |
| Hypothesis 4..... | 128 |

| | |
|---|-----|
| Hypothesis 5a..... | 134 |
| Hypothesis 5b..... | 134 |
| Hypothesis 6..... | 134 |
| CHAPTER 3: EXPERIMENT 2..... | 136 |
| Hypotheses..... | 136 |
| Hypothesis 1..... | 136 |
| Hypothesis 2..... | 137 |
| Hypothesis 3..... | 137 |
| Hypothesis 4..... | 137 |
| Method..... | 138 |
| Participants..... | 138 |
| Materials..... | 139 |
| Design and Procedure..... | 140 |
| Results..... | 141 |
| Overview..... | 141 |
| Section I: Measures and Variable Construction..... | 142 |
| Attention check..... | 142 |
| Scale construction and reliabilities..... | 142 |
| Variable construction..... | 145 |
| Section II: Basic, Moderation, and Mediation Analyses for Experiment 2..... | 146 |
| Section III: Familiarity with Mental Illness..... | 154 |
| Experiment 2 Discussion..... | 155 |
| Hypotheses..... | 156 |

| | |
|------------------------------------|-----|
| Hypothesis 1..... | 156 |
| Hypothesis 2..... | 156 |
| Hypothesis 3..... | 157 |
| Hypothesis 4..... | 157 |
| CHAPTER 4: GENERAL DISCUSSION..... | 160 |
| Theoretical implications..... | 161 |
| Legal Implications..... | 165 |
| Limitations..... | 167 |
| Future Directions..... | 170 |
| Conclusions..... | 172 |
| References..... | 174 |
| Tables..... | 189 |
| Figures..... | 209 |
| Appendices..... | 225 |

Introduction

On April 3, 2007, the State of Tennessee enrolled Brent Stewart in the Dyer County Drug Court Program as part of a probation revocation for the crime of burglary. During Stewart's tenure in the court-mandated program, he repeatedly failed to comply with some of the agreed upon program requirements (*State of Tennessee v. Brent R. Stewart*, 2010). Specifically, Mr. Stewart failed several drug screenings, repeatedly failed to appear for required weekly meetings, violated a house arrest rule, and failed to report for a drug screening, among numerous other violations. To address these program violations and modify Stewart's behavior, the judge sanctioned him to significant jail terms on six separate occasions. These jail terms ranged from one week to sixty days, totaling almost six months of additional jail time, over the sixteen months during which the defendant participated in the drug court program. On each of the six occasions, the judge denied Stewart basic due process when he sanctioned Stewart to incarceration. Further, the record does not indicate that the court attempted less severe forms of sanction (e.g., admonition from the judge, increased drug testing, additional home visits, etc.) before it sent him to jail. As a result of his wayward participation in the drug court program, Brent Stewart was expelled from the program and was subsequently considerably worse off, from a punitive perspective, than if he had chosen not to participate in the program at all.

Upon appellate review, the Tennessee Court of Appeals noted that the six months of incarceration imposed in this case was "in plain tension with the idea that drug courts should adopt a therapeutic, collaborative . . . response to a participant's noncompliant behavior" (*State of Tennessee v. Stewart*, 2010, p. 16). The Appellate Court also noted

that in spite of Mr. Stewart's lack of success and subsequent expulsion from the program, he *did* credit the Tennessee Drug Court with "saving his life" (*State of Tennessee v. Stewart*, 2010, p. 5). In other words, although Mr. Stewart was unable to comply with the program requirements, he seemingly benefited from, or at least appreciated the structure and support the program provided. Appreciative statements such as this suggest that problem-solving court clients benefit therapeutically and often legally from the strict process and oversight of the special court program—even if it is at the cost of a recognized liberty interest, such as freedom from lengthy incarceration without due process of law.

Although cases like *Stewart* may be the exception rather than the rule, this case raises an important theoretical and empirical question about whether the non-adversarial nature of problem-solving courts fosters a tension between clients' due process rights and the goals of therapeutic jurisprudence. The first chapter of this dissertation briefly examines the history of American problem-solving courts and how the philosophy of therapeutic jurisprudence informs these special court systems. Then, the dissertation goes on to analyze the legal history of procedural due process and evaluates how courts apply these protections in modern problem-solving courts, specifically at sanction and termination hearings.

The first chapter also reviews the social-cognitive theory of affective forecasting and introduces the psychology of the self-other effect. Further, the dissertation examines how the asymmetric immune knowledge hypothesis (Igou, 2008) might clarify the general inaccuracies that people demonstrate when anticipating the emotional consequences of an event. These psychological theories help explain differences in how

problem-solving court participants, compared to those less familiar with problem-solving courts, view potential liberty interest violations, such as incarceration without due process of law.

The second and third chapters of this dissertation present a series of experiments that join a focused movement toward evaluating the processes and procedures characteristic of problem-solving courts (see Quinn, 2009; Wiener, Winick, Georges, & Castro, 2010). The research tests whether problem-solving court clients experience dissatisfaction with the due process they receive as the court tries to balance the goals of therapeutic jurisprudence against the defendant's legal protections. The paper also offers a practical application of the asymmetric immune knowledge hypothesis (Igou, 2008) to help explain the difference between psycholegal scholars' concern about current due process practices and clients' general satisfaction with the sanctioning procedures in problem-solving courts.

Finally, the fourth chapter of this dissertation discusses the theoretical and legal implications and limitations of the findings of Experiments 1 and 2, and suggests directions for future research.

CHAPTER 1

Review of the Literature

Problem-Solving Courts: A Brief History

The modern day problem-solving court movement grew out of the recognition that the adversarial, criminal court system failed to resolve many of the problems that defendants faced in traditional criminal courts, which resulted in a revolving door for defendants involved in drug use and for those who suffered from a variety of mental health impairments (Lane, 2002). Judges and attorneys felt enormous pressure to efficiently clear the daily docket, without specific regard to the victims, communities, or defendants they served (Berman & Feinblatt, 2001). As Kathleen Blatz, Minnesota Supreme Court Judge articulated, “. . . you just move ‘em, move ‘em, move ‘em . . . you know, I feel like I work for McJustice: We sure aren’t good for you, but we are fast” (Berman, 2000, p. 80). Traditional criminal courts typically do not have the resources to address the underlying cause of illegal behavior—substance abuse, mental illness, and domestic violence, among others (Winick, 2003). For these reasons, problem-solving courts have become increasingly popular as caseloads in criminal courts have grown larger, and budgets to adjudicate these cases have grown leaner.

There is no single model for problem-solving court systems, however the unifying feature of these courts, and in particular drug and mental health courts, is an identifiable, treatable issue that underlies the client’s criminal conduct (Bozza, 2007). A conventional drug or mental health court differs from the traditional criminal court’s procedures and practices in that the court treatment team refers to offenders as “clients” or “participants,” and the judge becomes an active participant in the client’s treatment plan. These court

systems utilize a multi-faceted approach to address the legal issues of their clients and the court personnel serve as a rehabilitative team to treat the underlying cause of maladaptive behavior. This team-focused approach includes an interdisciplinary group of court and non-court players, such as a judge, a prosecutor, defense counsel, social workers, probation officers, and off-site treatment providers (Berman & Feinblatt, 2001; Winick, 2000). Most programs employ at least a small group of these key players, especially at weekly progress meetings. However, in some jurisdictions attorneys are not frequently present and when they are, they play a reduced role in the process (Nolan, 2003).

Problem-solving courts share a broadly defined set of goals and characteristics, such as a non-adversarial collaborative approach to decision making, an individualized plan for each client, increased judge/offender interaction, clearly defined rules and goals to increase defendant accountability, and an emphasis on improved substantive outcomes, including lower recidivism and victim safety (Berman & Feinblatt, 2001; Casey & Rottman, 2003; Porter, Rempel, & Mansky, 2010; Watson, Hanrahan, Luchins, & Lurigio, 2001). Most importantly, these problem-solving courts have the resources to deal with a client's immediate legal dispute, but also to provide treatment in a way that prevents recurring court involvement (Labriola, Rempel, O'Sullivan, & Frank, 2007; Nolan, 2003; Winick, 2003).

Problem-solving court systems are well integrated into the American justice system. In 1989, Dade County, Florida created the first problem-solving drug court and on July 1, 2007, South Dakota became the 50th state in America to implement a drug court (Eckrich & Loudenburg, 2012). Since the creation of the first problem-solving drug court, more than 3,000 modern problem-solving courts have emerged across the nation

(Porter et al., 2010). Specifically, jurisdictions in all fifty states have created more than 2,100 drug courts as well as an additional group of problem-solving court systems that include more than 200 mental health courts, 200 domestic violence courts, 30 community courts, and more than 500 other focused court systems, such as veterans, homeless, teen, and sex offense courts (Porter et al., 2010). Further, both federal and state court organizations recognize these problem-solving courts as favorable cost and time saving approaches to social and mental health problems (Becker & Corrigan, 2002).

The primary underlying psychosocial and legal model behind the widespread proliferation of these special court systems is therapeutic jurisprudence (Wexler & Winick, 1996; Winick & Wexler, 2002; 2003). The philosophy of therapeutic jurisprudence is one approach to scholarship that attempts to analyze legal practice and theory through a set of lenses, specially formed to view the law for not only what it is, but more importantly what it ought to be.

Therapeutic Jurisprudence

Therapeutic jurisprudence is the study of the law's impact on an individual's psychological well-being (Winick & Wexler, 2002). The concept of therapeutic jurisprudence (hereinafter "T.J.") originated in the late 1980s as an approach to study and conceptualize mental health law (Wexler & Winick, 1991; Wexler & Winick, 1996; Winick, 2003). Wexler and Winick defined T.J. as an interdisciplinary approach to assess the extent to which legal rules and procedures produce therapeutic or anti-therapeutic consequences, with a focus on how to increase the former and decrease the latter (Wexler & Winick, 1991; Winick, 2003; Winick & Wexler, 2002; 2003). The original authors intentionally defined "therapeutic" quite broadly, as "anything that enhances the

psychological or physical well-being of the individual” (Winick, 1997, p. 192). They chose this broad, general characterization to allow scholars and practitioners to fit the concept of T.J. to the particular legal practice of interest. Although the original authors conceptualized T.J. as a theoretical and scholarly approach to empirically analyze the therapeutic influence of legal theory and practice on mental health law, (e.g., right to refuse treatment, treatment for incompetency to stand trial, etc.), legal and social science scholars have applied the principles of T.J. to a variety of other legal issues. These include the role of counsel in drug courts (Winick, 2003), consequences of sex offender registration laws (Levenson & Cotter, 2005), involuntary treatment of the mentally ill (Glaser, 2003; Winick, 1997), juvenile transfer policies (Mescall, 1999), and domestic violence adjudication (Simon, 1995), among many others.

While problem-solving courts and the T.J. movement are not identical concepts, the T.J. movement and the nation’s first problem-solving courts developed in parallel at approximately the same time in history. Winick and Wexler (2002) viewed T.J. and the proliferation of problem-solving courts as two “vectors” in a growing movement toward a more comprehensive, humane, and psychologically optimal way of applying and understanding the law (see also Winick, 2003). Therapeutic Jurisprudence serves as a philosophy of non-retributive justice in which the goal is “to empower offenders, offer them a way to take control of their own treatment, and help them to make judgments that are rational in the way that the criminal law defines rational choice” (Wiener & Georges, 2013, p. 6). Problem-solving courts create “rich and fascinating laboratories” from which to “generate and refine therapeutic jurisprudence approaches” (p. 484), but they should not be regarded as synonymous terms (Winick & Wexler, 2002).

Winick and Wexler, wholly regarded as the founders of the therapeutic jurisprudential approach to the law, make very clear that T.J. ought not override other competing values in law. That is, legal actors should apply T.J. only so long as its practices do not subordinate due process and other related justice values. Specifically, Winick (1997) asserted:

Therapeutic jurisprudence has always suggested that therapeutic goals should be achieved only within the limits of considerations of justice . . . that law should be applied fairly, evenhandedly, and non-discriminatorily. Legal actors should seek to apply the law therapeutically but only when consistent with these values. (p. 203)

In other words, proponents of T.J. do not suggest that therapeutic concerns should supersede other legal considerations, such as due process—in fact, some situations require that societal, legal concerns trump therapeutic ones (Hora, Schma, & Rosenthal, 1999). Instead, T.J. necessitates legal theorists to consider psychological and mental health as one meaningful piece in the analysis of legal practice or theory (Hora et al., 1999).

Therapeutic jurisprudence: A thoughtful critique. Proponents of T.J. argue that the problem-solving court movement provides a more appropriate way to provide services to vulnerable populations than does the traditional criminal court system approach. However, the therapeutic jurisprudential model is not without critics. Psycholegal scholars have recently called into question whether problem-solving courts can reduce the anti-therapeutic consequences of criminal courts without subordinating justice values, such as due process (Berman, 2004; Berman & Feinblatt, 2001; 2005;

Boldt, 1998; Burke, 2010; Casey, 2004; Castellano & Anderson, 2013; Hoffman, 2011; Lane, 2002; Meyer, 2009; Odegaard, 2007; Quinn, 2000; 2009; Seltzer, 2005). Quinn (2009) effectively argues that current problem-solving court policy and practice focus solely on the benevolent and exciting success stories of these courts; however, these successes are only one small part of the story. For example, some critics argue that the problem-solving court movement put the cart before the horse, so to speak because some systems lack sufficient resources (financial and manpower) to sufficiently treat the high volume of participants in their courts (Odegaard, 2007; Seltzer, 2005). Further, where resources *do* exist, these services may include little more than medication and “do nothing to address the factors associated with the criminal contact or the individual’s need for housing or other health care or vocational services” (Seltzer, 2005, p. 583). This lack of available evidence-based treatment services in many areas of the country as well as an ineffectiveness of the services that are in place often results in problem-solving court participants’ failure to thrive outside of the program.

State and defense attorneys’ nontraditional roles in problem-solving courts systems are also controversial (Burke, 2010; Odegaard, 2007). The collaborative nature of problem-solving courts contrasts sharply with the adversarial nature of criminal courts. Consequently, Seltzer (2005) and Odegaard (2007) among others, argue that defense attorneys may take a more passive role and ultimately fail to advocate on behalf of their clients. For example, Burke (2010) articulates that many drug courts utilize pre-hearing conferences (where the participant may not be present), to develop legal and treatment strategies for the participant. However, if the treatment team, defense attorney included, decides beforehand what is going to happen to the participant, the defendant has

“completely lost his or her chance to be heard” (Burke, 2010, p. 52) or be adequately represented by counsel. In other words, the informal nature of the court may create legitimate, legal-duty concerns when a defense attorney works double duty on behalf of the judge, the treatment team, and the client.

Some opponents of the T.J. movement also argue that these courts “coerce defendants to choose a guilty plea, drug treatment, and the immediate freedom that accompanies the drug court program over waiting in jail to litigate a claim with an uncertain outcome” (Blom, Galbo-Moyes, & Jacobs, 2010, p. 36). Blom et al. (2010) also note that if an offender fails out of drug court, the criminal court may impose a sentence that exceeds the prison term accompanying a standard plea for the same offense. In other words, if the offender fails out of the drug court and subsequently faces the full array of criminal court punishments, the offender may be punitively worse off than if he had not participated in the drug court at all. Though it may appear counterintuitive to the therapeutic jurisprudential ideals of the problem-solving court movement, a substantial number of courts require a defendant’s guilty plea to participate in the court’s treatment program (see Berman & Feinblatt, 2005). This paper reviews a number of these cases and its implication for due process protections in the following section.

Lastly, and most relevant for this paper is the court’s potential denial of participants’ procedural due process protections, under the pretense of an informal, therapeutic program setting (Berman, 2004; Boldt, 1998; Casey, 2004; Castellano & Anderson, 2013; Hoffman, 2011; Lane, 2002; Meyer, 2009; Odegaard, 2007; Quinn, 2000; 2009; Seltzer, 2005). Some argue that problem-solving courts have become so nearsighted by the romanticism of therapeutic jurisprudence, that they have “lost sight of

fundamental legal principles like due process and proportionality” (Berman, 2004, p. 1313). Although some scholars question whether the problem-solving court movement has “oversold its innovations” (Quinn, 2009, p. 68), most recognize that these courts, along with their therapeutic jurisprudential ideals, serve a necessary purpose as an alternative that avoids recycling offenders with drug and mental health problems through the criminal court system (see Odegaard, 2007). A more thorough understanding of the procedural protections and practical and therapeutic outcomes of problem-solving courts requires additional empirical research (see Wiener, Winick, Skovran Georges, & Castro, 2010). The current dissertation serves as one such empirical effort. The following section reviews the constitutionally guaranteed protections of due process, as well as how problem-solving courts satisfy or fail to satisfy these protections.

Procedural Due Process: What Process *is* Due?

The Fifth and Fourteenth Amendments of the United States Constitution describe a legal obligation by both federal and state governments to assure that all levels of government operate under the principle that no person shall be, “deprived of life, liberty or property without due process of law” (U.S. Const. amend. V). While the text of the Due Process Clause is broadly stated, the fact that the United States Constitution addresses it twice makes it clear that it is of fundamental importance.

The constitutional guarantee of due process of law traditionally applies to two separate categories—substantive due process and procedural due process. Substantive due process refers to issues such as privacy, freedom of speech, and the creation of rights, whereas procedural due process generally describes the procedures afforded to those who find themselves before a criminal or civil court (Chemirinsky, 2006). A thorough

procedural due process analysis requires an answer to a three pronged question: 1) Has there been a deprivation, 2) of a life, liberty, or property interest, 3) without due process of law (Chemirinsky, 2006)? Assuming that the government has deprived a defendant of a non-trivial protected interest (see *Fuentes v. Shevin*, 1972), the court must then answer *what* process of law is due. The analysis of any one individual case does not answer the question, “what process is due.” Rather, the answer relies on the application of relevant jurisprudence to the facts in any specific case. The United States Supreme Court in *Morrissey v. Brewer* (1972) articulated that, “It has been said so often by this Court and others as not to require citation of authority that due process is flexible and calls for such procedural protections as the particular situation demands” (p. 481).

The United States Supreme Court considered a number of cases regarding required due process procedures in traditional court systems (see *Bi-Metallic Investment Co. v. State Board of Equalization of Colorado*, 1915; *Fuentes v. Shevin*, 1972; *Goldberg v. Kelly*, 1970; *Hamdi v. Rumsfeld*, 2004; *Mathews v. Eldridge*, 1975). The most widely cited case that addresses due process is the Supreme Court’s ruling in *Goldberg v. Kelly* (1970). The Court held that a termination of federally assisted aid for families with dependent children, without proper prior notice and hearing, denied those families due process of law. Specifically, the recipient did not have sufficient opportunity to contest the reasons that agency used to remove them from the ‘aid eligible’ list. In its ruling, the Court enumerated specific procedures that must be provided *prior* to a potential deprivation of a liberty (or property) interest. These are the right to receive adequate notice of a [evidentiary] hearing (though not necessarily a judicial or quasi-judicial hearing), the right to make an oral presentation, the right to counsel, the right to an

impartial decision maker, the opportunity to confront adverse witnesses, and an ultimate decision based *only* on legal rules and evidence (*Goldberg v. Kelly*, 1970).

Several years later, the United States Supreme Court revisited the issue of due process requirements in *Mathews v. Eldridge* (1976). In this case, the Court outlined a more flexible, three-pronged balancing test that lower courts must use to evaluate the amount of process due: (1) the importance or value of the interest at stake, (2) the risk of error because of the procedures used, and the probable value, if any, of additional or alternate procedural safeguards, and (3) the government's interest, including administrative encumbrance and costs of additional procedures. A court must weigh all three factors as it decides when, and how much procedural protection to afford a defendant (*Mathews v. Eldridge*, 1976). While the *Mathews* test is significantly more flexible in scope than the specific procedures enumerated in *Goldberg*, its flexibility stems from a recognition "that not all situations calling for procedural safeguards call for the same kind of procedure" (*Morrissey v. Brewer*, 1972, p. 471). In other words, the legal history of procedural due process in traditional court systems clearly articulates which procedures must be in place before a court denies a defendant's property or liberty interest. However, the method by which courts impose these procedures depends on the specific facts of the case, and a careful balancing of the factors defined in *Mathews v. Eldridge* (1976).

While there are instances where a problem-solving court may potentially deprive a client of a life or property interest, this paper focuses primarily on clients' potential liberty interest violations and the requisite procedural protections that prevent such violations. However, the problem-solving courts' application of these procedural

protections is not yet well defined and is significantly less clear than that of the traditional criminal court system. Social science and legal scholars (e.g., Berman, 2004; Berman & Feinblatt, 2001; 2005; Boldt, 1998; Burke, 2010; Casey, 2004; Castellano & Anderson, 2013; Hoffman, 2011; Lane, 2002; Meyer, 2009; Odegaard, 2007; Quinn, 2000; 2009; Seltzer, 2005) have expressed that the non-adversarial nature of problem-solving courts fosters a tension with clients' due process rights. An example is the case of *State of Tennessee v. Stewart* (2010) cited in the beginning pages of this paper. However, because modern day problem-solving courts are a relatively new phenomenon, much of the relevant case law and psycholegal literature regarding due process in problem-solving courts stems from juvenile court jurisprudence—arguably the first type of problem-solving court in the United States. In fact, the history of the juvenile court foreshadows many of the due process challenges faced by modern courts and provides a “cautionary tale of the pitfalls” (p. 1464) to the unique, discretionary methods of these relatively new special court systems (Casey, 2004). The following section briefly reviews the history of due process violations and protections in America's juvenile court system.

Due process in the juvenile court. The juvenile court movement began in this country when Illinois adopted the first juvenile court in 1899 (Bunch, 2004). Soon after, all fifty states adopted a similar system. The goal of the juvenile court system was to act *en loco parentis*, or in place of the parent, to benevolently intervene on the behalf of wayward youth (Casey, 2004). The courts' original intent was to look beyond the child's crime or unruly behavior and to “dig deeper,” and ask “what is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career” (Mack, 1909, p. 174). This system anchored its practice in

rehabilitative and therapeutic ideals, such as individualized treatment of offenders, indeterminate sentences and a decision maker's broad discretion to make adjudication and sentencing decisions, much like that of modern problem-solving courts (Gardner, 2003).

Until the late 1960s, the juvenile court system had insulated itself from an analysis of legitimacy and arbitrariness because of the widely accepted discretion deemed necessary to provide care in the best interest of the child (Casey, 2004). However, in 1967, the landmark Supreme Court decision, *In re Gault*, changed the landscape of procedural due process protections for children in the juvenile court system. On June 8, 1964, an Arizona sheriff took then fifteen-year-old Gerald Gault into custody for making lewd phone calls to a neighbor, a charge he denied. The court ultimately sentenced him, without witnesses or record of the hearing, to confinement at the state industrial school until he reached the age of 21—a near six-year sentence. Ironically, had the court tried Gault as an adult, and thus provided him with the procedural protections of the criminal court system, he would have received a maximum punishment of two months imprisonment and a \$50 fine. In an eight to one decision, the United States Supreme Court found that Gault's commitment to the state industrial school violated his 14th Amendment's requirement of due process. Specifically, the Supreme Court ruled that juveniles must be afforded *most* of the same due process protections provided to adults, including the right to confront witnesses, the right to counsel, timely notification of charges, and the right against self-incrimination (*In re Gault*, 1967).

Since *Gault*, more than 3,000 modern problem-solving courts have grown out of the therapeutic jurisprudence movement (Porter et al., 2010). In response, the United

States Department of Justice promulgated explicit guidelines for these court systems, but left untouched the question of how to balance client rehabilitation, public safety, and protection of clients' due process rights in a non-adversarial system (NADCP, 1997). The United States Supreme Court has not yet had occasion to review the level of due process that the law owes to defendants in problem-solving courts, as it did for juvenile court systems in *In re Gault* in 1967. As a result, the existing case law comes from state courts of appeal.

The following section examines the current legal landscape regarding problem-solving court clients' due process rights—specifically as it applies to two potential losses of liberty: termination from a problem-solving court program and the use of incarceration as a sanction for noncompliance. These two areas are central to the functioning of problem-solving courts for several important reasons. First, problem-solving courts are a relatively new phenomenon and as such, the existing due process case law is limited in both breadth and depth. However, the case law regarding termination and sanctioning practices provides an effective point of comparison to both the juvenile court (*In re Gault*, 1970) and traditional criminal court systems' analysis of procedural due process. Although this paper's focus on termination and sanction proceedings is somewhat narrow in scope, there is room for additional empirical research examining equally important sources of liberty interest violations, including equal protection, First Amendment issues, and judicial impartiality (Meyer, 2009).

Due Process in Modern Problem-Solving Courts

Due process in termination proceedings. Problem-solving courts function as an alternative to traditional criminal courts. If a defendant voluntarily chooses to participate

in a drug or mental health court, he generally signs an agreement to follow the court's mandated treatment plan. If the participant fails to comply with that plan, the court can terminate the client's participation and remand the case back to criminal court. Once in the criminal court system, the offender faces the full panoply of punishments that a traditional court may impose. Problem-solving court judges and program staff practice wide discretion to determine when, and whether to terminate an offender's time in the problem-solving court.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution requires due process protections when there is a chance that a person will potentially suffer a loss to a recognized liberty interest (Chemirinsky, 2006). The *State of Idaho v. Rogers* (2007) provides one of the most thorough termination procedural due process analyses. Rogers successfully argued that the local drug court program terminated his participation without due process of law, in violation of the Fourteenth Amendment. On February 24, 2003, the court charged Rogers with possession of methamphetamine and driving without privileges. He entered a plea that required him to successfully complete the local county drug court program. If Rogers successfully graduated, the state agreed to dismiss the case and drop the charges against him. In accordance with the plea agreement, he pleaded guilty to possession of methamphetamine and entered drug court on February 11, 2004. Rogers had some success in the program and the judge praised him for these successes. However, in June of 2004, the court staff accused him of soliciting fellow drug court participants to enter into an "adult entertainment business," a violation of the program requirements (*State of Idaho v. Rogers*, 2007, p. 739). The judge terminated his participation from the drug court

program during an informal closed-door “discussion” with the treatment team. This discussion did not include Rogers, nor did Rogers have an opportunity to provide a statement or evidence on his behalf.

The *Rogers* (2007) case raises two separate, but related issues. The first is whether a defendant who pleads guilty in return for admission to a drug court system is entitled to due process of law when he or she faces termination from a drug court. The second issue is if the court finds that there are due process requirements that must be met before a drug court can terminate a client’s participation from the program, what are those requirements?

To address the first question, the court performed an analysis of whether a program participant in Roger’s position has a protected liberty interest under the Fourteenth Amendment. The court noted that Rogers pleaded guilty to the drug possession charge as a stipulation of drug court participation. Then, the court likened those who have pleaded guilty to an offense and who participate in a “diversionary” program such as drug court, to those on probation or parole. The court relied heavily on United States Supreme Court case law that recognized the liberty interests of parolees (*Morrissey v. Brewer*, 1972) and those on probation (*Gagnon v. Scarpelli*, 1973). The *Morrissey* (1972), opinion held that a court deprives a defendant of due process when it revokes the defendant’s parole without a hearing. However, they also articulated that although a parolee may not be physically incarcerated and thus subject to the severely limited due process rights of incarcerated defendants, a person on parole is still “in custody” and “is not entitled to a full adversary hearing such as would be mandated in a criminal proceeding” (p. 471). Due process, as it applies to parolees, requires at least

prior notice of a potential revocation, as well as a revocation hearing. This hearing must include at least the minimum requirements of due process:

(a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses; (e) a neutral and detached hearing body; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole. (p. 489)

One year later, the Court addressed due process protections for those on probation and found that similar to those on parole, those on probation also have a recognized liberty interest and the same minimum due process protections apply (*Gagnon v. Scarpelli*, 1973).

Returning to the original issues in *State of Idaho v. Rogers* (2007), that court held that because Rogers participated in a post-plea diversionary program (drug court), he too enjoyed a “cognizable liberty interest,” (p. 742) and was entitled to at least minimum due process of law at the time of termination from the drug court program. Specifically, at the time of his participation, he was living in society, free to move about as he pleased within the confines of the drug court’s requirements. After his termination, the court incarcerated him, which ended his recognized liberty interest to freely move about society as he pleased. After the court terminated his drug court participation, the drug court judge criminally sentenced him and a felony conviction appeared on his record. Therefore, the court held that Rogers had a liberty interest to remain in the drug court program (*State of Idaho v. Rogers*, 2007). In regard to the second issue in the case, the

Idaho court found that since a drug court participant's liberty interest is similar to that of a person on probation or parole, Rogers should also have benefited from the Supreme Court's decisions in *Morrissey v. Brewer* (1972) and *Gagnon v. Scarpelli* (1973). Specifically, the state should have entitled Rogers, at minimum, the same procedural due process requirements afforded to those on probation or parole.

A number of additional cases address when, and how many procedural due process protections a court must afford to a defendant if it seeks to terminate participation in the program. In each case, the courts relied heavily on the Supreme Court findings in *Morrissey* (1972) and *Gagnon* (1973). For example, courts must afford minimum due process when termination resulted from no written notice (*Gosha v. State of Indiana*, 2010; *Hagar v. Oklahoma*, 1999), no opportunity for a hearing or to present evidence (*State of Washington v. Cassill-Skilton*, 2004), no opportunity to participate in a hearing (though one took place), (*Harris v. Commonwealth*, 2010), no opportunity to cross-examine adverse witnesses (*State of Nebraska v. Shambley*, 2011), and inadequate counsel (*Hunt v. Kentucky*, 2010). In each case, clients faced certain liberty interest restrictions, however, they were not imprisoned and like parolees or probationers, could freely participate in a wide variety of social privileges including gainful employment, human attachments, the opportunity to spend time with family, and the opportunity to live at home (*State of Nebraska v. Shambley*, 2011). Termination of program participation ultimately revokes these recognized liberty interests, thus, existing case law suggests that a court must afford the client at least minimal due process protections as recognized in *Morrissey* (1972) and *Gagnon* (1973). Of course, the availability of these due process rights varies across jurisdictions and will continue to do so unless the

Supreme Court takes up the issue of drug court due process obligations as it did for due process in juvenile courts (*In re Gault*, 1970).

Occasionally, a diversionary court such as a drug or mental health court requires participants to sign a waiver of due process rights as a stipulation to participate in the program. In each of the cases above, the problem-solving court client did not sign (or there was no mention of) a contract that waived due process rights. In the case where a problem-solving court client does sign such a contract, at least one court has found that minimal due process protections still apply. Specifically, in *People v. Kimmel* (2009), the court found that a client may make an unsworn statement and the court would consider any arguments of counsel on behalf of the client, in lieu of a full termination hearing. This analysis suggests that while clients may waive their rights to some due process protections, in the case where a recognized liberty interest is at stake, at least one court found it jurisprudentially appropriate to apply at least minimal due process.

A distinction between pre-plea and post-plea programs. The major distinction between the above and other termination cases is the point during the adjudicative process when the drug or mental health court clients voluntarily accepted participation into the program. Specifically, when a court requires a plea *prior* to program participation, as in *Rogers* (2007), case law suggests that the same protections apply as in other situations where a defendant has already pleaded guilty (e.g., probation and parole) (see also *Hagar v. State of Oklahoma*, 1999; *Hopper v. State*, 1989; *People v. Bishop*, 1999; *Simmons v. State*, 2001; *State of Ohio v. Stafford*, 2001). However, some courts have gone so far as to conclude that participants who enter a diversionary program, such as drug court, *pre-plea* are *also* entitled to the same due process protections as those on

probation or parole (*State of Washington v. Cassill-Skilton*, 2004). For example, an Illinois court found that the state wrongfully denied a client a hearing prior to dismissing him from the local drug-court program, even though the program did not require the defendant to enter a plea prior to participation (*State of Illinois v. Anderson*, 2005). The court held that the distinction between whether the drug-court program took place before or after an admittance of guilt was of, “no consequence and is not outweighed by the similarities” (p. 1113).

On the other hand, other jurisdictions have held that due process does not apply when a defendant participates in a program pre-plea. For example, the court in *Batista v. State of Florida* (2007) rejected the defendant’s claim that the court denied him an evidentiary hearing prior to termination from the drug court program. The court asserted that even though there is no record as to *why* the court terminated Batista’s participation in the program, there is, “no basis . . . to require that each time the state elects to terminate [pre-trial intervention] . . . the state has the burden to prove . . . that its reasons for electing to terminate [pre-trial intervention] . . . are valid” (*Batista v. State of Florida*, 2007, p. 1011). In other words, although the pre-trial intervention program required that the defendant admit guilt, this admission was not an “official plea” in the case. The client would not enter an official plea until he successfully or unsuccessfully completed the program. As such, *Batista* adds to the ambiguous case law of required due process rights for clients who participate in pre-trial intervention programs prior to entering an official plea for the original charges.

In summary, some state and local courts of appeal support the proposition that should they choose to terminate a client’s participation from a problem-solving court,

they ought to afford participants at least some level of due process protections. This author believes that the protections that courts afford to parolees or those on probation, as recognized in *Morrissey* (1972) and *Gagnon* (1973), should serve as a model for problem-solving courts. Additionally, the distinction between whether a defendant enters a plea prior to or after participation in the program is an important one. In the case where a defendant enters a plea *prior* to participation, the court should award due process if they seek to terminate the client's involvement in the program. However, the case law is exceptionally unclear in the situation where a defendant does not first enter a plea.

Due process in sanction proceedings. A court may also deprive a client of a recognized liberty interest, defined under the 14th Amendment, when he or she faces a sanction for noncompliance in a problem-solving court. Offenders have an incentive to voluntarily participate in drug and mental health courts because these courts will often agree to drop the defendant's original charges upon successful completion of the court ordered treatment program. However, court administrators and treatment specialists acknowledge that clients often face a bumpy path towards a successful program outcome and many clients will "stumble" along the way. In most cases, courts address these "stumbles" with a variety of graduated penalties, including but not limited to more frequent contact with the court, increased drug testing, home visits by a social worker, and even periods of brief incarceration (Boldt, 1998). Many believe that a court's imposition of increasingly severe sanctions is central to a client's successful treatment in problem-solving courts (Bozza, 2007; Griffin, Steadman, & Petrila, 2002; Harrell & Roman, 2001). Regardless of the effectiveness of incarceration as a therapeutic tool, the current paper is primarily concerned with a court's use of incarceration as a sanction for

noncompliance. Specifically, the paper asks whether incarceration results in a loss of a recognized liberty interest and whether procedural protections are, or should be due when a court sanctions a client to jail time.

Fewer courts have considered the issue of due process in sanction proceedings than have considered similar issues in termination cases. Further, the matter of due process in sanction proceedings is often secondary to a larger due process claim, thus much of the available opinion is in the form of judicial dicta. *State of Tennessee v. Stewart* (2010) provides one of the more troubling examples of incarceration as a sanction. Stewart, as cited at the beginning of this paper, claimed the court violated his due process rights when the same judge presided over his drug court treatment and his probation revocation hearing. The court of appeals remanded the case for a new hearing in front of a different judge, but a substantial portion of the judge's opinion focused on the five or six occasions where the drug court sanctioned Stewart to "significant jail time" (*State of Tennessee v. Stewart*, 2010, p. 15). During Stewart's two-year participation in the drug court program, the court sanctioned him to a net total of approximately six months of jail time, with sixty-days as the longest single incarceration. Further, when the court terminated Stewart from the drug court program, the judge sentenced him to his original six-year sentence and Stewart did *not* receive credit for the six months of time served for violating program requirements. The appeals judge noted significant discrepancy between this case outcome and the general parameters under which drug courts *should* function. He noted that this defendant's offenses (repeated noncompliance, missed meetings, and positive drug urine tests) were not outside of the types of behaviors that clients will struggle with in drug court. Specifically, he found it, "difficult to imagine

that the Drug Courts Standards committee envisioned that significant amounts of jail time would be added to the sentences of program participants as sanctions for behavior that the Committee expressly contemplated would be engaged in by “many” of those same participants” (p. 16).

The court in *Stewart* (2010) also noted that the record does not suggest whether the drug court team attempted a process of measured, graduated sanctions, such as admonishment from the bench and increased testing and monitoring, without success prior to substantial incarceration. The appellate judge directed drug courts to impose only *appropriate* responses for continued drug and alcohol abuse, and these courts should consider a full array of positive *and* negative reinforcement steps that utilize a “continuum of responses” (p. 16) to noncompliant behavior. Further, the appellate court judge suggested that in the case of a repeatedly noncompliant client, the drug court should return the offender immediately to the traditional court system, because the current practice of jail time as incarceration is too similar to the traditional criminal justice system practice as it currently stands. Although Stewart was unable to comply with the drug court’s requirements and was subsequently subjected to lengthy incarceration, he ironically credited the Tennessee drug court program with saving his life. This is a particularly surprising statement from a procedural protection standpoint, as the court ostensibly did not allow Stewart *any* of the traditional due process protections when the judge violated his liberty interest and sentenced him to substantial jail time. This case poses the curious question of whether sanction proceedings should necessitate minimal due process protections, especially if court clients seemingly do not have a negative view of the process taken as a whole—and in some cases, have a positive view.

In other words, while an outside observer may view a sanction of jail time without due process quite negatively, a person more familiar with problem-solving court systems, and even a client, may in fact, not take offense with decreased procedural due process protections.

In direct juxtaposition to *Stewart* (2010), in the previously cited case, *State of Idaho v. Rogers* (2007), the appellate court found that while drug courts must afford clients minimum due process at a termination hearing, the same due process is not necessary or required at the time of a sanction imposition. Specifically, the court in *Rogers* (2007) held that required due process protections at a sanction hearing run *counter* to the informal nature of problem-solving courts, although both termination and sanction may result in the same outcome—jail time. This is particularly problematic in cases where clients will potentially suffer a loss to a recognized liberty interest as defined by the Fifth and Fourteenth Amendments to the United States Constitution. When the court terminated Rogers from the program, it incarcerated him, ending his liberty to move about freely. As such, the judge should have afforded him at least minimum due process of the law. Similarly, when a drug or mental health court sanctions a client to incarceration, for any number of days, the defendant loses his liberty to move about freely in precisely the same manner. This author argues that the distinction between the liberty lost through termination (incarceration) or through a sanction proceeding (incarceration) is of little consequence. Therefore, courts should afford their clients minimal due process at sanctioning proceedings when a recognized liberty interest is at stake, that is, if there is a potential for incarceration. The National Association of Drug Court Professionals (1997) agrees. They assert that if a drug court participant claims not

to have engaged in the conduct that is subject to incarceration—that is, he or she denies the noncompliant behavior—best practice dictates that the court should provide for a hearing in accordance with the due process protections awarded to those under probation or parole (see *Morrissey v. Brewer*, 1972 & *Gagnon v. Scarpelli*, 1973).

Incarceration as a sanction: Drug vs. mental health courts. A number of authors draw a distinction between the use of incarceration as a sanction in drug courts versus mental health courts (Redlich, Steadman, Monahan, Robbins, & Petrila, 2006). While the use of incarceration as a sanction for noncompliance in drug courts is fairly routine, (see National Drug Court Institute, 2000), the more contentious issue is a court's use of incarceration-as-sanction in mental health courts (Redlich et al., 2006). This author is not aware of any existing case law regarding incarceration as a sanction for mental health courts, however a number of psycholegal scholars have considered its potential to be in contradiction to the therapeutic aims of mental health courts. Some argue that a full reliance on a drug court model, which utilizes brief incarceration periods for noncompliance, is counter to a therapeutic jurisprudence model and essentially punishes people for their mental illness (Odegaard, 2007; Redlich et al., 2006). Furthermore, as Redlich et al. (2006) and others point out, the use of incarceration in mental health courts creates additional concerns, such as whether it is morally or legally just to sanction a person to jail time because of behavior that results from mental illness.

Although some believe that mental health courts use incarceration less frequently than drug courts, a 2006 survey of adult mental health courts in the United States (n = 90), found that most (92%) report a willingness to use incarceration as a sanction for noncompliance, at least on some occasions (Redlich et al., 2006). At least one program

reported using jail as a sanction frequently, while at least six others reported using it “rarely,” though each program admitted they did not keep specific records about the number of times the court imposed these sanctions. In summary, while the actual number of mental health courts that utilize incarceration as a potential sanction for noncompliance is unclear, the majority of these courts state that they are at least *willing* to utilize it as part of their treatment plan.

The questions arise, “Is jail time an effective therapeutic or behavior modifying tool and should problem-solving courts use it as such?” If empirical research can demonstrate that jail time is an effective behavior change tool, then its use may not be in opposition to therapeutic jurisprudence because the ultimate impact of jail time could be to improve the well-being of the offender. However, if there is little evidence that jail time is an efficacious intervention, then even drug court personnel will have a difficult time defending it based upon the principles of therapeutic jurisprudence that underlie the rationale of these courts. Under a T.J. model, legal intervention should bring about improvements in the psychological well-being of participants in the legal system. While the evaluation of the effectiveness of jail time assigned in problem-solving courts is beyond the scope of the current review, it remains an important issue in the analysis of how much due process the law owes to problem-solving court participants.

Any analysis of procedural due process in courts must balance the benefits of therapeutic jurisprudence (i.e. treatment and problem-solving) against the adversarial protections of the criminal justice system. In order to understand this perceived tradeoff, we must take into consideration the perspective of the perceiver. For example, in *Stewart* (2010), while the appellate judge expressed serious concern with the lengthy jail time the

drug court imposed on Stewart as part of the treatment process, Stewart himself ultimately had a positive opinion about his experience in the program. In order to understand how people experience the outcome of due process (or the lack of due process) in problem-solving courts, we need to take into consideration the perspective of the judge who evaluates the adequacy of due process protections. It may be that a client who experiences the sanction may not view it as negatively as outside observers view it and thus, the offender may be more likely to comply with program requirements because of the threatened sanction.

The following section reviews the literature on affective forecasting and examines more generally how the self-other effect may in part, explain how a defendant like Brent Stewart might credit a two-year program, wrought with due process violations and lengthy jail terms, with ultimately saving his life. Specifically, the following section briefly reviews the affective forecasting literature, identifies a number of self-other effects in affective forecasting, and evaluates Igou's (2008) novel asymmetric immune knowledge hypothesis as one explanation for the discordant sentiments between problem-solving court clients' positive evaluations of their experiences and psycholegal scholars' concerns about the due process practices in these court systems.

Affective Forecasting

People make countless decisions each day: to walk the dog or write a dissertation, to drive to Starbucks for a pumpkin spice latte or make coffee at home. Each potential choice requires a certain amount of utilitarian decision-making: Does the dog need exercise more than I need sleep? Do I have the money to purchase an expensive beverage? However, in addition to these utilitarian-type considerations, people want to

know whether the decision will make them *happy* and increase their well-being. Will a brisk dog walk make the rest of the day seem less glum? Have I been holding out for a latte for just the right occasion? Over the last twenty years, the theory of affective forecasting has sought to explain this phenomenon. It addresses why, and under what circumstances people over predict the emotional impact of a future event, and how those predictions influence decision-making behaviors (Baron, 1992; Baumeister, Vohs, DeWall, & Zhang, 2007; Georges & Wiener, 2013; Gilbert, Pinel, Wilson, Blumberg, & Wheatley, 1998; Hsee & Hastie, 2006; Igou, 2004; Loewenstein & Prelec, 1993; Loewenstein & Schkade, 1999; Wilson & Gilbert, 2003; 2005; Zeelenberg, 1999; Zeelenberg & Pieters, 2004; Zeelenberg, van Dijk, Manstead, & van der Pligt, 2000).

Researchers have documented the affective forecasting phenomenon in a wide variety of settings including employees' happiness with a location transfer (Gilbert, Brown, Pinel, & Wilson, 2000), clothing purchases (Gilbert & Ebert, 2002), the emotional impact of a physical or emotional trauma (Gilbert, Lieberman, Morewedge, & Wilson, 2004), and even jury decision-making (Georges & Wiener, 2013; Wiener, Georges, & Cangas, in press). These findings illustrate that people can generally predict the valence of an anticipated event—a trip to a beach in Mexico will be a positive, enjoyable affair and a root canal will be an unpleasant experience. However, people less accurately predict how long and how intensely each of these imagined positive and negative events would influence their experience (Gilbert et al., 1998; Gilbert et al., 2004; Wilson & Gilbert, 2003; 2005). Affective forecasting errors refer to two general inaccuracies that people demonstrate when anticipating the emotional consequences of an event. The tendency to over predict the strength or intensity of a forecasted emotion is

known as the impact (i.e., intensity) bias and the tendency to overestimate the duration of an anticipated emotion is known as the durability bias (Gilbert, Driver-Linn, & Wilson, 2002).

The impact bias. The most common and pervasive finding in affective forecasting is the impact bias, or people's tendency to over predict the peak level of intensity of a forecasted event (Hsee & Hastie, 2006; Wilson & Gilbert, 2003). Researchers have demonstrated this tendency to overestimate the emotional impact of future events in a wide variety of populations (e.g., college students, medical patients, sports fans, dieters, professors, prospective employees) with a wide variety of potentially emotionally provoking events (e.g., relationship problems, medical testing, eating behaviors, tenure and hiring decisions). Wilson, Wheatley, Meyers, Gilbert, & Axsom (2000) studied the impact (and durability) bias in a study of football fans from two rival Virginia universities. Two months prior to a 1995 football game between the two schools, participants predicted what their overall level of happiness would be after they viewed the important game. Specifically, participants answered, on a 9-point Likert type scale, "How happy would you say you are these days?" and predicted how happy they would be after the football game if their team lost and if their team won (p. 823). On the day after the game, the participants again reported their actual overall level of happiness. The researchers found, over the course of five studies, that fans consistently overestimated how happy they would feel the day after their team won, demonstrating an impact bias (Wilson et al., 2000).

Gilbert et al. (1998) also found an intensity bias in their study of college students' romantic relationships. Introductory psychology students completed a brief happiness

measure on the first day of fall classes at a large Texas University. Specifically the experimenters asked participants whether they had ever experienced the dissolution of a close romantic relationship and how long ago the breakup occurred. The students who answered 'yes' to this question were labeled as "leftovers," an unfortunate term to be sure. Students who answered 'no' to this question were labeled "luckies." All students answered the question, "In general how happy would you say you are these days?" on a 7-point Likert type scale (p. 621). The "luckies" also predicted how happy they would feel two months after such a breakup. The researchers found that the "luckies" consistently under predicted how unhappy they would be two months after an imagined breakup, compared to the "leftovers" measured happiness after they had actually experienced a breakup. They found this intensity bias regardless of whether the "luckies" were or were not currently involved in a romantic relationship (Gilbert et al., 1998).

Gilbert et al. (1998) recognized that the romantic relationship study did not fully explain the impact bias, as the "leftovers" and the "luckies" may have self-selected, at some level, their relationship situation. Thus, they conducted a single sample, longitudinal experiment to study the intensity bias with a phenomenon the participants could not control or predict. Researchers approached 57 people who had just voted in the 1994 gubernatorial election. Each participant completed a ten-item survey and reported, on a 7-point Likert type scale how happy they generally were, and how happy they would be if their candidate won and if their candidate lost. Approximately one month after the election, researchers successfully contacted 25 of the voters and asked them to report their general level of happiness. They found that voters did not believe that a win would influence their happiness, but believed a loss would decrease their general happiness. In

fact, voters *did* accurately predict how happy they would be if their candidate had won. However, after the election voters reported significantly greater happiness than they had anticipated if their candidate had lost. This example illustrates an intensity bias for those whose candidate lost the election. In other words, voters were significantly less disappointed in the loss than they had anticipated they would be.

Research shows that people experience an intensity bias for feelings of general happiness and well-being, but researchers have also found this effect for specific negative emotions, such as regret for a number of behaviors, including jury decision-making (Georges & Wiener, 2013), lottery play (Zeelenberg & Pieters, 2004), casual sexual behavior (Richard, de Vries, & van der Plight, 1998), and eating behaviors (Richard, Van der Plight, & de Vries, 1996). For example, Gilbert, Morewedge, Risen, & Wilson (2004) investigated the role of anticipated regret using a game show paradigm. Sixty-four participants arranged items in two separate sets in order of price. After arranging the items, they chose which set they thought they had arranged correctly. One half learned that only the *unchosen* set was correctly ordered (narrow margin of loss), and the other half learned that both the *unchosen* and chosen sets were incorrectly ordered (wide margin of loss). In a forecasting condition, participants *predicted* how much regret they would feel under these conditions, while those in an experiencing condition *actually* reported how much regret they felt after they made their choices. Gilbert and colleagues hypothesized that participants would expect the margin of loss (wide vs. narrow) to influence their experiences of regret. They in fact did find support for their hypothesis that the size of the margin of loss influenced participants' forecasted regret, but not experienced regret. In other words, participants overestimated how much regret they

thought they would feel after not winning a valued prize. They replicated these findings in a real-world scenario by stopping people who were late to catch a train and told them they missed it by either a small or a large margin. Riders expected more regret when they missed the train by a small margin but others who actually *did* miss the train by a small margin experienced no more regret than those who missed the train by a wide margin (Gilbert et al., 2004). Together, these studies illustrate that in general, people inaccurately forecast the intensity or impact of a future emotional state. This phenomenon is particularly pronounced for negative valence emotions such as unhappiness or regret.

The durability bias. The durability bias is the tendency to over predict the length of a forecasted emotional experience (Wilson & Gilbert, 2003). The durability bias is important because, “people typically wish for and work toward events that they believe will cause lasting happiness, not just a moment’s pleasure” (Wilson et al., 2000, pp. 821-822). Researchers have shown that people experience a durability bias with common events such as receiving an ‘A’ in a college course, or the dissolution of a romantic relationship (Suh, Diener, & Fujita, 1996), as well as for more atypical events, such as winning the lottery (Brickman, Coates, & Janoff-Bullman, 1978), the loss of a loved one (Silver & Wortman, 1980; Wortman & Silver, 1989), and cancer patients’ coping behaviors (Collins, Taylor, & Skokan, 1990). In the previously cited study by Wilson et al. (2000), the researchers also studied the influence of the durability bias on the affective predictions of football fans. Utilizing the same methodology, the researchers also asked the Virginia football fans to predict how long they would feel happy after their team won (measured in days). The fans again, consistently over predicted the length of time (by

approximately three days) they would feel increased happiness after the win, demonstrating a durability bias (Wilson et al., 2000).

Gilbert and colleagues (1998), in the previously cited series of studies, also investigated the durability bias for college professors' tenure decision outcomes. The researchers recruited a sample of former assistant professors who had achieved or failed to achieve tenure, and current assistant professors at a Texas University. Participants reported, on a 7-point Likert type scale how happy they generally were. Experiencers (those who achieved or who had not achieved tenure) also completed a thirteen-item measure that assessed their general satisfaction with life. The forecasters (current assistant professors) completed the same thirteen-item scale and then estimated how happy they would be at several points during the ten years following a positive tenure decision, as well as a negative tenure decision. The researchers found evidence for both the durability bias as well as the intensity bias. Specifically, the forecasters predicted that they would feel happier during the first five years after achieving tenure than if they had not achieved tenure. However, professors who had received tenure were no happier than those who had not received tenure in the first five years after the tenure decision, or during the following five years. In other words, current assistant professors predicted greater happiness in the ten years that follow a positive tenure decision, than professors who had achieved tenure actually experienced. Interestingly, former assistant professors who had achieved tenure were no happier than former assistant professors who did not achieve tenure.

Georges and Wiener (unpublished paper) recently studied jurors' anticipated feelings of regret about making a verdict mistake in a sexual assault case and found

evidence for both the intensity bias as well as the durability bias. Two months prior to an in-lab portion of the study, mock jurors completed a pre-trial measure about how much regret they would feel if they convicted an innocent person or failed to convict a guilty offender during a trial. During the in-lab portion of the study, researchers showed mock jurors a reenacted sexual assault trial and participants provided a verdict in the case. Then, the researchers presented evidence that the participants may have mistakenly found the defendant guilty when he was innocent, or vice versa. Participants then immediately reported how much regret they felt about their verdict decision. The researchers discovered that participants consistently over predicted how much regret they would feel if they made a verdict mistake in the case, providing evidence for an intensity bias. Participants also completed the same experienced regret measure two days, and again ten days after the in-lab portion of the study. Mock jurors' levels of experienced regret significantly decreased across the ten days following the verdict choice, providing evidence for a durability bias. In other words, mock jurors consistently over predicted how much regret they would feel if they made a verdict mistake in a sexual assault case, and the small amount of regret they *did* experience decreased significantly over the ten days following the verdict. Furthermore, the level of anticipated regret that participants expected to feel predicted their verdicts in the case. This study was one of the first to study emotion applied to legal decision-making and the very first to apply an affective forecasting framework to a juror decision-making paradigm (Georges & Wiener, unpublished paper).

Although people consistently over predict the duration of common and uncommon events, research reveals that these events influence a person's general well-

being only for “little more than a few months” (Gilbert et al., 1998, p. 618). For example, Suh et al. (1996) conducted a longitudinal study of college students’ well-being and found that typical positive and negative events did not significantly influence students’ well-being for as long as some might suspect. The researchers followed 115 participants across a two-year longitudinal study and participants completed a checklist of a variety of positive events (e.g., marriage, acquired a car, improved financial status, made a new close friend) and negative events (e.g., divorce, surgery, lost a job, serious illness or accident) that they experienced during that time. They also completed a 24-item affect measure from which the experimenters calculated positive and a negative affect scales. The participants completed these measures at two separate time points during the two-year period. The researchers found that although the exact duration varied across individuals, the study’s list of life events impacted participants’ general positive and negative affect for less than six months, and in most cases less than three months (Suh et al., 1996).

The finding by Suh and colleagues (1996) is particularly relevant to the durability bias literature because it provides evidence that a person’s most positive and most negative experiences do not significantly impact experienced affect beyond a relatively short period of time. In other words, although a person’s emotions ebb and flow, these fluctuations equalize much more quickly than people expect. The following section reviews two potential sources of the impact and durability biases in affective forecasting.

Sources of the impact and durability biases. Affective forecasting researchers provide a number of explanations for the impact and durability biases and especially in

the instance where one would suspect an enduring emotional outcome, such as an atypical or tragic event.

Focalism. One potential explanation is focalism, or the tendency to overestimate how much we will think about the impact of a central event (e.g., a football game win), and underestimate the influence of other, unrelated experiences (e.g., doing the laundry and washing dishes) that will invariably influence our thoughts and feelings (Wilson & Gilbert, 2005; Wilson et al., 2000). “Life goes on, and non-focal events do happen and do have affective consequences” (Gilbert et al., 1998, p. 619). For example, a person may over predict the negative consequences of an upcoming surgical procedure (focal event) because they fail to consider less-focal events that will ultimately influence their thoughts and feelings, such as increased social support, time off of work, and positive medical benefits of the procedure. In other words, people overestimate the duration of their emotional response to a focal event because they fail to consider peripheral, non-focal events that transpire at the same time or subsequently to the focal event.

In their college football game study, Wilson et al. (2000) also tested focalism as a source of the impact and durability biases. Half of the participants estimated how they would spend their time during a specific day later in the semester. These participants estimated how many hours they would spend on a variety of activities (e.g., eating meals, studying, spending time with friends, etc.). The other half of the participants made no such predictions. All participants then predicted how good they would feel after a win, and how bad they would feel after a loss. Consistent with the concept of focalism, participants who spent time thinking about how they would spend a typical day predicted that the outcome of the game would impact their happiness significantly less than people

who did not make such predictions (Wilson et al., 2000). In other words, encouraging people to consider future, non-focal events, led to more moderate affective forecasts subsequent to the focal event (how the participant would feel after his team won or lost the game).

In a related study, Schkade and Kahneman (1998) investigated the focusing illusion, a precursor of Wilson et al.'s (2000) theory of focalism. The focusing illusion occurs when a “judgment about an entire object or category is made with attention focused on a subset of that category” (Schkade & Kahneman, 1998, p. 340). In this case, the focal object outweighs the peripheral, or unattended subset of information or objects. The researchers asked students from the Midwest and Southern California about their overall satisfaction with life, rated on an 11-point Likert type scale, as well as a number of specific wellness focused questions. Half of the students answered these questions for themselves (self-focused), while the second half answered the questions for a “student with your values and interests” at another University (either the Midwest or Southern California University). The researchers found that participants in both regions reported equal overall life satisfaction. However, students in both regions predicted that a student *like them* would experience greater satisfaction in Southern California than in the Midwest. Through a series of mediation analyses, the researchers determined that this second effect was driven, in part, by a positive focus on salient differences (focusing illusion), specifically the climate-related differences between the two regions (Schkade & Kahneman, 1998). In other words, when a person answers a question about his or her own general life satisfaction, the evaluator focuses on central *and* non-central aspects. However, when a person considers general life satisfaction for *another* person, attention

focuses on more central, less holistic factors (such as the weather in California) (Schkade & Kahneman, 1998).

Immune neglect. Another source of both the durability and intensity biases in affective forecasting for negative events is immune neglect. Immune neglect refers to people's failure to anticipate how much their psychological immune systems will protect them and accelerate their recovery in the case of a negative emotional event (Gilbert et al., 1998). In other words, people generally do not realize how well their psychological immune system will help them overcome an upsetting experience. This psychological immune system protects us from incapacitating negativity through a variety of defense mechanisms, including coping strategies, dissonance reduction, self-serving biases, and self-deception. For example, in the unfortunate event that I should unexpectedly lose my beloved dog, Bigs, I would fail to anticipate how effectively my psychological immune system would rationalize and minimize the negative affective influence of this event on my well-being. I would cope with this loss by persuasively convincing myself that he lived a long, fulfilling life and that he is now certainly "in a much better place." These rationalizations exhibit the psychological immune system at work. However, Gilbert et al. (1998) suggest that people are actually not aware of the influence of their psychological immune system. Further, this phenomenon works most effectively through private, internal rationalizations. "The mental machinery that transform adversity into prosperity must work quietly if it is to work at all, and successful rationalization typically requires that rationalizers not regard themselves as such" (Gilbert et al., 1998, p. 619). In other words, the self copes with and rationalizes negative events without conscious awareness

of the psychological immune system as it quietly works to lessen the negative influence of the event.

A study by Gilbert et al. (1998) illustrated how easily people use their psychological immune systems to rationalize negative feedback. Early in the semester, college-age participants completed a personality measure as part of a mass screening session. All participants then read that based on their scores, they had been categorized as either mundane, good, or extraordinary but they did not know their category. The researchers included descriptions of each personality type so participants could familiarize themselves with each. Based on the description, the ‘mundane’ personality type was least appealing, while the ‘extraordinary’ type was most appealing. Researchers then assigned participants to either a forecaster condition or an experiencer condition. After reading the descriptions, the researchers told the forecasters that either a computer (fallible source) or a pair of trained clinical psychologists (infallible source) evaluated their responses to the personality measure. The participants then predicted whether they would be classified as mundane, good or extraordinary, and how they would feel five minutes after they learned of their classification. The experiencers, however, all learned that they had been classified as mundane by either a computer (fallible source) or a pair of trained clinicians (infallible source). Please note that the mundane classification was consistent across all experiencers and was not based on their completed personality inventory. After five minutes, the experiencers also reported how they felt after being classified as mundane. The results showed that the forecasters who did not anticipate negative personality feedback (classified as mundane) predicted they would feel equally bad whether they received that feedback from the computer or trained clinicians.

However, experiencers who learned a computer classified them as mundane felt less bad several minutes after receiving feedback, than did those who learned that trained clinicians classified them as mundane. In other words, participants more easily rationalized the negative feedback from the potentially fallible computer than from trained, infallible experts. This study demonstrates that we quickly and easily rationalize unfavorable feedback, but we underestimate how easily our psychological immune systems will help us do so (Gilbert et al., 1998).

Gilbert et al. (1998) and others have argued that people fall prey to affective forecasting errors because they are not aware of how readily their coping mechanisms kick in to deal with negative events. A study by Hoerger, Quirk, Lucas, and Carr (2009) addressed this theory and found immune neglect to be so pervasive that even when participants *were* aware of their potential coping resources in the face of a negative event, they failed to consider them when they made predictions about that event. Similar to Wilson et al. (2000), participants at a Midwestern University completed a forecasting measure three days before nine separate home football games during a semester. Specifically, participants rated their baseline level of happiness and predicted how good they would feel two days after a win, and two days after a loss on a nine-point Likert type scale. Participants also completed a coping inventory to assess how they generally cope with stressful life events. Two days after each game, participants reported their actual level of happiness. Consistent with the impact bias findings in Wilson et al. (2000), participants consistently overestimated how happy they would feel after a win, and how bad they would feel after a loss. Most interestingly, however is that although participants made forecasts about a potential win or loss, and completed the coping inventory within

minutes of each other, participants “failed to consider these coping factors when making predictions, perhaps emphasizing the automaticity and pervasiveness of the impact bias (Hoerger et al., 2009, p. 94). This study highlights that even when people *think about* potential coping strategies, they generally discount the influence of their own psychological immune systems when they forecast how they expect to feel after a negative event.

Focalism and immune neglect are well-documented sources of affective forecasting errors for the self. Research illustrates that we easily fall prey to these errors, especially when we consider the negative outcome of a decision or event for the self. However, fewer studies have focused on the accuracy and influence of a person’s affective forecasts about others beside the self. Just as Schkade & Kahneman (1998) found that people use both focal and non-focal information when they make judgments about themselves, perhaps a shift in focus from the self to another person influences the type of information the self employs (or disregards) in making an affective prediction.

Self-Other Effects in Social Psychology

Self-other differences are well document in social psychology. The following section presents a brief overview of several explanations for this discrepant self versus other effect and then reviews self-other differences in affective forecasting specifically.

The fundamental attribution error, or the tendency to infer that a person’s behavior corresponds to their personality while failing to take into account the situation, is one explanation for the self-other effect (Fiske & Taylor, 1991; Heider, 1958; Jones & Harris, 1967; Ross, 1977). Several studies have demonstrated this pervasive phenomenon, however the most classic is a study by Jones and Harris (1967) in which

they asked participants to read essays purportedly written by fellow participants that were either in favor of or opposed to Fidel Castro's rule in Cuba. The researchers told half of the participants that the author of the essay freely chose a position (pro vs. anti-Castro) for the essay, and told the other half that someone else had assigned a position to the author to argue as a participant in the debate. Jones and Harris found that when the participant thought that the author had free choice in their essay position, they rated those who wrote favorably about Castro as having a more positive attitude toward the dictator. Most interestingly, those participants who learned that the author did not have free choice in the essay still rated the authors as Castro supporters when those authors wrote favorably about the dictator. In other words, even when the participants knew that the author had no choice in the content of their essay, they assumed that the essay content reflected the author's true attitudes (Jones & Harris, 1967).

One reason people fall prey to the fundamental attribution error is because when a person attempts to explain someone's behavior, they usually focus on the person and not on the surrounding, related information (Jones & Nisbett, 1971). For example, a person not familiar with a typical drug court participant's lifestyle and struggles may attribute repeated drug offenses to the participant's lack of self-control and not consider other, related variables such as their friend group, living situation, and the enormity of a drug addiction. Further, if a drug court judge sanctions an offender to jail time, an outside observer might view the sanction as unfair and unjust because the observer may not consider how quickly and easily the offender can make use of the psychological immune system to rationalize the sanction. The fundamental attribution error begins to explain the conditions that lead people to make uninformed attributions for others, but it does not

clarify why people generally explain their own behavior differently than the behavior of others.

The most interesting characteristic of the fundamental attribution error is that people tend to apply it unevenly. This function, or extension of the fundamental attribution error is known as the actor-observer bias (Jones & Nisbett, 1971; Nisbett, Caputo, Legant, & Marecek, 1973). The actor-observer bias, originally proposed by Jones and Nisbett (1971), is the “pervasive tendency for actors to attribute their actions to situational requirements, whereas observers tend to attribute the same actions to stable personal dispositions” (p. 80). They explain that one of the underlying reasons for the actor-observer phenomenon is the disproportionate information available to the actor and to the observer. In other words, while an actor and observer have equivalent information about the *nature* of an act, an observer lacks first-hand knowledge about the actor and the context in which the actor performed the behavior. For example, a person may see me sitting at a party alone in a corner. That person (observer) would likely judge me as a shy introvert, whereas I (actor) have significantly greater insight and information about my usual party behavior. For example, I am actually a boisterous, outgoing person but may have not been feeling particularly well that day and thus, did not act jovially. I would agree, as an actor, that I acted a bit more shy than usual, however my explanation for the behavior is far more informed than the observer’s evaluation that I am simply an introvert. Consistent with the fundamental attribution error (Jones & Nisbett, 1971), the observer explained my behavior utilizing an internal disposition only, whereas I, as the actor understood my behavior in terms of the current situation, my temporary health condition, and my usual disposition as a merry partygoer. In other words, this discrepant

explanation for my behavior is a problem of perspective between the actor and the observer.

Although the actor-observer bias phenomenon generally explains an observer's attributions, there is at least one scenario where a person is more likely to explain one's own behavior with an external attribution instead of the usual internal attribution. When a situation or an outcome threatens a person's self-esteem, the actor may make a self-serving attribution. For example, a person may use an internal factor to explain success on a standardized math exam ("I studied day and night for a month"), but blame external, situational factors for poor performance on the exam ("The room was really cold and I wasn't feeling particularly well, and the person next to me repeatedly tapped his pencil on the table") (Miller & Ross, 1975). McFarland and Ross (1982), found evidence for this phenomenon in a study of female college students. The participants read a story about a person who had encountered a stressful period in life. Then, they answered a series of factual questions about the scenario. The researcher then told the participants that they either had done well on the recall exam (success) or had not performed well on the exam (failure). The participants then focused on task-oriented reasons (external attribution) or individual ability reasons (internal attribution) to explain their performances. McFarland and Ross (1982) found that successful participants were more likely to attribute their performances to ability rather than task-specific characteristics, and participants who experienced failure were more likely to attribute their performance to task-specific factors, consistent with the idea of using the self-serving bias to preserve one's self-esteem.

In general, people will make an effort to maintain their self-esteem, even if that means distorting reality to adjust a belief or explanation for that outcome. In the case of a positive outcome, people happily attribute their success to dispositional, internal factors. However, people will make excuses or provide a situational explanation to explain their unsuccessful behavior as an adaptive mechanism to maintain self-esteem (McFarland & Ross, 1982). In short, self-other differences are a well-documented phenomenon in social psychology, but only recently have scholars considered the question of whether self-other effects occur in affective forecasts (Igou, 2008).

Self-Other Effects in Affective Forecasting

The vast majority of affective forecasting experiments study emotional predictions about the self in a future situation (Gilbert et al., 1998; Igou, 2008; Wilson et al., 2000; 2003). We know people do not accurately predict the duration or intensity of emotional experiences for themselves; however, researchers have only recently begun to study self-other differences in affective forecasting focusing specifically on whether people can accurately predict how *another person* may feel in a given situation.

Just as we make affective predictions for ourselves (“How will I feel if I don’t walk the dog?”), we also make affective predictions for others (“How will my *husband* feel if I don’t walk the dog?”). Van Boven and Loewenstein (2003) studied the interesting role of emotional perspective taking through a number of creative studies. They argued that emotional perspective taking, that is, imagining how another person would feel in a given situation, requires two judgments. The first is how the self would feel in the actor’s situation. The second is how they adjust these self-predictions to accommodate the perceived difference or similarity between themselves and the actor

(Van Boven & Loewenstein, 2003). In a two-study experiment, they asked participants to imagine what a set of lost hikers were thinking and feeling, two days after they ran out of food. They found that the majority of participants considered this situation by mentally trading places with the hikers and imagining what their *own* feelings would be in that situation. This suggests that people *do* consider their own feelings in the judgments of others' feelings. In a second study, participants reported, either before or after they exercised vigorously for at least twenty minutes, whether they would be hungrier or thirstier after being lost for two days. They then considered whether a hiker, lost for two days without food or water, would be hungrier or thirstier. Van Boven and Loewenstein found that the participants who had exercised prior to considering the hiker scenario (who were likely thirsty themselves) predicted feeling more bothered by thirst than hunger, and those participants also projected their feelings onto the hikers, inferring that the hikers would also be bothered more by thirst. The authors concluded that the majority of participants did not directly consider how *that* hiker might feel; instead, they considered how *they themselves* would feel in a similar situation, by mentally trading places with the hikers in the story. This propensity to project one's own emotional feelings onto another person may be an integral source of biased explanations for others' behavior (Van Boven & Loewenstein, 2003).

Wiener, Gervais, Allen and Marquez (2013) also investigated this self-other effect in affective forecasting utilizing a sexual objectification paradigm. Specifically, they investigated whether differential perspective taking may, in part, explain varying judgments of objectifying behavior as it applies to hostile work environment sexual harassment. The researchers manipulated the role of the complainant in a sexual

harassment case and hypothesized that differential perspective taking might explain why a woman in a simulated job interview who experiences objectification would experience less negative affect, than a predictor or observer of that objectification experience might anticipate.

Wiener et al. (2013)'s novel perspective taking experiment asked undergraduate females to assume one of three perspectives in a sexual objectification paradigm: experiencer, observer, or predictor. The experiencers participated in a mock interview where a male research assistant systematically objectified the female participant, by slowly gazing at the participant's chest for approximately two seconds. The male research assistant did so six separate times during the course of the study. In the observer condition, female participants watched a video of another female participant's interview, during which the male research assistant repeatedly gazed at the participant's chest. In the predictor condition, the female participant read the transcript of the interview, which included a description of the male research assistant repeatedly gazing at the participant's chest. All participants then completed a measure of their experienced emotions (experiencer group) or their prediction about how they think the *experiencer* would feel (observer and predictor groups). Consistent with the impact bias and the self-other effect in the affective forecasting literature (Gilbert et al., 1998; Hsee & Hastie, 2006; Igou, 2004; 2008; Wilson & Gilbert, 2003), the researchers found that objectification increased forecasted negative emotions for the predictor group, but not for the observer group. Further, objectification had no impact on the experiencer's actual negative emotions. In other words, the predictors anticipated that the person subjected to the objectifying gaze would experience greater negative emotion than she actually felt.

One potential explanation for this finding, as cited by Wiener et al. (2013) is that when people experience a negative event, they automatically and quickly utilize their psychological immune system to control and adjust their emotional reaction to the event (see Gilbert et al., 1998; Hoerger et al., 2009). However, “while the psychological immune system allows experiencers a rapid return to equilibrium after positive and negative emotional experiences, those who observe and predict their behavior expect the targets to experience longer lasting and deeper emotional experiences than targets actually experience” (Wiener et al., 2013, p. 209). This phenomenon occurs, in part, because predictors and observers fail to consider how efficiently the experiencer’s psychological immune system will protect that person from a profoundly negative experience. This may occur, in part, because the other and more importantly the other’s situation may be an unfamiliar one for the predictor.

The degree to which the other person’s situation is not a familiar one for the self may enhance the tendency to project one’s own emotions onto others. A seminal article by Brickman et al. (1978) studied subjective well-being and laid the foundation for future research about how much familiarity plays a role in affective forecasts of others. Brickman et al. (1978) interviewed paraplegic and able-bodied people and asked them about their general overall happiness and about a variety of everyday pleasures (e.g. talking with a friend, eating breakfast, hearing a funny joke). They found that while the paraplegics noted that their life had significantly changed as a result of their paralysis, there were only very small differences in reported life satisfaction between paraplegics and able-bodied subjects.

Schkade and Kahneman (1998) suspected that familiarity, in part might have driven this effect. They asked a sample of able-bodied participants to predict how often paraplegics practice a variety of happiness-related behaviors, and how often they experienced positive and negative moods. They also asked the participants whether they had ever known someone who is a paraplegic. The researchers hypothesized that people who knew at least one paraplegic would view them as happier than people who do not. The results were, in their words, “unequivocal” (p. 340). Participants who did not know a paraplegic predicted significantly more bad moods over good, whereas those who did know a paraplegic had the opposite perception (more good moods than bad). According to the authors, “The message is clear: The less you know about paraplegics, the worse off you think they are” (p. 340). In other words, the self-other effect in affective forecasting is potentially stronger when the other is unfamiliar, or encounters an unfamiliar situation.

These affective forecasting misinterpretations may be “particularly pronounced and problematic when it comes to visceral states, with wide-ranging implications for everyday social life and public policy” (Van Boven & Loewenstein, 2003, p. 1167). For example, a judge or some other legal decision-maker might struggle to accurately forecast the emotional and behavioral impact of a three or thirty day sanction for a drug or mental health court client because of a perspective differential between the judge and the client. Further, a person with little to no knowledge of drug or mental health courts might predict even *less* accurately the impact of such a sanction for that client.

The asymmetric immune knowledge hypothesis. Igou (2008) began with the finding that people use their self-predictions as a basis to estimate the emotional state of others but then went on to propose a mechanism that might explain *why* people are

inaccurate predictors of others' emotional reactions to negative experiences. According to the asymmetric immune knowledge hypothesis (AIK) (Igou, 2008), people inaccurately predict others' emotional reactions to negative events because they know more about their own ability to cope compared to what they know about others' coping abilities. Specifically, Igou (2008) argued that the self-other effect is not a simple disparity in perspective taking, as suggested by Van Boven and Loewenstein (2003). Rather, forecasting errors occur because of the intimate knowledge that forecasters have about their own psychological immune systems and coping strategies (i.e., the ability to rationalize and distort negative events), compared to what little they know about the coping mechanisms of other people. Underestimating another's coping ability and rationalization capability causes a forecaster to over predict the duration and intensity of the negative affect that follows negative outcomes for that person (Igou, 2008).

Igou established the AIK on the belief that when a person anticipates a negative affective experience, the evaluator will recall successful coping strategies used in past, similar situations to reduce the negative affect. "Anticipating a negative experience facilitates activation of knowledge about one's own psychological immune system . . . of psychological processes that help when battling negative affect . . . such as instrumental coping strategies" (Igou, 2008, p. 900). Igou (2008) draws a distinction between the AIK hypothesis and Gilbert et al.'s, (1998) immune neglect hypothesis, which suggests that people do not have insight into their psychological immune system and their available coping strategies to overcome adversity. Instead, Igou (2008) purports that people are at least minimally aware of, and do reflect on their own coping strategies when they anticipate an adverse event for themselves, even if their insight is inaccurate. In other

words, people are at least vaguely aware of their own psychological immune system and they utilize it more successfully than they anticipate (i.e., immune neglect). Further, they are less aware of the coping ability of others so they will be less accurate forecasting the emotional reactions of others as compared to themselves (i.e., the AIK hypothesis).

In a series of programmatic studies, Igou (2008) tested the AIK hypothesis by evaluating: (1) the accuracy with which people predict the duration of negative affect for others, (2) whether people have knowledge of others' coping strategies, and (3) the subsequent effectiveness of those strategies. He tested these general research questions through nine separate, programmatic experiments. In the first experiment, Igou examined the self-other effect as it relates to the duration of negative events. Participants read and reflected on two separate scenarios—one in which the participant did either significantly better or significantly worse on an exam than they had expected, followed by a scenario in which the participant's romantic partner was involved with another person and the situation ended in a negative way (the significant other ended the relationship) or a positive way (the significant other chose to stay in the relationship). Participants also considered each situation from either their own perspective (self-focus), or from the perspective of another student (other-focus). Participants considered each scenario and rated how the outcome of the scenario would influence their well-being (or the fellow student's well-being) and completed a measure of the duration of that impact. Igou (2008) found that when participants anticipated a negative experience, they expected the duration of the affective response to last longer for other people than for themselves. Further, this self-other effect occurred only for negative experiences (poor exam performance and dissolution of a relationship), and not for positive experiences

(exceptional exam performance and continuation of the relationship). In other words, people expected affective experiences for negative events to last longer for other people than for themselves.

Through a series of additional experiments, Igou (2008) demonstrated that people anticipated the shortest negative affect duration for themselves, followed by a familiar other (an acquaintance), and the longest for an unfamiliar other (a person they did not know). Igou (2008) suspected that a familiarity difference between the self and the imagined other drove this forecasted duration effect. To confirm this hypothesis, Igou performed a study similar to the first experiment where participants considered three separate negative scenarios from a self-focus perspective or from the perspective of a familiar, close friend. He found a significant self-other effect *even* when participants' familiarity with the close friend was high—except for the previously mentioned negative relationship scenario. Igou suspected that because close friends are likely to discuss how they would feel when a relationship ends, the self has increased knowledge about the coping strategies of the friend and this information diminishes the knowledge gap between the self and the other. In short, Igou found a pervasive self-other effect even when the other was a familiar friend, except in the case where friends may have previously discussed potential coping strategies.

Igou (2008) further investigated this selective, reduced self-other effect and hypothesized that coping knowledge one has for another would mediate this effect. Participants considered one of the negative scenarios from the above studies and imagined the situation from their own perspective, or the perspective of an acquaintance (a familiar other). Participants answered a variety of questions about how either they or

the acquaintance would handle this negative situation emotionally and behaviorally. Finally, participants predicted the duration of the negative affect. Igou (2008) found that participants reported more knowledge about coping strategies for the self, as opposed to the other. Further, this asymmetric coping knowledge between the self and the other mediated the relationship between the self-other effect for anticipated affect duration. That is, statistically controlling the differences in coping knowledge attenuated the self-other effect in anticipated negative affect.

To examine the final hypothesis, that coping efficacy (in addition to coping knowledge) contributes to the asymmetric immune knowledge effect, Igou (2008) hypothesized that coping efficacy would also mediate the self-other relationship for affective forecasts. Igou (2008) assigned the participants to a self-focus condition or an other-focus condition in the same manner as the previous studies. Then, the participants read a number of scenarios, including a situation where a person studied hard for a driver's license exam. On the day of the exam, the instructor gave the person positive feedback to lead the student driver to believe that everything went well. However the student ultimately failed the exam. Participants then indicated on a graph their [the others'] anticipated negative emotional trajectory over a period of 12 days and how intensely the outcome would impact the self or other. He also assessed participants' coping knowledge by asking, "How good do you *know* whether you have learned how to deal with such negative experiences?" and, "How *sure* are you that you can deal with such negative experiences?" on a 7-point Likert type scale. He found that all participants anticipated that the intensity of the negative experience would decrease over time, but this decrease would occur more quickly for the self than for the other, suggesting a

greater insight into their own psychological immune system. Similarly, participants reported increased knowledge about their own coping efficacy compared to another, and this asymmetric knowledge again mediated the self-other effect. That is, after statistically controlling for the knowledge about coping efficacy, the self-other effect again attenuated.

In short, Igou (2008) found that people generally predict the duration of a negative affective experience to be longer for another person than for the self, and this effect is more pronounced the more dissimilar the other is from the self. Contrary to Gilbert et al.'s (1998) notion that people do not have insight into their own psychological immune system, Igou (2008) found that people are more aware of coping strategies for the self, and more readily consider coping strategies for the self, compared to the other. This differential self-other effect suggests that people are at least minimally aware of the effectiveness of their own psychological immune system, but because of problematic perspective taking and asymmetrical coping knowledge for the other, they are even poorer at predicting the emotional consequences of a negative event for another person than for themselves.

Modern Problem-Solving Courts: A Problem of Perspective?

Igou's (2008) asymmetric immune knowledge hypothesis serves as a potential explanation for a self-other effect in problem-solving courts. As previously discussed, drug and mental health courts function under the model of therapeutic jurisprudence—the idea that legal policies and procedures should help and not harm clients, within the confines of the law (Winick & Wexler, 2002). Although it would seem that problem-solving courts' lack of procedural due process might be in direct opposition to the best

interests of a client, it is possible that observers find this more of a problem than do the clients themselves. Perhaps this disconnect is simply a problem of perspective and a discordant knowledge of the effective coping strategies used by problem-solving court clients.

In short, casual observers, legal commentators, and even the appellate level judges themselves may over predict the negative emotions and consequences that problem-solving court clients feel after they suffer incarceration for failing to follow their treatment plans. That is, offenders have exceptional knowledge about the effectiveness of their own coping strategies and the nature of the psychological difficulties that they endure but observers do not. Therefore, the observers may over predict the negative impact of a sanction for the clients, whereas the clients may view such sanctions simply as part of the treatment process itself. This would explain why clients such as Brent Stewart (*State of Tennessee v. Stewart*, 2010) were satisfied with problem-solving courts despite the loss of some of their due process rights (see Berman & Feinblatt, 2005; Cosden, Ellens, Schnell, Yamini-Diouf, 2005; Freeman, 2002; Gover, Brank, & MacDonald, 2007; Poythress, Petrila, McGaha, & Boothroyd, 2002). Although the drug court denied Mr. Stewart due process, perhaps his positive sentiment that the drug court “saved his life” is not the exception, but rather the norm among drug and mental health court clients. If this is indeed the case, the law may need to rethink the best way to protect the due process rights of individuals who would prefer to waive some of their rights in order to obtain the therapeutic advantages that are inherent in problem-solving court treatment.

The Current Study: An Overview

The goal of this two-experiment research study was to apply Igou's (2008) AIK hypothesis to problem-solving courts' practice of sanctioning in the absence of due process. Psycholegal researchers have only recently begun to study the influence of emotion on legal decision-making and this experiment advances research on the study of emotion because it was one of the first to consider the self-other effect in affective forecasting in a legal decision-making paradigm, and the first to test the effects of the AIK in problem-solving courts. The researcher accomplished this in two separate experiments.

Experiment 1 utilized a similar perspective-taking paradigm as Wiener et al. (2013) and applied Igou's (2008) AIK hypothesis to study the influence of the self-other effect by asking participants to estimate the negative impact of incarceration as a sanction from their own perspective, from the perspective of a drug [mental health] court client, someone familiar with drug [mental health] courts, or someone unfamiliar with drug [mental health] courts. The research varied whether due process (see *Gagnon v. Scarpelli*, 1973; *Morrissey v. Brewer*, 1972) was present at the time the judge imposed the sanction. Based on the AIK effect, there should be significant differences between participants' knowledge of coping strategies in each perspective, and that these differences should mediate the relationship between the self-other effect and the strength of the anticipated negative impact of the sanction.

Drug and mental health courts are excellent targets of investigation for several reasons. Drug and mental health courts are the two most common types of problem-solving courts in the United States (Porter et al., 2010) and thus, participants may be

more familiar with them, compared to less common problem-solving courts (e.g., veterans court, community court, homeless court). Further, compared to other problem-solving court systems, existing case law and psycholegal research provide a comprehensive review of both drug and mental health courts. Lastly, the comparison of drug courts to mental health courts creates a fascinating dyad because of societal and legal beliefs surrounding drug use and mental health issues. Specifically, court observers and participants may view sanctions and a lack of due process very differently for a drug court client than for a mental health court client (see Redlich et al., 2006).

Due to the fundamental differences between the typical fact patterns of drug and mental health courts, as well as the inherent problems faced by their clients, there is an acknowledged difficulty in creating symmetric drug and mental health court legal scenarios. To avoid potentially confounded comparisons as a manipulated independent variable (drug court vs. mental health court), Experiment 1 had two parts. Experiment 1a presented participants with a typical drug court fact pattern, whereas Experiment 1b presented them with a typical mental health court fact pattern. The dependent measures and manipulations were exactly the same for each court type. The researcher collected data simultaneously for both Experiment 1a and Experiment 1b and where appropriate, made statistical comparisons between the two court type scenarios.

Experiment 2 attempted to reduce any observed self-other effects by encouraging participants to think about and list problem-solving court clients' potential coping strategies. To further isolate the effect of reported coping strategies on the self-other effect, Experiment 2 included only a mental health court condition without due process. The original intention was to include the mental health court condition only, due to the

potentially more problematic use of sanctions as a prohibited behavior that resulted because of mental illness. Based on the findings of Experiment 1, the selection of the mental health court condition was appropriate.

Both Experiment 1 and Experiment 2 utilized an online data collection paradigm in which community members served as participants who took the perspective of the various actors who interact with a problem-solving court.

CHAPTER 2

Experiment 1

Hypotheses

Hypothesis 1. Consistent with the self-other effect in affective forecasting, participants who review a scenario from the perspective of a person unfamiliar with problem-solving courts and their clients (i.e., a predictor) will anticipate the longest duration and greatest negative affect impact of a problem-solving court judge incarcerating a client for failing to follow the court's orders. Participants who consider the scenario from the perspective of a person familiar with problem-solving courts and their clients (i.e., an observer) will anticipate a shorter duration and less extreme impact than will the predictor. Those who assume the perspective of the court client (i.e., actor-referenced experiencer) will anticipate an even shorter and less intense negative affect, and finally those who assume the perspective of him or herself, as if he or she was the person in the story (i.e., self-referenced experiencer) will report the shortest and least intense response. This final group provides the most direct comparison to Igou's (2008) self-forecasting condition.

Hypothesis 2. Participants who consider a scenario in which the court awarded the client minimal due process rights will anticipate a weaker and shorter negative impact than those who consider a scenario in which the judge denied the client adequate due process. This finding would reinforce the judge's argument in *State of Tennessee v. Stewart* (2010) and echoes the perspective of scholars who believe the therapeutic jurisprudence movement in problem-solving courts is appropriate, insofar as the court does not subordinate a client's justice rights such as due process.

Hypothesis 3. Within Experiment 1a (drug court) and Experiment 1b (mental health court), there should be a two-way interaction between perspective and due process. Specifically, within each type of problem-solving court scenario, the greatest negative emotional impact will occur for participants who consider the scenario from the perspective of an outside observer (predictor) without due process. Further, the least negative impact will occur for participants who consider the scenario from the perspective of him or herself, as if he or she was the person in the problem-solving court scenario (self-referenced experiencer), for whom the judge awarded due process.

Hypothesis 4. In addition, the participants' knowledge about their ability or the client's ability to cope with the negative sanction will mediate the relationship between perspective and anticipated intensity and duration. Specifically, those individuals who respond from the self-referenced experiencer and the actor-referenced experiencer perspectives will acknowledge stronger coping knowledge than those who respond from either the predictor or observer perspective. Mediation will be strongest for self-referenced experiencers and weakest for predictors. It is also possible that coping will act as a moderator such that those individuals who recognize the coping abilities of others will show a different pattern of perspective and due process effects than those who fail to recognize the coping strategies of others, as suggested by the AIK hypothesis (Igou, 2008).

It is possible that coping skills reflect no more than perceived similarity between the participant and their assigned perspective. To control for this, all participants completed a similarity measure that served as a potential mediator. Likewise, it is also possible that similarity will act as a moderator such that those individuals who show more

similarity to the perspective to which they are assigned will show a different pattern of perspective and due process effects than those who score low in similarity to the perspective.

Finally, it is also possible that participants' personal familiarity with drug use or mental health issues will moderate the relationship between perspective and anticipated intensity and duration. Specifically, those who are personally familiar with drug use might anticipate a shorter and less intense negative affective experience than those personally unfamiliar with drug courts or their clients. Likewise, those who are familiar with mental health issues might anticipate a shorter and less intense negative affective experience than those unfamiliar with mental health courts or their clients.

Hypothesis 5a. Participants who review a scenario in which the offender is a mental health court client (Experiment 1b) will anticipate a greater negative impact (intensity and duration) than participants who review a scenario in which the offender is a drug court client (Experiment 1a). Furthermore, this difference should occur, regardless of the participants' assigned perspective (predictor, observer, actor-referenced experiencer, self-referenced experiencer). Remember that although the use of incarceration as a sanction for noncompliance in drug courts is somewhat routine (NDCI, 2000), a mental health court's use of incarceration is more contentious and likely to raise stronger concerns about due process. This finding would support Redlich et al. (2006) and others' beliefs that a court's use of incarceration as a sanction for mental health court clients is counter to the mental health court philosophy and essentially punishes people for their mental illnesses. Although this comparison will be somewhat confounded by the differences in the fact patterns in the two types of cases, it is nonetheless, interesting to

compare the effects of due process in a typical drug court case to a typical mental health court case.

Hypothesis 5b. Furthermore, there should be a three-way interaction between perspective, due process, and court type. When problem-solving court type (Experiments 1a and 1b) is included in the model, the greatest negative emotional impact will occur for participants who consider the scenario from the perspective of an outside observer (predictor) when the defendant was a client in a mental health court without due process. Further, the least negative impact will occur for participants who consider the scenario from the perspective of hi, or herself, as if he or she was the person in the drug court scenario (self-referenced experiencer) for whom the judge awarded adequate due process.

Exploratory Hypotheses

The theory of procedural justice provides another set of lenses from which to consider clients' affective experiences in courts. Procedural fairness focuses on "participants' subjective experience of the case disposition process" (Poythress et al., 2002, p. 520) and predicts that defendants are as concerned with respectful treatment and fair practices as they are about the outcome of their case (Rossman, Willison, Mallik-Kane, Kim, Debus-Sherrill, & Downey, 2012). Furthermore, satisfaction with the legal process and a positive perception of legal authorities (e.g., judge, attorneys, social workers) are often independent of case outcomes.

According to Lind and Tyler (1988), two important factors affect a client's perceived fairness of a courtroom experience. The first is whether the participant felt as though he or she had the opportunity to explain his or her side of the dispute to the judge or decision maker (voice). The second is whether the participant perceived that the judge

or decision maker treated him or her with dignity and respect. Researchers have found that in treatment-focused courts, such as drug or mental health courts, participants who experience high levels of perceived procedural fairness generally report greater satisfaction with the process, which in turn influences their compliance with the law and court ordered treatment plan (Cascardi, Poythress, & Hall, 2000; Lind & Tyler, 1988; Poythress et al., 2002; Tyler, 2003).

Hypothesis 6. In line with the literature on procedural fairness, the researcher theorizes that participants who consider the scenario in which due process was awarded will report higher levels of procedural fairness. Similarly, participants who perceive greater procedural fairness will anticipate a shorter, less intense negative impact for the court client than those who perceive less procedural fairness. This hypothesis is exploratory in that the design does not test procedural fairness as measured in the usual way (opportunity to be heard, to have a “voice,” etc.), but rather fairness as it relates to the presence or absence of due process.

Method

Design

Experiment 1 was a 4 (perspective: predictor vs. observer vs. actor-referenced experiencer vs. self-referenced experiencer) x 2 (due process: present vs. absent) x 2 (court type: drug court vs. mental health court) between-subjects design.

Participants

Five hundred and nineteen people accessed the welcome page of the Experiment 1 website. Of those 519 potential participants, 103 did not continue past the welcome page or answer any questions about the study. Four hundred and fifteen participants completed

the study. These participants were recruited through Amazon's Mechanical Turk online data collection program and were paid \$1.50 for participation. Utilizing community participants, as opposed to undergraduate college students provided a clearer sense of the views that everyday citizens hold about courts.

The mean study completion time was 20.59 ($SD = 16.09$) minutes. Six participants took longer than 68.86 minutes (3 standard deviations above the mean completion time of 20.59 minutes) and were subsequently removed from the database. Another two participants completed the study in less than five minutes, which seems dubious that they gave appropriate attention and thus, were also removed from the database.

Of the 407 remaining participants, five incorrectly answered at least one of the two built-in manipulation check questions and were therefore removed from the database. This left a final dataset with 402 participants with a mean age of 32.92 years ($SD = 10.53$). Fifty-seven percent of the participants were female and 43% were male. The sample was 74.2% Caucasian, 9.3% Asian or Pacific Islander, 9.1% Black and 4.5% Hispanic. Less than 3% identified as "other" ethnicity. The sample was primarily well educated with 89.6% completing at least some college. The program randomly assigned these participants to the 16 conditions in the fully crossed Experiment 1 design. Condition cell sizes ranged from 20-29.

Materials for Experiment 1 Overall

Case fact questionnaire. Participants completed a short five-item manipulation check to measure comprehension of case facts and to ensure they paid sufficient attention. The measure included questions about each independent factor (assigned

perspective, due process, and court type). For example, “The client in the case summary was a (an): a) drug court client; b) mental health court client; or c) arsonist?” and “True or False: The client was afforded due process at the time of the review hearing.” The questionnaire also required participants to identify the perspective from which they read and thought about the case summary to ensure they considered this perspective throughout the study.

The measure also included the first of several attention-check questions in the study. These items, integrated throughout the dependent measures ensured that the participants deliberately considered each question as they worked through the study. For example, “Please choose ‘true’ for the following question if you have read and paid sufficient attention up to this point.” If a participant missed any these attention check questions, the researcher dropped that participant’s data from the study. Appendix A includes the full items.

Coping skills questionnaire. Similar to Igou’s (2008) coping skills inventory, participants completed a knowledge of a variety of coping skills measure for Brent [themselves]¹. Specifically, the measure instructed participants to “complete the following scale about Brent’s [your] coping skills and how Brent [you] would cope with the experience after the judge announced the sanction of 30 days in jail.” Then, participants rated, on a 7-point Likert type scale from 1 (*do not know*) to 7 (*know very well*), how Brent [you] would deal with this experience emotionally, psychologically, socially, financially, and practically. Then, participants indicated the degree to which they *know* what Brent [you] would do in such a situation on a 7-point Likert type scale from 1 (*not at all*) to 7 (*much*). The composite scores for these questions produced one

¹ Self-referenced experiencers answered these questions for themselves as the defendant.

scale for coping knowledge for the client [self]. Igou (2008) found adequate internal consistency reliability for a similar measure with a coefficient alpha of .83. See Appendix B.

Similarity questionnaire. To control for the possibility that coping skills reflect no more than a perceived similarity between the participant and their assigned perspective, participants also completed a similarity measure. Participants denoted how similar they think they are to their assigned perspective, on a 7-point Likert type scale from 1 (*very dissimilar*) to 7 (*very similar*). Specifically, participants indicated their level of similarity as it applies to physical characteristics, personality, emotional reactions, motivations, social life, and overall. See Appendix C for the full questionnaire.

PANAS-X revised (intensity). The dependent measures in the study included a modified Positive and Negative Affect Schedule-Expanded Form (PANAS-X) measure, a standardized measure of experienced positive and negative affect (Kercher, 1992; Watson, Clark, & Tellegen, 1988). Participants were instructed to “think about how Brent [you] would feel about the sanction outcome (jail time) described in the above scenario.” They then indicated the extent Brent [you]² would feel each emotion after the judge announced his sanction in the scenario. Participants rated, on a 5-point Likert type scale from 1 (*very slightly or not at all*) to 5 (*extremely*) the extent they would feel each of 8 positive emotions (inspired, alert, excited, enthusiastic, determined, happy, surprised and relaxed) and 8 negative emotions (angry, distressed, scared, nervous, upset, afraid, embarrassed, and ashamed). This modified scale expands on the PANAS-X short form (Kercher, 1992), which has a reported alpha reliability of .78 and .87, for the negative and positive scales, respectively (Mackinnon, Jorn, Christensen, Korten, Jacomb, & Rodgers,

² Self-referenced experiencers answered these questions for themselves as the defendant.

1999). This measure produced a positive and negative summary scale for intensity of anticipated affect, which allowed a test of the impact bias. Appendix D includes a full description of the scale.

PANAS-X revised (duration). Participants next went back to each of the emotions on the PANAS-X (revised) and indicated how many days Brent [you]³ would experience each of the 16 emotions after the judge announced the sanction. Participants supplied an answer ranging from 0 days (the emotion would last less than a day) to 35 days (the emotion would last even after Brent [you] was released from jail). The answers to these items formed duration scales for both positive and negative emotions, which allowed a test of the duration bias. See Appendix E.

Well-being questionnaire. Participants also completed an overall evaluation of Brent's [your] anticipated well-being after the sanction experience. From their assigned perspective, participants were asked to "think about how Brent [you]⁴ would feel about the situation and outcome (jail time) described in the legal summary." Then, participants rated, on a 7-point Likert type scale from 1 (*very slightly or not at all*) to 7 (*extremely*), how *intensely* Brent's [your] well-being would be negatively influenced by this experience. Specifically, participants rated emotional, psychological, social, financial, and overall wellbeing using this scale. Together the items formed a scale to measure forecasted well-being intensity.

Participants also rated, on a 7-point Likert type scale from 1 (*very short amount of time or not at all*) to 7 (*very long time*), how *long* Brent's [your]⁵ well-being would be negatively influenced by this experience. Specifically, participants rated emotional,

³ Self-referenced experiencers answered these questions for themselves as the defendant.

⁴ Self-referenced experiencers answered these questions for themselves as the defendant.

⁵ Self-referenced experiencers answered these questions for themselves as the defendant.

psychological, social, financial, and overall wellbeing on this scale. Together the items formed a scale to measure forecasted well-being duration. Participants also provided a numerical answer to the question, “How many days would Brent’s [your] overall well-being be negatively influenced by this experience?”

The well-being scale included an additional attention-check question to ensure the participant paid sufficient attention. See Appendix F.

Procedural fairness questionnaire. Participants then completed a brief, five-question perceived procedural fairness measure, based in part on the original scale by Cascardi et al., (2001) and Poythress et al., (2002). Each participant rated on a Likert type scale from 1 (*not at all*) to 7 (*a great deal*) the degree to which they believe Brent [they]:⁶ (1) was [were] treated with respect by the judge, (2) had the opportunity to share information about Brent’s [your] personal and legal situation, (3) thought the judge seemed genuinely interested in Brent [you] as a person, (4) was [were] treated fairly by the judge, and (5) was [were] satisfied with how the judge treated them and dealt with their case. Cascardi et al., (2001) and Poythress et al., (2002) successfully used the items both as a scale and as individual dimensions of procedural fairness. In this study they served as a composite scale of procedural justice.

Participants also completed a one-item evaluation of whether Brent [they]⁷ was [are] satisfied with the hearing outcome, “As you consider the case as a whole, should Brent be [are you] satisfied with the Judge’s decision today to sanction Brent [you] to thirty days in jail?” rated on the same 7 point Likert-type scale. See Appendix G for the full questionnaire.

⁶ Self-referenced experiencers answered these questions for themselves as the defendant.

⁷ Self-referenced experiencers answered these questions for themselves as the defendant.

Demographic survey and drug court familiarity questionnaire. Finally, participants completed a demographic survey, including basic questions such as gender, race, age, and political ideology, among other relevant self-report items. In addition, participants also answered three questions about their familiarity with drug use and drug courts. Specifically, participants rated on a Likert type scale from 1 (*no problems*) to 7 (*many problems*) the degree to which they personally experienced problems with drug use (“Have you personally experienced problems with drug use?”) or whether they have a close friend or family member who has experienced problems with drug use (“Do you have a close friend or family member who has experienced problems with drug use?”). Next, the participants reported whether they have ever been personally involved with a drug court, and if so, in what capacity (e.g., client, social worker, etc.). Finally, three questions (for self mental illness and friend mental illness) asked whether the participants had experience with mental illness (had a friend who has experienced mental illness) and whether they (their friend) had experienced problems as a result of that mental illness. They also reported whether they have ever been personally involved with a mental health court, and if so, in what capacity (e.g., client, social worker, etc.). The full demographic survey can be found in Appendix H.

Preliminary Analyses

The following section includes preliminary analyses that evaluate the attention checks, scale construction and reliabilities for Experiment 1 overall.

Attention check.

Case fact questionnaire. The Case Fact Questionnaire (CFQ) served as a validity check, to determine whether participants paid sufficient attention to the online stimulus materials. CFQ scores ranged from a minimum of 3 correct, to a maximum of 5 correct ($M = 4.78, SD = .46$). Thus, the study respondents answered over 95% of the questions correct, verifying that they had paid close attention to the study materials.

Of particular interest were the participants' responses to the perspective and due process manipulation check questions. Only 2.7% of participants missed the perspective manipulation check question and 2.5% of participants missed the due process manipulation check. Because of the small percentage of participants who incorrectly answered these questions and to maximize sample size across Experiment 1, they were included in all analyses.

Scale construction and reliabilities.

Coping skills questionnaire. The coping skills questionnaire demonstrated an acceptable internal alpha reliability of .91 ($M = 3.44, SD = 1.45, N = 402$) for Experiment 1 overall. Higher scores indicate greater perceived coping skills. See Table 1 for alpha reliabilities, means, and standard deviations of the coping skills questionnaire, as well as all other measures for Experiment 1.

Similarity questionnaire. The similarity questionnaire ($M = 3.31, SD = 1.63, N = 401$) showed high internal reliability ($\alpha = .95$) for Experiment 1. High scores indicate greater perceived similarity between the self and the assigned perspective. Table 1 illustrates reliabilities and descriptive statistics of the similarity questionnaire.

PANAS-X revised (intensity). An exploratory factor analysis on the 16 emotion ratings collected on the PANAS-X revised intensity survey with a varimax rotation

produced four factors with Eigen values greater than 1.00 and accounted for 63.10% of the variance. Applying a .60 cutoff on the loadings in the rotated factor matrix produced four dimensions. Loading on factor 1, the negative affect intensity scale were angry (.76), upset (.74), surprised (.70), scared (.63), distressed (.62), afraid (.60) and nervous (.59). The second factor, the positive affect intensity scale included happy (.79), enthusiastic (.78), inspired (.78), and relaxed (.74). The emotions ashamed (.87), and embarrassed (.82) created a third factor. Alert (.83) independently loaded on a fourth factor. Excited and determined did not reach the .60 cutoff score on any single factor. Table 2 shows the factor loadings for the PANAS-X intensity measure. The derived positive affect intensity scale (happy, enthusiastic, inspired, and relaxed) showed $\alpha = .81$ ($M = 1.14$, $SD = .38$, $N = 399$) for Experiment 1 overall. The derived negative affect intensity scale (angry, upset, surprised, scared, distressed, afraid, and nervous) resulted in an alpha reliability of .86 for Experiment 1 overall ($M = 3.63$, $SD = .79$, $N = 399$). See Table 1 for a summary of the means and standard deviations.

PANAS-X revised (duration). An exploratory principal components factor analysis on the 16 emotion ratings collected on the PANAS-X revised duration survey with a varimax rotation produced 5 factors with Eigen values greater than 1.00 and accounted for 65.59% of the variance. Applying a .60 cutoff on the loadings in the rotated factor matrix produced five dimensions. Loading on factor 1 were scared (.86), afraid (.85), nervous (.81), and distressed (.60). The second factor consisted of happy (.84), enthusiastic (.81), excited (.74), and relaxed (.68). The emotions ashamed (.90) and embarrassed (.91) created a third factor. A fourth factor resulted from angry (.85) and upset (.75), and finally a fifth factor included determined (.83) and inspired (.66). Finally,

alert and surprised did not reach the .60 cutoff score on any single factor. See Table 3 for the factor loadings for the PANAS-X duration measure. The derived positive affect duration scale (happy, enthusiastic, excited, and relaxed) revealed $\alpha = .79$ ($M = 2.20$, $SD = 3.79$, $N = 398$) for Experiment 1 overall. The derived negative affect duration scale (scared, afraid, nervous, distressed, angry, and upset) resulted in an alpha reliability of .82 for Experiment 1 overall ($M = 20.01$, $SD = 8.87$, $N = 399$). See Table 1 for means and standard deviations.

Embarrassed and ashamed scale. The PANAS-X factor analyses cited above revealed that embarrassed and ashamed (on both the intensity and duration scales) loaded onto an independent factor. In lieu of creating a scale of two items, the researcher standardized these four, highly correlated emotion measures (embarrassed intensity, ashamed intensity, embarrassed duration, and ashamed duration) and created an embarrassed and ashamed scale ($M = .00$, $SD = .82$, $N = 399$). See Table 4 for the bivariate correlation matrix. The scale resulted in an alpha reliability of .84 for Experiment 1 overall. See Table 1 for means and standard deviations.

Well-being questionnaire (intensity). The well-being intensity questionnaire demonstrated a high internal alpha reliability of .89 for Experiment 1 overall ($M = 5.13$, $SD = 1.30$, $N = 397$). Higher scores indicate a greater anticipated negative well-being impact. See Table 1 for means and standard deviations.

Well-being questionnaire (duration). The well-being duration questionnaire demonstrated an acceptable internal alpha reliability of .86 for Experiment 1 overall ($M = 4.60$, $SD = 1.25$, $N = 398$). Higher scores indicate a longer anticipated negative well-being impact. See Table 1 for means and standard deviations.

Procedural fairness questionnaire. The procedural fairness questionnaire ($M = 4.04$, $SD = 1.60$, $N = 398$) showed acceptable internal reliability ($\alpha = .89$) for Experiment 1 overall. High scores indicated greater perceived procedural fairness. See Table 1 for means and standard deviations.

Tests of the emotion and well-being hypotheses for Experiment 1 made use of the positive affect intensity, negative affect intensity, positive affect duration, negative affect duration, the combined embarrassed and ashamed intensity and duration scale, well-being intensity, well-being duration, and procedural fairness scales described in Tables 1, 2, and 3.

Experiment 1a—Drug Court

Method

Participants

Two-hundred and four participants with a mean age of 33.32 ($SD = 10.76$) completed Experiment 1a. Fifty-four percent of the participants were female and 45% were male. The sample was 73.8% Caucasian, 9.8% African American, 9.4% Asian or Pacific Islander, 3.9% Hispanic and 3% identified as “other” ethnicity. Condition cell sizes ranged from 23-29.⁸

Materials

Drug court description. The AIK hypothesis (Igou, 2008) posits that the more familiar another person is to the forecaster, the more knowledge the forecaster should have about that role and should consider more information when anticipating the client’s

⁸ The 204 Experiment 1a participants are a subset of the 402 Experiment 1 participants described in the Experiment 1 overall methods section.

affective responses to a negative event. In order to familiarize participants with problem-solving courts, and specifically drug courts, participants in the observer and experiencer conditions (but not the predictor condition) first read a one page description about drug courts to provide them with a basic knowledge of and familiarity with a typical drug court and its clients. This description, titled “What is a Drug Court?” summarized the background, basic components, and therapeutic jurisprudential goals of a drug court, and was based in part on information that the Center for Court Innovation (Porter et al., 2010) and the National Association of Drug Courts (see www.nadcp.org) have gathered and disseminated. See Appendix I for the full description.

Participant perspective instructions. Similar to the perspective-taking procedures used by Igou (2008) and Wiener et al., (2013), participants read and considered a legal case, *State of Nebraska v. Brent Kahler* (2012) from one of four perspectives: 1) a random person who is unfamiliar with drug court clients (predictor); 2) a person who interacts frequently with drug court clients (this could be a social worker or case worker) (observer); 3) Brent, the drug court client portrayed in the legal case (actor-referenced experiencer); or 4) the participant him or herself, as if the respondent was the drug court client in the legal case (self-referenced experiencer). To encourage the participants to focus on their assigned perspective, the instructions read, “take several minutes before you move on to put yourself in the place of this person and think about what he may be like.” As a reminder to the participant, the assigned perspective appeared at the top of each page of the experimental materials in the online survey. Please see Appendix J for the full participant perspective instructions.

Legal case summary (drug court). A two-page written summary of the case facts of *State of Nebraska v. Brent R. Kahler* (2012) (loosely modeled after *State of Tennessee v. Brent R. Stewart* (2010) presented at the beginning of the paper) served as the stimulus case for the measurement tasks in this study.

Participants read the drug court summary from their assigned perspective. Specifically, those in the predictor, observer, or actor-referenced experiencer condition read the name 'Brent Kahler' as the actor in the scenario. Participants in the self-referenced experiencer condition read the summary with the word 'you' in place of 'Brent Kahler'. All participants were instructed to "please read the summary carefully as you will answer questions about this case at the end of the study."

The case facts described Brent Kahler as an individual who had a history of drug problems and as a result, he committed a series of felony offenses, which resulted in his voluntary participation in the drug court program. Brent signed a waiver that described the rules and obligations of the drug court program. Specifically, Brent agreed to abstain from using drugs and alcohol, provide regular and random samples for drug testing, attend weekly Alcoholics Anonymous (AA) meetings and weekly meetings with the court treatment team. The court also explained that any violation of the agreement would result in a variety of sanctions, including increased drug testing, additional court appearances, and potentially brief periods of incarceration. Brent was particularly motivated to do well in the program because he understood the judge could send the case back to criminal court for repeated noncompliance.

During Brent's time in the drug court program, he failed to comply with the basic program requirements. Specifically, he failed to appear in court on two separate

occasions and failed random drug tests on three separate dates. Finally, two days prior to the current hearing, Brent purportedly missed a weekly-required drug test and came before the judge for review. The judge called a hearing and explained that he was disappointed in Brent's performance in the program. The judge determined that Brent was using drugs and alcohol, which is in violation of the drug court agreement. However, Brent insisted that the drug test was scheduled for the following day and thus, Brent did not believe there was evidence of a missed required test. He explained that he wrote down the date and time of the scheduled drug test on a card, and he could show the court the date if he could retrieve the card and present it as evidence. He also wanted to share with the court why he had missed and failed previous drug tests.

The court then awarded or did not award Brent due process protections at the hearing (see the due process manipulation description below). Brent explained his desire to continue in the program and promised Judge Zubrod that the court would see improvement if he gave him another chance. Ultimately, because of Brent's repeated offenses, the judge sentenced him to thirty days in jail as a sanction. Officers of the court immediately took Brent into custody. See Appendix K for the full case fact summary.

Due process manipulation. Half of the participants read that the judge provided Brent with traditional due process protections and the other half read that the judge did not provide Brent with those protections. These due process protections were modeled after those awarded to parolees and those on probation, as defined by the Supreme Court in *Gagnon v. Scarpelli*, 1973 and *Morrissey v. Brewer*, 1972.

Participants in the due process rights awarded condition read:

At this time, Judge Zubrod enacted several protections to honor Brent's [your] due process rights. Specifically, the judge gave Brent [you] a written notice of the claimed violations of the program and a written disclosure of the evidence against him [you]. The statement explained that Judge Zubrod was seeking jail time for Brent [you] to help him [you] appreciate the seriousness of the violated drug court agreement. At that point, Judge Zubrod left the bench and a different, neutral judge presided over the remainder of the hearing. The new judge called several drug court staff to testify that Brent [you] had failed drug testing and did not show up for one of the drug testing sessions. The judge then allowed Brent [you] to question the drug court staff, show the judge his appointment card with the next day's date written on it, and give a statement about why he [you] failed previous drug tests.

Participants in the due process rights *not* awarded condition read:

In drug court, judges do not give clients the same due process rights as they would in a criminal court. Judge Zubrod did not provide Brent [you] with a written notice of the claimed violations of the program or a written disclosure of the evidence against him [you]. The judge gave no reason why he was seeking jail time for Brent [you] other than that Brent [you] had failed the drug tests and failed to attend a drug testing session. Several drug court staff reported to the judge that Brent [you] had failed several drug tests and did not show up for one of the drug testing sessions. Judge Zubrod did not allow Brent [you] to question the drug court staff, he did not examine Brent's [your] appointment card, or allow a statement about why Brent [you] failed previous drug tests.

Please see Appendix L for the full due process description.

Perspective manipulation booster. Participants wrote a short, manipulation-boosting paragraph about their assigned perspective (predictor, observer, actor-referenced experiencer, or self-referenced experiencer) to encourage them to consider the dependent measures from that perspective. Specifically, in the provided space, each participant was asked to “put yourself in the place of [assigned perspective]. From this perspective, briefly write what you [Brent] know[s] about drug courts and the services they provide.” See Appendix M for a full summary of the manipulation booster instructions from each assigned perspective.

Design and Procedure

Experiment 1a was a 4 (perspective: predictor vs. observer vs. actor-referenced experiencer vs. self-referenced experiencer) x 2 (due process: present vs. absent) between-subjects design.

Participants who freely chose to participate in the study through Amazon’s Mechanical Turk program linked to a website that randomly assigned them to one of the eight research design conditions. All experiment materials were posted to a website created through Qualtrics, an internet survey design and data collection program.

Upon accessing the online survey via Qualtrics, participants completed an informed consent form. Then, those in the observer and experiencer conditions (not the predictor condition) read the one-page drug court summary titled, “What is a Drug Court?” The instructions directed participants to, “Please read the following description carefully...Soon, you will see a number of questions about a specific drug court case. This information will help you understand that case.” This description was particularly

important for participants in the observer and experiencer conditions to help them effectively role-play their assigned perspective.

Then, similar to the perspective-taking procedures used by Igou (2008) and Wiener et al., (2013), participants read and thought about the legal summary from one of the four randomly assigned perspectives described above (predictor, observer, actor-referenced experiencer, or self-referenced experiencer). To further encourage the participants to focus on their assigned perspective, the participants were encouraged to, “take several minutes before you move on to put yourself in the place of this person and think about what he or she may be like.” The description of the participant’s assigned perspective also appeared at the top of each subsequent page and section in the online survey to remind participants of their task.

The website then directed participants to the legal case summary, *State of Nebraska v. Brent R. Kahler*, 2012. The instructions read, “Please read the following summary carefully...from the perspective of [insert assigned perspective]...as you will answer questions about this case at the end of the study.” Then, those in the condition without due process rights read that the court did not afford the client due process at the time of the sanctioning hearing. The other half of the participants read that the judge carefully informed the client about his due process rights at the time of the sanctioning hearing, as defined in Appendix L.

Participants then completed the perspective manipulation booster to encourage them to consider the legal case and subsequent dependent measures from their assigned perspective. After they wrote the manipulation booster paragraph, they completed the case fact questionnaire, which served as an attention check and a comprehension

measure. Then, participants completed the coping skills questionnaire, similarity questionnaire, the anticipated affect PANAS-X surveys (intensity and duration), the well-being questionnaire, and the brief survey about procedural fairness. Again, participants considered each of these surveys from their randomly assigned perspective (predictor, observer, actor-referenced experiencer, self-referenced experiencer). Finally, participants completed the demographic survey.

Participants then read a thank you and debriefing statement. Upon completion, the Mechanical Turk website paid the participants directly for their participation.

Results

Overview

The results are organized into four sections. The first section summarizes the measures, scale construction, and variable construction for Experiment 1a. Section two includes tests of hypotheses 1, 2, 3, and part of 4 using basic, moderation, and mediation analyses for coping and similarity for each of the dependent variables in Experiment 1a. Section three tests the relationship of familiarity with drug use as a potential moderator with each of the dependent variables (hypothesis 4). Finally, section four tests the mediating relationship of due process through procedural fairness on the participants' anticipated negative impact of a court-imposed sanction (exploratory hypothesis 6).

Section I: Measures and Variable Construction

Scale construction and reliabilities. Table 1 includes a summary of the alpha reliabilities, means, and standard deviations for all scales in Experiment 1a, including the coping skills questionnaire, similarity questionnaire, PANAS-X intensity scale (positive

and negative affect), PANAS-X duration scale (positive and negative affect), embarrassed and ashamed scale, well-being intensity and duration scales, and the procedural fairness questionnaire. The method section of Experiment 1 overall describes each measure and the construction of each scale.

Variable construction.

Drug use familiarity and problems. The researcher was interested in whether the study results of Experiment 1a (drug court) would be influenced by participants' familiarity with self or friend drug use. Two questions (for self drug use and friend drug use) asked whether the participants had used drugs in the past (had a friend who used drugs in the past) and whether they (their friend) had experienced problems as a result of that drug use. See Appendix H for the relevant questions.

The first step in creating a composite continuous variable as a measure of those who used drugs themselves was to code participants who noted they had not used drugs in the past with a score of 0. All other participants received the scale value derived from the second question, measuring any problems with drug use for those who admitted to using. Sixty-two percent of participants reported no experience with self-drug use, whereas 37% reported at least some experience with drug use. Creating a composite continuous variable for a measure of those whose friends used drugs followed the same pattern, assigning a zero to all who did not have friends who used drugs. All other participants received the scale value derived from the second question, regarding any problems that friends who used had with drugs. Here, 41% of participants reported not having a friend who had used drugs and 57% reported knowing a friend who had used. The mean scores for the newly derived self drug problems variable were .51 ($SD = .90$)

and 2.41 ($SD = 2.59$) for the friend drug problems variable for Experiment 1a. Table 5, which displays the correlations between the self and friend drug problems variables and each dependent variable shows no relationship between these two indices and the dependent variables of interest.⁹ No further analyses involved self or friend drug problem measures.

Section II: Basic, Moderation, and Mediation Analyses for Experiment 1a (Drug Courts)

Section two includes tests of hypotheses 1, 2, 3, and part of 4 for drug court participants. Specifically, section two is organized by each dependent variable (positive affect duration and intensity, negative affect duration and intensity, embarrassed and ashamed scale, well-being duration and intensity, and procedural fairness). For each dependent variable, the author tested a basic general linear model to identify whether there was a hypothesized perspective effect (hypothesis 1), due process effect (hypothesis 2), or a two-way perspective by due process effect (hypothesis 3). A between-subjects multivariate analysis of variance (MANOVA) with perspective as a four-level manipulated factor (predictor vs. observer vs. actor-referenced experiencer vs. self-referenced experiencer) and due process as a two-level manipulated factor (due process present vs. due process absent) with each of the dependent variables in the section below is the basic model that tests the major hypotheses throughout Experiment 1a.

Following the basic model tests are tests of the moderating and mediating effects of coping knowledge and similarity (hypothesis 4), respectively. Mediation tests only

⁹ There was some skewness and kurtosis in the self and friend drug problem variables, which suggested the need for a log transformation. The correlations did not differ between the transformed and untransformed variables so that Table 5 reports the original, untransformed variables.

follow where there were main effects for due process or perspective or the interaction between these two factors in the basic or moderation analyses.

Positive affect duration and intensity. The 4 (perspective: predictor vs. observer vs. actor-referenced experiencer vs. self-referenced experiencer) by 2 (due process: present vs. absent) MANOVA design with positive affect duration and positive affect intensity serving as dependent variables revealed no multivariate effect for due process, $F(2, 194) = .78, p = .50, \eta_p^2 = .01$, perspective, $F(6, 388) = 1.31, p = .25, \eta_p^2 = .02$, and no interaction, $F(6, 388) = 1.06, p = .38, \eta_p^2 = .02$. Furthermore, there were no univariate effects for positive affect duration or positive affect intensity. See Tables 6 and 7 for a summary of the means and standard deviations of each dependent variable by perspective in the due process present condition (Table 6) and in the due process absent condition (Table 7) for Experiment 1a.

Coping knowledge moderation. Adding coping knowledge (a measured, continuous factor) along with all interactions between coping and the manipulated factors tested the moderating effects. This was a 4 (perspective) x 2 (due process) general linear model with coping as a continuous factor and positive affect duration and positive affect intensity as dependent variables. There was no significant multivariate main effect for coping, $F(2, 186) = .77, p = .47, \eta_p^2 = .01$, nor were there any significant coping univariate effects. There were also no significant multivariate main effects or univariate effects for due process, $F(2, 186) = .34, p = .71, \eta_p^2 = .004$, or perspective, $F(6, 374) = 1.06, p = .30, \eta_p^2 = .02$. There were also no significant multivariate interactions or significant interaction univariate effects.

Similarity moderation. Adding perceived similarity (a measured, continuous factor) along with all interactions between similarity and all the manipulated factors tested the moderating effects. This was a 4 (perspective) x 2 (due process) general linear model with similarity as a continuous factor and positive affect duration and positive affect intensity as dependent variables. There was a significant multivariate main effect for similarity, $F(2, 186) = 4.57, p = .01, \eta_p^2 = .05$, and significant univariate effects for similarity on positive affect duration, $F(1, 187) = 4.84, p = .03, \eta_p^2 = .03, \beta = .22$, and positive affect intensity, $F(1, 187) = 7.72, p = .01, \eta_p^2 = .04, \beta = .27$. This shows that increases in similarity resulted in significant increases in positive affect duration and positive affect intensity.

There was also a significant multivariate main effect for due process, $F(2, 374) = 3.78, p = .03, \eta_p^2 = .04$, and a significant univariate effect for due process on positive affect duration, $F(1, 187) = 7.39, p = .01, \eta_p^2 = .04$, where participants anticipated longer positive affect when due process was absent ($M = 2.39, SD = .3.36$) than when due process was present ($M = 2.05, SD = 2.69$). (Note: for all GLM and ANCOVA models, the means reported in the text are estimated at the intercept of the continuous variable in the model.) The univariate effect for due process on positive affect intensity was not significant, $F(1, 187) = 2.23, p > .05$. The multivariate main effect for perspective was not significant, $F(6, 374) = 1.50, p = .18, \eta_p^2 = .03$, nor were there significant univariate perspective effects.

Similarity interacted with due process, $F(2, 186) = 4.61, p = .01, \eta_p^2 = .03$, to qualify the due process multivariate main effect. The univariate interaction for positive affect duration was significant, $F(1, 187) = 8.74, p = .004, \eta_p^2 = .05$. Figure 1 displays

the results of the interaction. Follow up tests using simple slope analyses (Dawson, 2014) showed that increases in similarity led to longer positive affect duration when due process was absent, ($\beta = .47, p = .02$), however, the effect of similarity when due process was present was not significant ($\beta = .02, p > .05$). The univariate interaction for positive affect intensity was not significant, $F(1, 187) = 3.34, p > .05$.

There was also a multivariate interaction approaching significance between similarity and perspective, $F(6, 374) = 2.03, p = .06, \eta_p^2 = .03$. Follow up univariate analyses showed that the univariate interaction for positive affect duration was not significant $F(1, 187) = .36, p > .05$, nor was the univariate interaction for positive affect intensity $F(1, 187) = 2.18, p > .05$.

Coping knowledge mediation. The correlations between similarity and positive affect duration ($r = .12, p = .09$) and intensity ($r = .06, p = .37$) were not significant. Because mediation requires a significant relationship between the mediator (perceived similarity) and the dependent variable of interest, there was no need to pursue a more formal analysis testing whether coping knowledge mediated the due process effect on positive affect.

Negative affect duration and intensity. The basic MANOVA model with negative affect duration and negative affect intensity as dependent variables resulted in non-significant multivariate effects for due process, $F(2, 194) = 2.22, p = .11, \eta_p^2 = .02$, and perspective, $F(6, 390) = .83, p = .55, \eta_p^2 = .01$. The interaction was also not significant, $F(6, 388) = .48, p = .82, \eta_p^2 = .007$. Furthermore, the univariate effects for negative affect duration and negative affect intensity were not significant.

Coping knowledge. Adding coping knowledge (a measured, continuous factor) along with all the interactions between coping and all the manipulated factors tested the moderating effect and found no significant multivariate main effects for coping, $F(2, 186) = .06, p = .95, \eta_p^2 = .001$, due process, $F(2, 186) = .14, p = .87, \eta_p^2 = .001$, or perspective, $F(6, 372) = .57, p = .75, \eta_p^2 = .01$. The univariate effects for negative affect duration and negative affect intensity were also not significant. There were also no significant multivariate interactions or univariate interaction effects.

Similarity moderation. Including perceived similarity in the basic model to test for moderation revealed no significant multivariate main effects for similarity, $F(2, 186) = 1.41, p = .25, \eta_p^2 = .02$, due process, $F(2, 186) = .20, p = .82, \eta_p^2 = .002$, or perspective, $F(6, 372) = .43, p = .86, \eta_p^2 = .01$. The univariate effects for negative affect duration and negative affect intensity were also not significant. There were also no significant multivariate interactions or univariate interaction effects.

Embarrassed and ashamed scale. An ANOVA similar to the basic multivariate model used the embarrassed and ashamed scale as the dependent variable. The results indicated no significant main effect for due process, $F(1, 195) = .50, p = .48, \eta_p^2 = .003$. However the main effect for perspective was significant, $F(3, 195) = 3.79, p = .01, \eta_p^2 = .06$, whereby those in the self-referenced experiencer condition ($M = .33, SD = .86$), anticipated feeling significantly more embarrassed and ashamed than participants in the predictor ($M = -.12, SD = .80, p = .01$), observer ($M = -.06, SD = .85, p = .01$), and actor-referenced experiencer groups ($M = -.15, SD = .78, p = .004$). The interaction between due process and perspective was not significant, $F(3, 195) = 1.85, p = .14, \eta_p^2 = .03$.

Coping knowledge moderation. Adding coping knowledge to the basic ANOVA model to test for moderation resulted in no significant main effect for coping, $F(1, 187) = .18, p = .67, \eta_p^2 = .001$, due process, $F(1, 187) = .78, p = .38, \eta_p^2 = .04$, or perspective, $F(3, 187) = .22, p = .88, \eta_p^2 = .004$. There were also no significant interactions.

Coping knowledge mediation. The correlation between coping knowledge and the embarrassed and ashamed scale ($r = .09, p = .20$) was not significant. Therefore, coping knowledge was likely not a potential mediator of the relationship between perspective and feelings of embarrassment and shame.

Similarity moderation. Adding perceived similarity to the basic ANOVA model tested for moderation and found the main effects for similarity, $F(1, 187) = .11, p = .75, \eta_p^2 = .001$, due process, $F(1, 187) = .02, p = .88, \eta_p^2 = <.001$, and perspective, $F(3, 187) = 1.64, p = .18, \eta_p^2 = .03$, were not significant. There were also no significant interactions.

Similarity mediation. The correlation between perceived similarity and the embarrassed and ashamed scale ($r = .22, p = .09$) was not significant. Therefore, coping knowledge was likely not a potential mediator of the relationship between perspective and shame.

Well-being duration and intensity. The basic MANOVA model with well-being duration and well-being intensity as dependent variables revealed no significant multivariate main effect for due process, $F(2, 194) = 1.32, p = .27, \eta_p^2 = .01$, perspective, $F(6, 388) = 1.43, p = .20, \eta_p^2 = .02$, or the multivariate interaction, $F(6, 388) = 1.28, p = .27, \eta_p^2 = .02$. Furthermore, the univariate effects for well-being duration and well-being intensity were not significant.

Coping knowledge moderation. Adding coping knowledge as a potential moderator produced no significant multivariate main effects or univariate effects for coping knowledge, $F(2, 186) = .86, p = .43, \eta_p^2 = .01$, due process, $F(2, 186) = .38, p = .9, \eta_p^2 = .01$, or perspective, $F(6, 372) = 1.21, p = .30, \eta_p^2 = .02$.

The due process by perspective multivariate interaction was significant, $F(6, 372) = 2.62, p = .02, \eta_p^2 = .04$. Specifically, the univariate interaction for well-being duration was significant, $F(3, 187) = 3.99, p = .01, \eta_p^2 = .06$. When due process is absent, those in the predictor condition ($M = 4.26, SD = .99$) anticipated that their well-being would be negatively impacted for a shorter amount of time than those in the self-referenced experiencer condition ($M = 4.91, SD = .291, p = .05$). There were no other significant pairwise comparisons. When due process is present, those in the observer condition ($M = 3.76, SD = 1.17$) anticipated that their well-being would be negatively impacted for a significantly shorter amount of time than those in the predictor condition ($M = 4.81, SD = 1.51, p = .01$) or the self-referenced experiencer condition ($M = 4.80, SD = 1.83, p = .01$). There were no other significant pairwise comparisons. The univariate interaction for well-being intensity was not significant, $F(3, 187) = .69, p > .05$.

There was also a significant three-way multivariate interaction between coping, due process, and perspective, $F(6, 372) = 3.19, p = .01, \eta_p^2 = .05$. The univariate interaction on well-being duration was significant, $F(3, 187) = 4.68, p = .004, \eta_p^2 = .07$. Tests of the interaction of coping and due process at each perspective level and found significant effects for the predictor condition, $F(1, 53) = 6.57, p = .013, \eta_p^2 = .11$, and the actor-referenced experiencer condition, $F(1, 43) = 6.76, p = .01, \eta_p^2 = .14$. The

interactions for the observer condition, $F(1, 45) = .01, p > .05$, and the self-referenced experiencer condition, $F(1, 46) = .08, p > .05$, were not significant.

Figure 2 displays the coping by due process interaction for the predictor perspective. Follow up tests using simple slope analyses (Dawson, 2014) showed that increases in coping led to longer negative well-being duration when due process was present, ($\beta = .47, p = .02$), however, the effect of coping when due process was absent was not significant, ($\beta = -.13, p > .05$).

Figure 3 displays the coping by due process interaction for the actor-referenced experiencer perspective. Follow up tests using simple slope analyses (Dawson, 2014) showed that under high coping at one standard deviation above the mean, participants in the due process absent condition predicted longer negative well-being than those in the due process present condition, $\beta = -.44, t(43) = -2.18, p = .04$. Under low coping at one standard deviation below the mean, there were no significant differences between those in the due process present and due process absent conditions, $\beta = .31, t(43) = 1.55, p = .13$.

The univariate interaction on well-being intensity was not significant, $F(3, 187) = .27, p = .85$.

Coping knowledge mediation. The correlations between coping knowledge and well-being duration ($r = .12, p = .10$) and well-being intensity ($r = .06, p = .42$) were not significant. Therefore, coping knowledge was likely not a potential mediator of the due process or perspective effects.

Similarity moderation. Adding perceived similarity as a potential moderator produced no significant multivariate main effects for similarity, $F(2, 186) = .25, p = .78$,

$\eta_p^2 = .003$, due process, $F(2, 186) = .37, p = .69, \eta_p^2 = .004$, or perspective, $F(6, 372) = .94, p = .46, \eta_p^2 = .02$. The univariate effects for well-being duration and well-being intensity were not significant. There were also no significant multivariate interactions or univariate interaction effects.

Procedural fairness. The basic ANOVA model with the procedural fairness scale as a dependent variable indicated a significant main effect for due process, $F(1, 195) = 40.80, p < .001, \eta_p^2 = .17$, whereby those in the due process present condition ($M = 4.83, SD = 1.35$) experienced greater procedural fairness than those in the due process absent condition ($M = 3.57, SD = 1.46$). The main effect for perspective approached significance, $F(3, 195) = 2.48, p = .06, \eta_p^2 = .04$. Specifically, those in the predictor condition ($M = 4.54, SD = 1.54$) experienced greater procedural fairness than those in the actor-referenced experiencer ($M = 3.95, SD = 1.58, p = .04$) and the self-referenced experiencer conditions ($M = 3.94, SD = 1.40, p = .03$). There were no other significant pairwise comparisons. The interaction between due process and perspective was not significant, $F(3, 195) = .16, p = .92, \eta_p^2 = .002$.

Coping knowledge moderation. When coping knowledge was added to the basic model to test for moderation, the model revealed a non-significant main effect for coping knowledge, $F(1, 187) = .15, p = .70, \eta_p^2 = .001$. The due process effect main effect was significant, however, $F(1, 187) = 3.80, p = .05, \eta_p^2 = .02$, whereby those in the due process present condition experienced significantly greater procedural fairness ($M = 4.77, SD = 1.35$) than those in the due process absent condition ($M = 3.73, SD = 1.45$). The perspective main effect was not significant, $F(3, 187) = 1.65, p = .18, \eta_p^2 = .03$.

Coping also interacted with due process and perspective, qualifying the due process main effect, $F(3, 187) = 3.18, p = .03, \eta_p^2 = .05$. The researcher calculated the interaction of coping and due process at each perspective level and found a significant effect for the predictor condition, $F(1, 53) = 11.62, p = .001, \eta_p^2 = .18$. The interactions for the observer, $F(1, 45) = .37, p > .05$, actor-referenced experiencer, $F(1, 43) = .34, p > .05$, and self-referenced experiencer conditions, $F(1, 46) = .11, p > .05$, were not significant. Figure 4 displays the coping by due process interaction for the predictor perspective. Follow up tests using simple slope analyses (Dawson, 2014) showed that increases in coping led to greater procedural fairness when due process was absent, ($\beta = .53, p = .001$), however, the effect of coping when due process was present was not significant ($\beta = -.29, p > .05$). Further, under low coping at one standard deviation below the mean, participants in the due process present condition experienced greater procedural fairness than those in the due process absent condition, $\beta = .82, t(53) = 5.26, p < .01$. Under high coping at one standard deviation above the mean, there were no significant differences between those in the due process present and due process absent conditions, $\beta = .06, t(53) = .36, p > .05$.

Coping knowledge mediation. The correlation between coping knowledge and procedural fairness ($r = .05, p = .51$) was not significant. Therefore, coping knowledge was likely not a potential mediator of the due process or perspective effects.

Similarity moderation. When similarity was added to the basic model to test for moderation, the similarity main effect was not significant, $F(1, 187) = .01, p = .94, \eta_p^2 = .003$. The due process main effect was significant, however, $F(1, 187) = 4.87, p = .03, \eta_p^2 = .03$. As in the basic model, those in the due process present condition ($M = 4.63, SD =$

1.35) experienced significantly greater procedural fairness than those in the due process absent condition ($M = 3.61$, $SD = 1.46$). The perspective effect was not significant, $F(3, 187) = .18$, $p = .92$, $\eta_p^2 = .003$. There were also no significant interactions.

Similarity mediation. The correlation between perceived similarity and procedural fairness ($r = .13$, $p = .07$) was not significant. Therefore, similarity was likely not a potential mediator of the due process or perspective effects.

Section III: Familiarity with Drug Use

Hypothesis 4 explored a potential moderating effect of familiarity with drug use on the manipulated factors as they impacted the dependent variables. More specifically, it is possible that participants familiar with drug use reacted differently to the dependent measures than did those unfamiliar with drug use.

Self drug use. A series of correlations between the self drug problems continuous variable and each of the dependent variables (positive affect duration and intensity, negative affect duration and intensity, embarrassed and ashamed scale, well-being duration and intensity, and procedural fairness) measured the potential influence of familiarity on the major dependent measures in Experiment 1a. Table 5 shows that self drug problems was not significantly correlated with any of the dependent variables and therefore required no further analyses involving self drug problems as a familiarity measure.

Friend drug use. The same series of correlations between the friend drug problems continuous variable and each of the dependent variables again showed no significant correlations with any of the dependent variables. Thus, there was no need to

conduct further analyses involving friend drug problems as a familiarity measure. See Table 5 for a summary of the correlation analyses.

Section IV: Exploratory Procedural Fairness Mediation Analyses

Exploratory hypothesis 6 concerned the relationships between due process, procedural fairness, and a participant's anticipated negative reaction to a sanction. A between-subjects MANOVA with due process as a two-level manipulated factor and each of the measures of interest (positive affect duration and intensity, negative affect duration and intensity, embarrassed and ashamed scale, and well-being duration and intensity) as dependent variables showed a significant multivariate effect. See Table 8 for a summary of the results. The significant multivariate model, $F(1, 201) = 4.58, p < .001, \eta_p^2 = .19$, showed a significant effect of due process on negative affect duration, $F(1, 201) = 3.82, p = .05, \eta_p^2 = .02$, such that those in the due process present condition anticipated a shorter duration of negative affect ($M = 18.73, SD = 8.18$) than those in the due process absent condition ($M = 21.11, SD = 9.08$). There was also a significant effect for procedural fairness, $F(1, 201) = 41.47, p < .001, \eta_p^2 = .17$, such that those in the due process present condition experienced more procedural fairness ($M = 4.85, SD = 1.35$) than those in the due process absent condition ($M = 3.58, SD = 1.46$). There were no other significant effects.

The significant effects for procedural fairness and negative affect duration in the MANOVA model leave open the possibility that procedural fairness might have mediated the effects of due process on negative affect duration. The mediation analyses followed Preacher and Hayes' (2008) bootstrapping approach rather than the traditional Baron and Kenny (1985) mediation procedure, the latter of which makes use of ordinary least

squares regression and the Sobel (1982) test of mediation to examine indirect effects. The Preacher and Hayes procedure calculates standards of error for the regression weights using a bootstrapping procedure, which does not make normality assumptions and which increases the power of the test statistic.

The Preacher and Hayes (2008) test, calculated with an SPSS sub-program in the regression routine, produces an OLS path analysis and a matrix of indirect effect coefficients of the independent variable (due process) on the dependent variable (negative affect duration). It also calculates coefficients for the potential mediator (procedural fairness). The program calculates the indirect path coefficients and their standard errors simultaneously with a bootstrapping procedure that estimated 50,000 bootstraps thereby reducing the bias in the estimators that result from deviations from normality assumptions.

Figure 5 illustrates the results from the Preacher and Hayes mediation analysis. The rectangles represent the cause (due process) and effect (negative affect duration) variables. The oval is the potential mediator (procedural fairness). The arrows are the path coefficients that emerged in the Preacher and Hayes analysis. The figure represents a simple model in which procedural fairness served as a direct mediator between due process and negative affect duration. Figure 5 shows the mediation model such that the direct path before mediation ($\beta = -2.38, p = .05$) is significant but drops to a non-significant association after including the mediator (procedural fairness) ($\beta = -1.63, p = .22$). Due process present decreases anticipated negative affect duration and increases procedural fairness. However, procedural fairness did not contribute to the participants' anticipated duration of negative affect ($\beta = -.58, p = .12$).

Table 9 lists the indirect path effects and the 95th percent confidence intervals for those parameters. The confidence interval for the indirect path coefficient for procedural fairness contains zero, so the coefficient for procedural fairness is not significantly different from zero. Thus, procedural fairness did not mediate the effect of due process on negative affect duration.

Experiment 1b—Mental Health Court

Method

Recall that the overall objective of Experiment 1 was to investigate problem-solving court clients' and anticipated affective experiences and well-being after a sanction, as it relates to participant perspective and procedural due process in both drug courts and mental health courts. Although the overarching objectives (decreased offending) in both types of courts and the general philosophy of therapeutic jurisprudence are similar, the typical court client and treatment goals differ. Thus, because of the confounded comparison between drug and mental health courts as a manipulated variable, there were two parts to Experiment 1.

Experiment 1b is a conceptual replication of Experiment 1a. Experiment 1a investigated the impact of participant perspective and due process on anticipated emotion and well-being for *drug court* clients, whereas Experiment 1b employed an identical design for *mental health court* clients. The legal summaries of the cases (drug v. mental health court) in the two experiments mirrored each other as closely as possible. This allowed for comparisons between the two cases on the overall effects of the AIK hypothesis, recognizing that the drug court and mental health court cases are inevitably different with regard to court process and some of the case facts. Thus, the data from

Experiments 1a and 1b represent replications rather than an experimental manipulation. Experiment 1a and 1b data were collected simultaneously.

Participants

One-hundred and ninety-eight participants with a mean age of 32.52 ($SD = 10.30$) completed Experiment 1b. Fifty-nine percent of the participants were female and 41% were male. The sample was 74.7% Caucasian, 9.3% Asian or Pacific Islander, 8.2% African American, 5.2% Hispanic and 2.5% identified as “other” ethnicity. Condition cell sizes ranged from 20-28.¹⁰

Materials

Mental health court description. As in Experiment 1a, in order to familiarize participants with problem-solving courts, and specifically mental health courts, participants in the observer and experiencer conditions first read a one page description about mental health courts to provide them with a basic knowledge of and familiarity with a typical mental health court and its clients. The description closely mirrored that of the drug court summary. The description, titled “What is a Mental Health Court?” summarized the background, basic components, and therapeutic jurisprudential goals of a mental health court, and was based in part on information that the Urban Institute (Rossman et al., 2012) and the Center for Court Innovation (Porter et al., 2010) have gathered and disseminated. See Appendix N for the full description.

Legal case summary (mental health court). The mental health court case summary mirrored the drug court case summary in most ways. The basic fact pattern, court’s procedures, and client outcome (incarceration as a sanction) were identical.

¹⁰ The 198 Experiment 1b participants are a subset of the 402 Experiment 1 participants described in the Experiment 1 overall methods section.

However, the case featured a client who struggled with mental illness instead of drug addiction.

A two-page written summary of the case facts of *State of Nebraska v. Brent R. Kahler* (2012) (loosely modeled after *State of Tennessee v. Brent R. Stewart* (2010) presented at the beginning of the paper) served as the stimulus case for the measurement tasks in this study.

Participants read the mental health court summary from their assigned perspective (see Appendix O). Specifically, those in the predictor, observer, or actor-referenced experiencer condition read the name ‘Brent Kahler’ as the actor in the scenario. Participants in the self-referenced experiencer condition read the summary with the word ‘you’ in place of ‘Brent Kahler’. All participants were instructed to “please read the summary carefully as you will answer questions about this case at the end of the study.”

The facts describe Brent Kahler as an individual with a history of mental illness and as a result, he committed a series of felony offenses, which resulted in his voluntary participation in the mental health court program. Brent signed a waiver that described the rules and obligations of the drug court program. Specifically, Brent agreed to attend regular psychological counseling sessions, adhere to a prescribed medication regimen, attend weekly National Alliance on Mental Illness (NAMI) support group meetings, take regular drug and alcohol tests, and attend weekly meetings with the court treatment team. Court personnel explained that any violation of the agreement would result in a variety of sanctions, including increased psychological counseling, additional court appearances, and potentially brief periods of incarceration. Brent was particularly motivated to do well

in the program because he understood the Judge could send the case back to criminal court for repeated noncompliance.

During Brent's time in the mental health court program, he failed to comply with the basic program requirements. Specifically, he failed to appear in court on two separate occasions and failed to attend scheduled psychological counseling sessions on three separate dates. Finally, two days prior to the current hearing, Brent purportedly missed a scheduled medical check-in to ensure he had adhered to his prescribed medication regimen and came before the judge for review. Finally, two days prior to the current hearing, Brent purportedly missed a weekly-required drug test and came before the judge for review. The judge called a hearing and explained that he was disappointed in Brent's performance in the program. The judge determined that he had not adhered to his prescribed medication regimen or psychological counseling schedule, which is in violation of the drug court agreement. However, Brent insisted that the medical check-in was scheduled for the following day and thus, Brent did not believe there was evidence of a missed appointment. He explained that he wrote down the date and time of the scheduled medical check-in on a card, and could show the court if he was allowed to retrieve it and present it as evidence. He also wanted to share with the court why he had missed previous counseling sessions.

The court then awarded or did not award Brent due process protections at the hearing (see the due process manipulation below). Brent explained his desire to continue in the program and promised Judge Zubrod that the court would see improvement if he gave him another chance. Ultimately, because of Brent's repeated offenses, the judge

sentenced him to thirty days in jail as a sanction. Officers of the court immediately took Brent into custody. See Appendix P for the full case fact summary.

Due process manipulation. Half of the participants read that the judge provided Brent with traditional due process and the other half read that the judge did not provide Brent with those protections. As in Experiment 1a, these due process protections were modeled after those awarded to parolees and those on probation, as defined by the Supreme Court in *Gagnon v. Scarpelli*, 1973 and *Morrissey v. Brewer*, 1972. See Appendix Q for the due process rights manipulation for the mental health case.

Experiment 1b included a similar perspective booster as in Experiment 1a (See Appendix R, which is the booster manipulation for the mental health court case). The dependent measures for Experiment 1b were the same as those for 1a (Appendices A through H). None of the measures identified the court case as either a drug case or a mental health case.

Design and Procedure

Experiment 1b utilized the same design as Experiment 1a, a 4 (perspective: predictor vs. observer vs. actor-referenced experiencer vs. self-referenced experiencer) x 2 (due process: present vs. absent) between-subjects design. The researcher collected the data simultaneously with and in exactly the same manner as described in Experiment 1a.

Results

Overview

The results are organized into the same four sections as Experiment 1a. The first section summarizes the measures, scale construction, and variable construction for Experiment 1b. Section two includes tests of hypotheses 1, 2, 3, and part of 4 through

basic, moderation, and mediation analyses for coping and similarity for each of the dependent variables in Experiment 1b. Section three tests the relationship of familiarity with mental illness as a potential moderator with each of the dependent variables (hypothesis 4). Finally, section four tests the mediating relationship of due process through procedural fairness on the participants' anticipated negative impact of a court-imposed sanction (exploratory hypothesis 6).

Section I: Measures and Variable Construction

Scale construction and reliabilities. Table 1 includes a summary of the alpha reliabilities, means, and standard deviations for all scales in Experiment 1b, including the coping skills questionnaire, similarity questionnaire, PANAS-X intensity scale (positive and negative affect), PANAS-X duration scale (positive and negative affect), embarrassed and ashamed scale, well-being intensity and duration scales, and the procedural fairness questionnaire.

Variable construction

Mental health familiarity and problems. The researcher was interested in whether the participants' experience with self or friend mental illness would influence the results of Experiment 1b (mental health court). Two questions (for self mental illness and friend mental illness) asked whether the participants themselves had experience with mental illness (had a friend who has experienced mental illness) and whether they (their friend) had experienced problems as a result of that mental illness. See Appendix H for the relevant questions.

The first step in creating a composite continuous variable as a measure of those who had mental health problems themselves was to code participants who noted they had

not experienced mental illness in the past with a score of 0. All other participants received the scale value derived from the second question, measuring any problems with mental illness for those who admitted having mental health issues. Seventy-nine percent of participants reported no experience with self-mental illness, whereas 19% reported at least some experience with mental illness. Creating a composite continuous variable for a measure of those whose friends had mental health problems followed the same pattern, assigning a zero to all who did not have friends with mental illness. All other participants received the scale value derived from the second question, regarding any problems that friends who had mental illness reported. Here, 65% of participants reported not having a friend who has experienced mental illness and 33% reported knowing a friend who has experienced mental illness. The mean scores for the newly derived self mental illness problems variable were .53 ($SD = 1.50$) and 1.57 ($SD = 2.54$) for the friend mental illness problems variable for Experiment 1b. Table 10, which displays the correlations between the self and friend mental health problems variables and each dependent variable.¹¹

Section II: Basic, Moderation, and Mediation Analyses for Experiment 1b (Mental Health Courts)

Section two includes tests of hypotheses 1, 2, 3, and part of 4 for mental health court participants. Specifically, section two is organized by each dependent variable (positive affect duration and intensity, negative affect duration and intensity, embarrassed and ashamed scale, well-being duration and intensity, and procedural fairness). For each dependent variable, the author tested a basic general linear model to identify whether there was a hypothesized perspective effect (hypothesis 1), due process effect (hypothesis

¹¹ There was some skewness and kurtosis in the self and friend mental health issue variables, which suggested the need for a log transformation. The correlations did not differ between the transformed and untransformed variables so that Table 10 reports the original, untransformed variables.

2), or a two-way perspective by due process effect (hypothesis 3). A between-subjects multivariate analysis of variance (MANOVA) with perspective as a four-level manipulated factor (predictor vs. observer vs. actor-referenced experiencer vs. self-referenced experiencer) and due process as a two-level manipulated factor (due process present vs. due process absent) with each of the dependent variables in the section below is the basic model that tests the major hypotheses throughout Experiment 1b.

Following the basic model tests are tests of moderating and mediating effects of coping knowledge and similarity (hypothesis 4), respectively. Mediation tests only follow where there were main effects for due process or perspective or the interaction between these two factors in the basic or moderation analyses.

Positive affect duration and intensity. The 4 (perspective: predictor vs. observer vs. actor-referenced experiencer vs. self-referenced experiencer) by 2 (due process: present vs. absent) basic MANOVA design with positive affect duration and positive affect intensity serving as dependent variables showed no multivariate effect for due process, $F(2, 186) = 1.79, p = .17, \eta_p^2 = .02$, perspective, $F(6, 372) = .83, p = .55, \eta_p^2 = .01$, or the interaction, $F(6, 372) = 1.00, p = .42, \eta_p^2 = .02$. Furthermore, univariate effects for positive affect duration and positive affect intensity were not significant. See Tables 10 and 11 for a summary of the means and standard deviations of each dependent variable by perspective for the due process present condition (Table 11) and the due process absent condition (Table 12) for Experiment 1b.

Coping knowledge moderation. Adding coping knowledge (a measured, continuous factor) along with all the interactions between coping and the manipulated factors tested the moderating effects. This was a 4 (perspective) x 2 (due process) general

linear model with coping as a continuous factor and positive affect duration and positive affect intensity as dependent variables. There were no significant multivariate main effects for coping, $F(2, 178) = .84, p = .43, \eta_p^2 = .01$, due process, $F(2, 178) = .55, p = .58, \eta_p^2 = .01$, or perspective, $F(6, 356) = .20, p = .98, \eta_p^2 = .003$. The multivariate interactions were not significant, nor were any of the univariate effects for positive affect duration or positive affect intensity.

Similarity moderation. Adding perceived similarity (a measured, continuous factor) along with all interactions between similarity and the manipulated factors tested the moderating effects. The multivariate main effect for similarity was significant, $F(2, 178) = 4.29, p = .02, \eta_p^2 = .05$. The univariate effect for positive affect duration was not significant, $F(1, 179) = 1.93, p > .05$, however, the univariate effect for positive affect intensity was significant, $F(1, 179) = 7.65, p = .01, \eta_p^2 = .04, \beta = .23$. This shows that increases in similarity resulted in significant increases in positive affect intensity.

The multivariate main effect for due process was not significant, $F(2, 178) = 1.49, p = .23, \eta_p^2 = .02$. However, the perspective multivariate main effect approached significance, $F(6, 356) = 1.84, p = .09, \eta_p^2 = .03$. The univariate effect for perspective on positive affect duration was not significant, $F(3, 179) = .86, p > .05$, but the univariate effect for perspective on positive affect intensity was, $F(3, 179) = 3.11, p = .03, \eta_p^2 = .05$. Specifically, those in the actor-referenced experiencer condition ($M = 1.42, SD = .60$) anticipated significantly greater positive affect than those in the predictor ($M = 1.15, SD = .31, p = .01$), observer, ($M = 1.14, SD = .36, p = .002$) and self-referenced experiencer conditions ($M = 1.14, SD = .32, p = .002$). There were no other significant pairwise comparisons.

Similarity interacted with due process, $F(2, 178) = 3.36, p = .04, \eta_p^2 = .04$, to qualify the similarity multivariate main effect. The univariate interaction for positive affect duration was not significant, $F(1, 179) = .01, p > .05$, however, the univariate interaction for positive affect intensity was significant, $F(1, 179) = 6.68, p = .01, \eta_p^2 = .04$. Figure 6 displays the results of the interaction. Follow up tests using simple slope analyses (Dawson, 2014) showed that the effect of similarity when due process was present was not significant, ($\beta = .02, p > .05$), nor was the effect of similarity when due process was absent, ($\beta = .05, p > .05$). Despite the significant interaction, the simple slope effects for similarity were not significant under either due process condition.

Similarity also interacted with perspective, $F(6, 356) = 3.04, p = .01, \eta_p^2 = .05$ to qualify the perspective multivariate main effect. The univariate interaction for positive affect duration was not significant, $F(3, 180) = .63, p > .05$, however the univariate interaction for positive affect intensity was significant, $F(3, 180) = 5.98, p < .001, \eta_p^2 = .09$. Follow up tests of the interaction between similarity and perspective used planned comparisons to test each of the manipulated perspective conditions (predictor, observer, actor-referenced experiencer) against the self-referenced experiencer condition and the interaction of similarity with each of those planned comparisons. They resulted in significant interactions between similarity and the predictor vs. self-referenced experiencer comparison, $t(180) = -2.52, p = .013$, and the actor-referenced experiencer vs. self-referenced experiencer comparison, $t(180) = 4.15, p < .001$. The interaction between similarity and the observer vs. self-referenced experiencer comparison was not significant, $t(180) = -1.52, p > .05$.

Simple slope effects (Dawson, 2014) further examined the significant interactions. Figure 7 displays the interaction between similarity and the comparison of predictor vs. self-referenced experiencer. Under low similarity at one standard deviation below the mean, there were no significant differences between those in the self-referenced experiencer or predictor conditions, $\beta = .14$, $t(98) = .86$, $p = .39$. Further, there were no significant differences between the self-referenced experiencer or predictor conditions under high similarity at one standard deviation above the mean, $\beta = -.12$, $t(98) = -1.13$, $p = .26$.

Figure 8 displays the interaction between similarity and the comparison of actor-referenced experiencer vs. self-referenced experiencer. Under low similarity at one standard deviation below the mean, participants in self-referenced experiencer condition anticipated more intense positive affect, $\beta = -.30$, $t(94) = -2.33$, $p = .02$, than those in the actor-referenced experiencer condition. On the other hand, under high similarity at one standard deviation above the mean, those in the actor-referenced experiencer condition experienced a more intense positive affect, $\beta = .54$, $t(94) = 4.053$, $p < .001$, than those in the self-referenced experiencer condition.

There were no other significant interactions or univariate interaction effects.

Similarity mediation. The correlation between similarity and positive affect duration ($r = .03$, $p = .65$) was not significant. However, the correlation between similarity and positive affect intensity ($r = .14$, $p = .05$) was significant. A MANOVA in which perspective was the independent variable and both similarity and positive affect intensity served as dependent variables resulted in a significant multivariate effect, $F(6, 192) = 10.51$, $p < .001$, $\eta_p^2 = .14$. While, there was a significant univariate effect for

similarity, $F(3, 192) = 21.46, p < .001$, the effect of perspective on positive affect intensity as not significant, $F(3, 192) = .20, p = .90$. Therefore, there was no need to conducted further mediation analyses with similarity as the mediator because the effect of perspective on positive affect intensity was not significant

Negative affect duration and intensity. The basic MANOVA model with negative affect duration and negative affect intensity as dependent variables revealed no multivariate main effect for due process, $F(2, 187) = 2.07, p = .13, \eta_p^2 = .02$, or perspective, $F(6, 374) = .74, p = .62, \eta_p^2 = .01$. The interaction was also not significant, $F(6, 374) = .74, p = .62, \eta_p^2 = .01$. Furthermore, the univariate effects for positive affect duration or positive affect intensity were not significant.

Coping knowledge moderation. Adding coping knowledge to the basic model to test for moderation produced no significant main effects for coping, $F(2, 179) = 1.16, p = .31, \eta_p^2 = .01$, due process, $F(2, 179) = .50, p = .61, \eta_p^2 = .01$, or perspective, $F(6, 358) = 1.52, p = .17, \eta_p^2 = .03$. The univariate effects for negative affect duration and negative affect intensity were not significant. The multivariate interactions and univariate interaction effects were not significant.

Similarity moderation. Adding perceived similarity in the basic model to test for moderation resulted in non-significant multivariate main effects for similarity, $F(2, 179) = 1.11, p = .33, \eta_p^2 = .01$, and due process, $F(2, 179) = .44, p = .65, \eta_p^2 = .01$. The multivariate main effect for perspective was significant, $F(6, 358) = 2.66, p = .02, \eta_p^2 = .04$. However, univariate effects for perspective on negative affect duration, $F(3, 180) = 2.22, p > .05$, and negative affect intensity, $F(3, 180) = 2.14, p > .05$, were not significant.

The multivariate interaction between perspective and similarity was significant, $F(6, 358) = 2.94, p = .01, \eta_p^2 = .05$, which qualified the perspective main effect. Specifically, the univariate effect for negative affect duration was significant, $F(3, 180) = 3.45, p = .02, \eta_p^2 = .06$. Follow up tests of the interaction between similarity and perspective used planned comparisons to test each of the manipulated perspective conditions (predictor, observer, actor-referenced experiencer) against the self-referenced experiencer condition and the interaction of similarity with each of those planned comparisons. They resulted in a significant interaction between similarity and the predictor vs. self-referenced experiencer comparison, $t(180) = 2.36, p = .02$. The interactions between similarity and the observer vs. self-referenced experiencer comparison, $t(180) = -1.59, p > .05$, and the actor-referenced experiencer vs. self-referenced experiencer comparison, $t(180) = -1.80, p > .05$, were not significant.

Simple slope effects (Dawson, 2014) further examined the significant interaction between similarity and the comparison of predictor vs. self-referenced experiencer. Figure 9 shows that for those in the self-referenced experiencer condition, ($\beta = 1.51, p = .01$), and those in the predictor condition, ($\beta = 1.81, p = .04$), increases in similarity led to a longer negative affect duration. However, under low similarity at one standard deviation below the mean, $\beta = -.12, t(98) = -.74, p > .05$, and under high similarity at one standard deviation above the mean, $\beta = -.01, t(94) = -.03, p > .05$, there were no differences in negative affect duration between the predictor and self-referenced experiencer conditions.

The univariate perspective effect for negative affect intensity was not significant, $F(3, 180) = 1.80, p > .05$. There were no other significant multivariate interaction effects or univariate interaction effects.

Embarrassed and ashamed scale. A similar basic ANOVA included the embarrassed and ashamed scale as the dependent variable. The results indicated no significant main effect for due process, $F(1, 188) = .03, p = .87, \eta_p^2 < .001$, however the main effect for perspective approached significance, $F(3, 188) = 1.50, p = .08, \eta_p^2 = .04$, whereby those in the self-referenced experiencer condition ($M = .23, SD = .82$), anticipated feeling significantly more embarrassed and ashamed than participants in the predictor ($M = -.12, SD = .74, p = .03$), or observer conditions ($M = -.14, SD = .87, p = .02$). There were no other significant pairwise comparisons. The interaction between due process and perspective was also not significant, $F(3, 188) = .65, p = .58, \eta_p^2 = .01$.

Coping knowledge moderation. Adding coping knowledge to the basic ANOVA model tested for moderation and found no significant main effects for coping, $F(1, 180) = .01, p = .94, \eta_p^2 < .001$, due process, $F(1, 180) = .26, p = .61, \eta_p^2 = .001$, or perspective, $F(3, 180) = .45, p = .72, \eta_p^2 = .01$. The interactions were also not significant.

Similarity moderation. Adding perceived similarity to the basic ANOVA model to test for the moderating effects of perceived similarity yielded no significant main effects for similarity, $F(1, 180) = .69, p = .19, \eta_p^2 = .03$, due process, $F(1, 180) = .49, p = .48, \eta_p^2 = .003$, or perspective, $F(3, 180) = 1.61, p = .19, \eta_p^2 = .03$.

The interactions were also not significant.

Well-being duration and intensity. The basic MANOVA model with well-being duration and well-being intensity as dependent variables revealed no significant

multivariate main effects for due process, $F(2, 185) = 1.59, p = .21, \eta_p^2 = .02$, perspective, $F(6, 370) = 1.57, p = .20, \eta_p^2 = .03$, or the multivariate interaction, $F(6, 370) = 1.78, p = .10, \eta_p^2 = .03$. Furthermore, the univariate effects for well-being duration and well-being intensity were not significant.

Coping knowledge moderation. Adding coping to the model to test for moderation revealed no significant multivariate main effects or univariate effects for coping knowledge, $F(2, 177) = .29, p = .75, \eta_p^2 = .03$, or due process, $F(2, 177) = .01, p = .99, \eta_p^2 < .001$. However, the multivariate main effect for perspective was significant, $F(6, 354) = 3.11, p = .01, \eta_p^2 = .05$. Univariate effects for perspective on well-being duration, $F(3, 178) = 4.51, p = .004, \eta_p^2 = .08$, revealed that those in the self-referenced experience condition ($M = 4.98, SD = 1.19$) anticipated that their well-being would be negatively impacted for significantly longer than those in the observer ($M = 4.29, SD = 1.56, p = .02$) and actor-referenced experiencer conditions ($M = 4.44, SD = 1.23, p = .04$). Univariate effects for perspective on well-being intensity, $F(3, 178) = 5.40, p = .001, \eta_p^2 = .08$, also revealed that those in the self-referenced experience condition ($M = 5.58, SD = 1.21$) anticipated that their well-being would be more negatively impacted than those in the observer ($M = 5.03, SD = 1.54, p = .06$) and actor-referenced experiencer conditions ($M = 4.91, SD = 1.22, p = .01$). There were no other significant pairwise comparisons.

A significant perspective by coping knowledge interaction, $F(6, 354) = 2.2, p = .05, \eta_p^2 = .01$, qualified the perspective multivariate main effect. Specifically, the interaction was significant for well-being duration, $F(3, 178) = 3.12, p = .03, \eta_p^2 = .05$. Follow up tests of the interaction between coping and perspective used planned comparisons to test each of the manipulated perspective conditions (predictor, observer,

actor-referenced experiencer) against the self-referenced experiencer condition and the interaction of similarity with each of those planned comparisons. They resulted in non-significant interactions between coping and the predictor vs. self-referenced experiencer comparison, $t(177) = -.62, p > .05$, the observer vs. self-referenced experiencer comparison, $t(177) = 1.35, p > .05$, and the actor-referenced experiencer vs. self-referenced experiencer comparison, $t(177) = 1.61, p > .05$.

The univariate interaction was also significant for well-being intensity, $F(3, 178) = 3.97, p = .01, \eta_p^2 = .06$. Follow up tests of the interaction between coping and perspective used planned comparisons to test each of the manipulated perspective conditions (predictor, observer, actor-referenced experiencer) against the self-referenced experiencer condition and the interaction of similarity with each of those planned comparisons. They resulted in a significant interaction between coping and the actor-referenced experiencer vs. self-referenced experiencer comparison, $t(176) = 2.22, p = .03$. The interactions between coping and the predictor vs. self-referenced experiencer comparison, $t(176) = -.41, p > .05$, and the observer vs. the self-referenced experiencer comparison, $t(176) = -.91, p > .05$, were not significant.

To further examine the significant interaction, the researcher conducted simple slope effects (Dawson, 2014). Figure 10 displays the interaction between coping and the comparison of actor-referenced experiencer vs. self-referenced experiencer. Under low coping at one standard deviation below the mean, those in the self-referenced experiencer condition anticipated a more intensely negative well-being than those in the actor-referenced experiencer condition, $\beta = -.54, t(91) = -3.81, p < .001$. However, under high coping at one standard deviation above the mean, there were no significant differences

between the actor-referenced experiencer and self-referenced experiencer conditions on well-being intensity, $\beta = .10$, $t(94) = .75$, $p = .45$.

There were no other significant interactions or univariate effects.

Coping knowledge mediation. The correlations between coping knowledge and well-being duration ($r = -.02$, $p = .83$) and well-being intensity ($r = -.02$, $p = .83$) were not significant. Therefore, coping knowledge was not a potential mediator of the perspective main effect.

Similarity moderation. Adding similarity to the basic model to test for moderation revealed no significant multivariate main effects for similarity, $F(2, 177) = 1.01$, $p = .37$, $\eta_p^2 = .01$, due process, $F(2, 177) = .52$, $p = .37$, $\eta_p^2 = .01$, or perspective, $F(6, 354) = .83$, $p = .46$, $\eta_p^2 = .01$. The univariate effects for well-being duration and intensity were not significant. The multivariate interactions and univariate interaction effects were also not significant.

Similarity mediation. The correlations between similarity and well-being duration ($r = -.07$, $p = .33$) and well-being intensity ($r = -.06$, $p = .43$) were not significant. Therefore, similarity was likely not a potential mediator of the perspective main effect.

Procedural fairness. The basic ANOVA model with the procedural fairness scale as a dependent variable produced a significant main effect for due process, $F(1, 187) = 31.19$, $p < .001$, $\eta_p^2 = .14$, whereby those in the due process present condition ($M = 4.48$, $SD = 1.47$) experienced greater procedural fairness than those in the due process absent condition ($M = 3.29$, $SD = 1.59$). There was also a significant main effect for perspective, $F(3, 187) = 7.38$, $p < .001$, $\eta_p^2 = .10$. Specifically, those in predictor condition ($M = 4.43$, $SD = 1.59$) experienced significantly greater procedural fairness

than those in the actor-referenced experiencer ($M = 3.39$, $SD = 1.39$, $p = .001$) and self-referenced experiencer conditions ($M = 3.39$, $SD = 1.63$, $p < .001$). Further, those in the observer condition ($M = 4.33$, $SD = 1.69$) also experienced significantly greater procedural fairness than those in the actor-referenced experiencer condition ($p = .002$) and the self-referenced experiencer condition ($p = .002$). There were no other significant pairwise comparisons.

The interaction between due process and perspective was not significant, $F(3, 195) = .16$, $p = .92$, $\eta_p^2 = .002$.

Coping knowledge moderation. When coping knowledge was added to the basic model to test for moderation, there were no significant main effects for coping knowledge, $F(1, 179) = .36$, $p = .55$, $\eta_p^2 = .002$, or due process, $F(1, 179) = 2.53$, $p = .11$, $\eta_p^2 = .01$. There was, however, a significant perspective main effect, $F(3, 179) = 4.79$, $p = .003$, $\eta_p^2 = .07$, whereby those in predictor condition ($M = 4.36$, $SD = 1.59$) experienced significantly greater procedural fairness than those in the actor-referenced experiencer ($M = 3.50$, $SD = 1.40$, $p = .009$) and self-referenced experiencer conditions ($M = 3.28$, $SD = 1.63$, $p = .001$). Further, those in the observer condition ($M = 4.24$, $SD = 1.69$) also experienced significantly greater procedural fairness than those in the actor-referenced experiencer condition ($p = .026$) and the self-referenced experiencer condition ($p = .003$). There were no other significant pairwise comparisons.

Coping also interacted with perspective, $F(3, 179) = 3.29$, $p = .02$, $\eta_p^2 = .05$, qualifying the perspective main effect. Follow up tests of the interaction between coping and perspective used planned comparisons to test each of the manipulated perspective conditions (predictor, observer, actor-referenced experiencer) against the self-referenced

experiencer condition and the interaction of similarity with each of those planned comparisons. They resulted in a significant interaction between coping and the actor-referenced experiencer vs. self-referenced experiencer comparison, $t(177) = -2.14, p = .03$. The interactions between coping and the predictor vs. self-referenced experiencer comparison, $t(177) = .14, p > .05$, and the observer vs. self-referenced experiencer comparison, $t(177) = -.63, p > .05$, were not significant.

Simple slope effects (Dawson, 2014) further examined the significant interaction, for coping knowledge with the actor-referenced experiencer vs. self-referenced experiencer comparison. Figure 11 displays that under low coping at one standard deviation below the mean, those in the actor-referenced experiencer condition experienced greater procedural fairness than those in the self-referenced experiencer condition, $\beta = .30, t(91) = 2.09, p = .04$. On the other hand, under high coping at one standard deviation above the mean, those in the actor-referenced experiencer condition experienced less procedural fairness than those in the self-referenced experiencer condition, $\beta = -.32, t(91) = -2.21, p = .03$.

No other interactions were significant.

Coping knowledge mediation. The correlation between coping knowledge and procedural fairness ($r = -.01, p = .88$) was not significant. Therefore, coping knowledge likely was not a potential mediator of the significant perspective effect.

Similarity moderation. When similarity was added to the basic model to test for moderation, the similarity main effect, $F(1, 179) = .49, p = .48, \eta_p^2 = .003$, and due process main effect were not significant, $F(1, 179) = .91, p = .34, \eta_p^2 = .01$. The perspective main effect however, was significant, $F(3, 179) = 2.80, p = .04, \eta_p^2 = .05$.

Specifically, those in the predictor condition ($M = 4.57, SD = 2.60$) experienced significantly greater procedural fairness than those in the actor-referenced experiencer ($M = 3.54, SD = 1.40, p = .01$) and the self-referenced experiencer conditions ($M = 3.49, SD = 1.63, p = .002$). Similarly, those in the observer condition ($M = 4.30, SD = 1.69$) experienced significantly greater procedural fairness than those in the actor-referenced experiencer ($p = .04$) and self-referenced experiencer conditions ($p = .01$). There were no other significant pairwise comparisons.

There were no significant interactions in the moderation model.

Similarity mediation. The correlation between perceived similarity and procedural fairness ($r = .17, p = .02$) was significant. A 4 (perspective) by 2 (due process) between-subjects analysis of covariance (ANCOVA) with perceived similarity as a covariate and procedural fairness serving as the dependent variable revealed a non-significant effect for similarity, $F(1, 186) = .17, p = .70, \eta_p^2 = .001$. However, there was a significant main effect for due process, $F(1, 186) = 31.00, p < .001, \eta_p^2 = .14$, whereby those in the due process present condition ($M = 4.48, SD = 1.47$) experienced significantly greater procedural fairness than those in the due process absent condition ($M = 3.30, SD = 1.59$). Similarly, there was a significant perspective main effect, $F(3, 186) = 5.05, p = .002, \eta_p^2 = .08$. As in the moderation model, those in the predictor condition ($M = 4.40, SD = 1.60$) experienced significantly greater procedural fairness than participants in the actor-referenced experiencer ($M = 3.42, SD = 1.39, p = .004$) and self-referenced experiencer conditions ($M = 3.42, SD = 1.63, p = .002$). Likewise, those in the observer condition ($M = 4.31, SD = 1.69$) also experienced significantly greater procedural fairness than those in the actor-referenced experiencer ($p = .007$) and self-referenced experiencer

conditions ($p = .004$). Mediation requires a significant relationship between similarity and procedural fairness after taking into account the effects of the manipulated variables. No further mediation analyses were necessary because there was no significant relationship between similarity and procedural fairness.

Section III: Familiarity with Mental Illness

Hypothesis 4 explored a potential moderating effect of familiarity with mental health issues on the manipulated factors as they impacted the dependent variables. More specifically, it is possible that participants familiar with mental health issues reacted differently to the dependent measures than those unfamiliar with mental health issues.

Self mental illness. A series of correlations between the self mental illness problems continuous variable and each of the dependent variables (positive affect duration and intensity, negative affect duration and intensity, embarrassed and ashamed scale, well-being duration and intensity, and procedural fairness) measured the potential influence of familiarity on the major dependent measures in Experiment 1b. Table 10 shows that self mental illness problems was not significantly correlated with any of the dependent variables eliminating the need for any further analyses involving self mental illness problems as a familiarity measure.

Friend mental illness. The same series of correlations between the friend mental illness problems continuous variable and each of the dependent variables produced a moderate correlation with only one of the dependent variables, negative affect intensity ($r = .20, p = .01$). See Table 120. A 4 (perspective) by 2 (due process) between-subjects general linear model with friend mental illness problems as a continuous factor, including the interactions between friend mental illness and the manipulated factors using negative

affect intensity as the dependent variable failed to provide any evidence of moderation.

The main effects for friend mental illness, $F(1, 193) = 3.47, p = .08, \eta_p^2 = .03$, due process, $F(1, 193) = 2.10, p = .15, \eta_p^2 = .01$, and perspective, $F(3, 193) = .31, p = .82, \eta_p^2 = .005$, were not significant. There were also no significant interactions.

Section IV: Exploratory Procedural Fairness Mediation Analyses

Exploratory hypothesis 6 concerned the relationships between due process, procedural fairness, and a participant's anticipated negative reaction to a sanction. A between-subjects MANOVA with due process as a two-level manipulated factor and each of the measures of interest (positive affect duration and intensity, negative affect duration and intensity, embarrassed and ashamed scale, and well-being duration and intensity) as dependent variables showed a multivariate effect, tested any potential relationships between due process and the dependent variables, the researcher ran. See Table 13 for a summary of the results. The model revealed a significant multivariate effect, $F(1, 191) = 4.13, p < .001, \eta_p^2 = .17$, and specifically a significant effect for procedural fairness, $F(1, 191) = 30.50, p < .001, \eta_p^2 = .14$, such that those in the due process present condition experienced more procedural fairness ($M = 4.51, SD = 1.48$) than those in the due process absent condition ($M = 3.29, SD = 1.60$). There were no other significant effects. Because the MANOVA model did not reveal any significant effects for any of the dependent variables, the researcher did not pursue further mediation analyses.

Experiment 1 Overall—Drug and Mental Health Court

Method

Design and Procedure

Experiment 1 was a 4 (perspective: predictor vs. observer vs. actor-referenced experiencer vs. self-referenced experiencer) x 2 (due process: present vs. absent) x 2 (court type: drug court vs. mental health court) between-subjects design.

The Experiment 1 Overall analyses include the combined data from Experiment 1a and Experiment 1b. See Experiment 1 methods section above for a description of the participants and Experiments 1a and 1b for a summary of the materials and procedure.

Results

Overview

The results section includes additional tests of hypotheses 5a and 5b for Experiment 1 overall, comparing drug *and* mental health courts. The results are organized by each dependent variable (positive affect duration and intensity, negative affect duration and intensity, embarrassed and ashamed scale, well-being duration and intensity, and procedural fairness).

For each dependent variable, the researcher tested a basic general linear model to identify whether there was a hypothesized perspective effect (hypothesis 1), due process effect (hypothesis 2), or a two-way perspective by due process effect (hypothesis 3). Further, each analysis also includes court type as an independent variable to test for the hypothesized court type main effect (hypothesis 5a) and a three-way perspective by due process by court type interaction (hypothesis 5b). A between-subjects multivariate analysis of variance (MANOVA) with perspective as a four-level manipulated factor

(predictor vs. observer vs. actor-referenced experiencer vs. self-referenced experiencer), due process as a two-level manipulated factor (due process present vs. due process absent), and court type as a two-level manipulated factor (drug court vs. mental health court) is the basic model that tests the major hypotheses for Experiment 1 overall.

Positive affect duration and intensity. The 4 (perspective: predictor vs. observer vs. actor-referenced experiencer vs. self-referenced experiencer) by 2 (due process: present vs. absent) by 2 (court type: drug court vs. mental health court) MANOVA design with positive affect duration and positive affect intensity serving as dependent variables resulted in no significant multivariate main effect for due process, $F(2, 381) = 1.77, p = .17, \eta_p^2 = .01$, perspective, $F(6, 762) = .91, p = .248, \eta_p^2 = .01$, or court type, $F(2, 381) = .29, p = .75, \eta_p^2 = .001$.

There were no significant interactions. Furthermore, there were no significant univariate effects for positive affect duration or positive affect intensity.

Negative affect duration and intensity. The same basic MANOVA model with negative affect duration and negative affect intensity as dependent variables revealed a significant multivariate effect for due process, $F(2, 382) = 3.62, p = .03, \eta_p^2 = .02$. Univariate tests of due process on negative affect duration revealed a significant main effect, $F(1, 383) = 7.25, p = .01, \eta_p^2 = .02$, whereby those in the due process absent condition anticipated significantly longer negative affect ($M = 21.14, SD = 9.15$) than those in the due process present condition ($M = 18.77, SD = 8.39$). There was no significant univariate main effect for due process on negative affect intensity, $F(1, 383) = 1.54, p = .22, \eta_p^2 = .004$.

The multivariate main effect for perspective was not significant, $F(6, 764) = .90$, $p = .50$, $\eta_p^2 = .01$. There was, however, a significant multivariate main effect for court type, $F(2, 382) = 3.34$, $p = .04$, $\eta_p^2 = .02$. Univariate tests of court type on negative affect duration were not significant, $F(1, 383) = .02$, $p > .05$, however the univariate effect for negative affect intensity was significant, $F(1, 383) = 5.75$, $p = .02$, $\eta_p^2 = .02$. Specifically, those in the drug court condition anticipated less intense negative affect ($M = 3.53$, $SD = .75$) than those in the mental health court condition ($M = 3.73$, $SD = .82$).

There were no significant interactions, nor were there any additional significant univariate effects.

Embarrassed and ashamed scale. A basic ANOVA with the embarrassed and ashamed scale as the dependent variable yielded no significant main effect for due process, $F(1, 383) = .37$, $p = .54$, $\eta_p^2 = .001$. However, the main effect for perspective was significant, $F(3, 383) = 5.55$, $p = .001$, $\eta_p^2 = .04$, whereby those in the self-referenced experiencer condition ($M = .28$, $SD = .83$), anticipated feeling significantly more embarrassed and ashamed than participants in the predictor ($M = -.12$, $SD = .77$, $p < .001$), observer ($M = -.11$, $SD = .86$, $p = .001$), and actor-referenced experiencer groups ($M = -.06$, $SD = .84$, $p = .004$). There were no other significant pairwise comparisons.

The main effect for court type was not significant, $F(1, 383) = 1.88$, $p = .17$, $\eta_p^2 = .01$, nor were there any significant interactions.

Well-being duration and intensity. The basic MANOVA model with well-being duration and well-being intensity as dependent variables revealed a non-significant multivariate main effect for due process, $F(2, 380) = 2.51$, $p = .08$, $\eta_p^2 = .01$. However, the multivariate main effect for perspective was significant, $F(6, 760) = 2.59$, $p = .02$, $\eta_p^2 = .02$.

= .02. Specifically, a significant univariate main effect for well-being duration, $F(3, 381) = 3.92, p = .01, \eta_p^2 = .03$, revealed that those in the self-referenced experiencer condition ($M = 4.93, SD = .08$), anticipated a significantly longer negative impact on their well-being than participants in the predictor ($M = 4.58, SD = 1.21, p = .05$), observer ($M = 4.35, SD = 1.43, p = .001$), and actor-referenced experiencer groups ($M = 4.51, SD = 1.20, p = .02$). There were no other significant pairwise comparisons for well-being duration. Similarly, a significant univariate main effect for well-being intensity, $F(3, 381) = 4.26, p = .01, \eta_p^2 = .03$, revealed a similar pattern whereby those in the self-referenced experiencer condition ($M = 5.51, SD = 1.31$), anticipated a significantly greater negative impact on their well-being than participants in the predictor ($M = 5.10, SD = 1.34, p = .02$), observer ($M = 4.95, SD = 1.46, p = .002$), and actor-referenced experiencer groups ($M = 4.96, SD = 1.32, p = .003$). There were no other significant pairwise comparisons for well-being intensity.

The multivariate main effect for court type was not significant, $F(2, 380) = .49, p = .61, \eta_p^2 = .003$, nor were there any significant multivariate interactions or any additional significant univariate effects for well-being duration or well-being intensity.

Procedural fairness. The basic ANOVA model with the procedural fairness scale as the dependent variable indicated a significant main effect for due process, $F(1, 382) = 71.39, p < .001, \eta_p^2 = .16$, whereby those in the due process present condition ($M = 4.69, SD = 1.42$) experienced greater procedural fairness than those in the due process absent condition ($M = 3.43, SD = 1.53$). There was also a significant main effect for perspective, $F(3, 382) = 9.34, p < .001, \eta_p^2 = .07$. Specifically, those in the self-referenced experiencer condition ($M = 3.66, SD = 1.52$) experienced significantly less procedural

fairness than those in the predictor ($M = 4.48$, $SD = 1.56$, $p < .001$) or observer conditions ($M = 4.32$, $SD = 1.63$, $p = .001$). Similarly, those in the actor-referenced experiencer condition ($M = 3.65$, $SD = 1.52$) experienced significantly less procedural fairness than those in the predictor ($p < .001$) or observer conditions ($p = .001$). There were no other significant pairwise comparisons.

The main effect for court type was also significant, $F(1, 382) = 4.87$, $p = .03$, $\eta_p^2 = .01$. Specifically, those who were in the drug court condition ($M = 4.85$, $SD = 1.35$) experienced greater procedural fairness than those in the mental health court condition ($M = 4.51$, $SD = 1.48$).

There were no significant interactions.

Experiment 1 Discussion

The goal of Experiment 1 was to apply Igou's (2008) AIK to drug and mental health courts' practice of sanctioning in the absence of due process. Specifically, participants considered a drug or mental health court scenario, with or without due process, from a number of different perspectives. Further, the researcher predicted that knowledge about how the person would cope with the sanction would mediate or moderate these perspective and due process effects, similar to Igou's (2008) findings.

Hypotheses

Experiment 1 (Experiment 1a, 1b, and 1 overall) was guided by six overarching hypotheses, as described in Chapter 2. The following section discusses the results of Experiment 1, organized by each hypothesis.

Hypothesis 1. Hypothesis 1 stated that consistent with the self-other effect in affective forecasting (Gilbert et al., 1998; Hsee & Hastie, 2006; Brickman et al., 1978;

Igou, 2004; 2008; Van Boven & Lowenstein, 2003; Wiener et al., 2013) those unfamiliar with problem-solving courts and their clients (i.e. predictor) would anticipate the longest and most intense negative impact of a sanction, whereas those most familiar with problem-solving courts and their clients (i.e. self-referenced experiencer) would predict the shortest and least intense negative impact

Hypothesis 1 received mixed support across Experiment 1a (drug court), Experiment 1b (mental health court) and Experiment 1 overall (drug and mental health court). The following section considers each court type across each of the dependent variables.

For those who considered the sanctioning scenario for drug court participants only (Experiment 1a), there were no perspective effects for positive affect, negative affect, or well-being. However, there was a perspective effect for anticipated embarrassed and ashamed feelings, such that those who took the perspective of themselves anticipated feeling significantly more ashamed than those in the predictor, observer, or actor-referenced experiencer conditions. This suggests that while there were perspective differences for embarrassed and ashamed, the direction is contrary to the self-other effect identified by Igou (2008) and Wiener et al. (2013). According to the AIK hypothesis those in the predictor condition should anticipate more embarrassed and ashamed feelings than those in the observer or experiencer conditions. Instead, the results show that a self-referenced perspective encouraged participants to use themselves as a comparison point and elevate how ashamed and embarrassed they would be if they were in the position of a drug court client who was sanctioned for breaking the rules of the program. This shame

and embarrassment did not translate for an unfamiliar other. This finding is further discussed in the general discussion in Chapter 4.

There was also a perspective effect for procedural fairness in the opposite of the hypothesized direction for the drug court condition. Specifically, those unfamiliar or minimally familiar with mental health courts and their participants experienced greater procedural fairness compared to those who considered the scenario from the perspective of the drug court client, or themselves. Perhaps these participants experienced jail time as a negative event and provided a situational explanation (a less procedurally fair process) to describe that unsuccessful outcome. This self-protecting, adaptive effect that the process was less fair (regardless of whether the court awarded due process) for the self is similar to the findings by Miller and Ross (1975) and McFarland and Ross (1982). They found that in general, people will make an effort to maintain their self-esteem, even if that requires a distortion of reality (situational attribution) to justify a reason for the outcome, in this case jail time. It is possible that mental health problems carry a greater stigma and threat to one's self-esteem than drug use and thus, the participants were more attuned to the effect of this stigma on their self-esteem and self-worth. Future research should compare self-stigma and stigma attributed to participants in drug and mental health courts.

For those who considered the sanctioning scenario for mental health court participants only (Experiment 1b), there were again no perspective effects for positive affect, negative affect, or well-being. There was, however, was an identical pattern of findings as described in the drug court condition for feelings of embarrassment and shame. Specifically, those who considered the scenario from their own perspective

anticipated the greatest embarrassment and shame and those unfamiliar or minimally familiar with mental health court clients anticipated the least. Again, this supports a self-referenced perspective effect but not an AIK effect.

Further, there was an identical pattern of results as described in the drug court condition for procedural fairness. Those unfamiliar or minimally familiar with mental health courts and their participants experienced greater procedural fairness compared to those who considered the scenario from the perspective of the mental health court client, or themselves.

For Experiment 1 overall (drug and mental health court conditions combined), there was a perspective effect for embarrassed and ashamed in an identical manner to the drug and mental health court conditions above. However, there was a novel negative well-being effect such that those who considered the sanctioning scenario from the perspective of themselves anticipated a more intense and a longer negative well-being than those in the predictor, observer, or actor-referenced conditions. Again, while this finding may align with a common-sense approach that endorses a self-referencing perspective, it is contrary to the hypothesized self-other effect. There was also a significant perspective effect for procedural fairness, in the same direction as the drug and mental health court conditions.

Overall, the findings produced mixed support, at best, for Hypothesis 1. While positive and negative affect did not reveal significant perspective differences, feelings of shame and embarrassment as well as feelings of well-being did reveal some novel, albeit mixed effects. The procedural fairness relationship is considered further through Hypothesis 6.

Hypothesis 2. Hypothesis 2 predicted that participants who considered a scenario in which the court awarded due process would anticipate a less intense and shorter negative impact than those who considered a similar scenario without due process. Hypothesis 2 received very little support.

There was no due process effect across any of the dependent variables in Experiment 1a (drug court), except procedural fairness. As hypothesized, participants who experienced due process also experienced greater procedural fairness than those for whom due process was absent.

There was an identical pattern of due process effects for Experiment 1b (mental health court).

For Experiment 1 overall, there was, however, a hypothesized significant due process effect for negative affect duration such that participants (regardless of court type) anticipated a longer negative experience as a result of the sanction when due process was absent than when due process was present. This is important because although the sanction (jail time) was identical for all participants, the simple addition of basic due process provided for a shorter anticipated duration of negative affect for the participants.

The interpretation of this main effect is difficult. First, comparisons between the mental health and drug courts are clouded by differences in the fact patterns and collapsing across these fact patterns is equally cloudy. The addition of the main effect for due process on anticipated duration of negative affect is likely a result of the increase in power that resulted from increasing the sample size.

Nonetheless, to the extent that psycholegal researchers and practitioners value problem-solving court participants' emotional well-being as a therapeutic jurisprudential

outcome, this basic finding is paramount. Specifically, if participants are less negatively-impacted when due process is present, and the courts abide by a T.J. framework, it would behoove the courts to provide these basic due process rights to all problem-solving court participants. As in the drug and mental health court conditions, there was also a significant due process effect for procedural fairness such that those who experienced due process experienced greater procedural fairness than those who did not experience due process. The legal, practical implications of these findings are further discussed in the general discussion section in Chapter 4.

Hypothesis 3. Hypothesis 3 stated that there would be a two-way interaction between perspective and due process within each court type. The greatest negative impact should be for those who considered the scenario from the predictor perspective without due process, and the least negative for those in the self-referenced experiencer perspective for whom the judge awarded due process. The researcher did not find support for hypothesis 3.

For Experiment 1a (drug court), there were no perspective by due process interaction effects. This was also the case for Experiment 1b (mental health court) and Experiment 1 overall. While disappointing, in light of the relatively few (and mixed) main effects for perspective and due process across court types, this is not surprising.

Hypothesis 4.

Coping. The researcher hypothesized that the above relationships would be qualified by the participants' knowledge about the client's ability to cope with the sanction. Specifically, coping would either moderate or mediate the relationship between perspective or due process and anticipated affect.

Experiment 1a (drug court) produced mixed, inconsistent results across the dependent variables. Although coping knowledge *did* moderate the relationship between due process and well-being duration and procedural fairness for several of the perspective conditions (predictor and actor-referenced experiencer), the pattern of findings makes a meaningful interpretation difficult. In short, there was no consistent agreement within or across dependent variables about how coping influenced the strength of the relationship between perspective or due process and the dependent variables. This finding is not surprising given that the hypothesized AIK effects were absent in the due process by coping interactions. It is doubtful that the respondents considered the coping abilities of the defendants in the scenarios, therefore the hypothesized moderating effects of coping knowledge could not have emerged from the results of Experiment 1.

The moderated relationship between due process and procedural fairness for those in the predictor condition provided an interesting finding. Specifically, for those who considered the drug court scenario from the perspective of an unfamiliar other and for whom due process was absent, increased coping knowledge resulted in greater perceived procedural fairness. However, for those for whom due process was present, there was no such effect. This might suggest that when people consider a negative event for an unfamiliar other, those who have a greater knowledge about how that person would cope perceive the process to be more fair. However, this is only the case when due process is absent. When due process is present, the effect is attenuated, suggesting that coping only plays a role in the experience of procedural fairness when other external, regulating factors (such as due process) are not present.

Coping did not mediate any of the identified effects in hypotheses 1, 2, and 3. This suggests that coping did not account for the relationship, or explain *why* the significant relationships between perspective or due process and any of the dependent variables existed.

For Experiment 1b, a similar, inconsistent pattern of moderated coping effects emerged. Coping knowledge *did* moderate the relationship between perspective and well-being intensity. Specifically, participants who considered the mental health court scenario from their own perspective anticipated a more intense negative well-being than those who considered the scenario from the perspective of the mental health court client. However, this was only the case when coping knowledge was low. When coping knowledge was high, there were no perspective effects. In other words, when participants are less able to consider how they (or another) would cope with a negative sanction, a self-perspective resulted in a more negative affective experience than when participants considered the event from the perspective of the mental health court client.

A similar effect emerged for the moderating effect of coping on the perspective and procedural fairness relationship. Under low coping, participants who considered the scenario from their own perspective experienced less procedural fairness than those who considered the scenario from the perspective of the mental health court client. Consistent with the above well-being effect, this suggests that when participants are less able to effectively consider how they (or another) might cope with a negative sanction, a self-perspective resulted in lower experienced procedural fairness than when participants considered the event from the perspective of the mental health court client.

Together these findings support the availability of an immune neglect (AIK) type of effect in these data because self-reference responses with high coping knowledge dampened the negative effects of the sanctioned behavior. Participants who took the perspective of another could have overlooked the coping ability of the other but they did not. As a result, the lack of an affective forecasting effect likely resulted from the inability of the participants to adopt the point of view of someone familiar with a problem-solving court. Chapter 4 has more to say about this limitation.

As in Experiment 1a, coping did not mediate any of the identified effects in hypotheses 1, 2, and 3. This suggests that coping did not account for any significant relationships, between perspective or due process and any of the dependent variables.

Similarity. Because perceived similarity and coping could be related constructs, the relationships described in hypotheses 1, 2, and 3 might be confounded with a respondents' perceived similarity to the assigned perspective. As such, similarity could either moderate or mediate the relationship between perspective or due process and anticipated affect. As was the case for coping, similarity provided mixed, inconsistent results both within and across the dependent variables, making a meaningful interpretation of the results difficult.

In Experiment 1a, similarity moderated the relationship between due process and positive affect duration such that for those who considered the drug court scenario in which due process was absent, increases in perceived similarity resulted in increases in anticipated positive affect duration. There was no moderated effect when due process was present. This suggests that in the absence of due process rights, participants who view themselves as more similar to the drug court client anticipate more positive feelings about

the sanction. This researcher did not anticipate this confusing finding. This finding suggests that perceived similarity only acts on feelings of positive affect when due process is not present. When due process is present, the relationship is attenuated, suggesting that one's affiliation with or kindred feelings with the participant do not play a role. To the extent that the law does not condone observers to align themselves with defendants in problem-solving courts, this lopsided finding might be an argument for due process protections in problem-solving courts.

As was the case for coping, similarity did not mediate any of the identified effects in hypotheses 1, 2, and 3. This suggests that similarity did not account for the relationship, or explain *why* the significant relationships between perspective or due process and any of the dependent variables existed.

Similarity only moderated the relationship between perspective and positive affect intensity (as opposed to duration as in Experiment 1a) in Experiment 1b. Those who considered the mental health court scenario from the perspective of themselves anticipated greater positive affect under low similarity, compared to those who considered the scenario from the perspective of the mental health client. On the other hand, under high similarity, participants who considered the scenario from the perspective of the mental health court client anticipated more positive affect than those who considered the scenario from their own perspective.

As in Experiment 1b, similarity did not mediate any of the identified effects in hypotheses 1, 2, and 3. This suggests that similarity did not account for the relationship, or explain *why* any significant relationships existed between perspective or due process and any of the dependent variables.

Hypothesis 4 was concerned with the possibility that coping skills might reflect no more than perceived similarity between the participants and their assigned perspective. Taken together, these findings suggest that coping and similarity acted differently on different dependent variables, which suggests that similarity and coping serve as independent constructs as they relate to the moderation of the dependent variables in this study.

Familiarity Hypothesis 4 was also concerned with the possibility that participants' personal familiarity with drug use or mental health issues would moderate the relationship between perspective and anticipated intensity and duration. Hypothesis 4 received no support across Experiment 1. Familiarity with drug court problems did not predict any of the dependent measures. While, only 37% of participants had some personal experience with drug use, 57% reported knowing a friend or family member who had used drugs. However, the number of these participants who reported *problems* as a result of this drug use was low. For that reason, the conclusions from the familiarity measures should be interpreted with care because of a potential power problem.

Experiment 1b (mental health court) revealed a significant effect of friend mental illness familiarity for negative affect intensity such that increases in friend mental illness problems resulted in a more intense negative affect. However, there was no mediation. As was the case for Experiment 1a, only 19% of participants reported some experience with mental illness while only 33% reported knowing a friend who had experienced mental illness. Relatively few of these participants reported *problems* as a result of the mental illness. For this reason, these results should be interpreted with care because of a potential power problem.

Hypothesis 5a. Hypothesis 5a stated that participants who consider a scenario in which the offender is a mental health court client would anticipate a greater negative impact than participants who consider a scenario in which the offender is a drug court client. The researcher found partial support for hypothesis 5.

While there was no court type effect for positive affect, well-being, or the embarrassed and ashamed scales, the data showed support for negative affect, specifically negative affect intensity. Mental health court participants anticipated a significantly more negative impact for the sanctions than did drug court participants. Further, there was a court type effect for procedural fairness in the anticipated direction such that those in the mental health court condition experienced less procedural fairness than those in the drug court condition. These findings align nicely with Redlich et al.'s (2006) concerns for the use of jail time as a sanction in mental health court. While these findings may, in part, be confounded by the differences in fact patterns between the two case types, taken together these results illustrate the necessity for further research on perceived fairness and due process in sanction proceedings in drug and mental health courts.

Hypothesis 5b. Hypothesis 5b predicted a three-way interaction between perspective, due process, and court type. Specifically, the most negative emotional impact should have occurred for those who considered a mental health court scenario without due process from the perspective of a predictor. The researcher did not find support for hypothesis 5b, as there were no three-way interactions in Experiment 1 overall involving the above variables.

Hypothesis 6. Finally, hypothesis 6 considered procedural fairness in two separate ways. First, hypothesis 6 stated that participants who consider a scenario in

which due process is present would report higher levels of procedural fairness. This hypothesis showed full support across all court types (Experiment 1a, 1b, and 1 overall). In addition to considering procedural fairness as a dependent variable, hypothesis 6 anticipated that procedural fairness would mediate the relationship between due process and the dependent variables such that participants who experience greater procedural fairness would experience a less negative impact than those who experience less procedural fairness. Although procedural fairness was highly associated with due process such that the presence of due process increased feelings of procedural fairness, procedural fairness did not mediate the relationship between due process and any of the various dependent variables of interest.

CHAPTER 3

Experiment 2

Experiment 2 is a partial replication of Experiment 1, but also included a manipulation that primed participants to bring to mind the coping skills that they and others might use after reading about the incarceration sanction. The self-other effect and specifically the AIK hypothesis (Igou, 2008) follows from the theory that people overestimate the duration and intensity of a negative event for another person because they lack knowledge about or the ability to consider the other's coping skills and resources (Igou, 2008). Although the researcher found inconsistent perspective effects in Experiment 1, asking participants to actively think about how they would cope with a negative sanction from their assigned perspective might still attenuate these effects.

Hypotheses

Hypothesis 1. As theorized in Experiment 1 and consistent with the self-other effect that is central to the affective forecasting AIK phenomenon, participants who reviewed a mental health court scenario from the perspective of a person unfamiliar with problem-solving courts and their clients (i.e., a predictor) should anticipate the longest duration and greatest negative affect impact after a judge incarcerated a client for failing to follow the court's orders. Participants who consider the scenario from the perspective of a person familiar with mental health courts and their clients (i.e., an observer) will anticipate a shorter duration and less extreme impact than will the predictors. Those who assume the perspective of the court client (i.e., actor-referenced experiencer) will anticipate even shorter and less intense negative affect, and finally those who assume the perspective of him or herself, as if he or she was the person in the story (i.e., self-

referenced experiencer) will report the shortest and least intense response. This final group provides the most direct comparison to Igou's (2008) self-forecasting condition.

Hypothesis 2. Igou (2008) found it difficult to eliminate the self-other effect even when the other was similar to the self. However, he and others were able to reduce the effect by asking others to consider the coping skills that individuals use when faced with a negative outcome. For example, Schkade and Kahneman (1998) found that familiarity reduced a self-other effect for people who had experience a paraplegic. In addition, Igou (2008) speculated that it might be possible to reduce the self-other effect by "emphasizing that affect-reducing strategies generally exist in everyone" (p. 915). In other words, people who *actively* consider the psychological immune system for another person may be less likely to overestimate the impact of a negative event. Hypothesis 2 states that participants who call to mind potential coping skills will anticipate a weaker and shorter negative impact than those who do not call to mind potential coping skills.

Hypothesis 3. Affective forecasting and the AIK hypothesis anticipate a perspective by coping interaction such that the greatest negative emotional impact should occur for participants who consider the mental health court scenario from the perspective of an outside observer (predictor) who does not consider coping strategies. Further, the least negative impact should occur for participants who consider the scenario from the perspective of him or herself, as if he or she was the person in the mental health court scenario (self-referenced experiencer), and who actively considers potential coping strategies.

Hypothesis 4. As in Experiment 1, it is possible that coping skills reflect no more than perceived similarity between the participants and their assigned perspectives. To

control for this, all participants completed a similarity measure as a potential mediator. Likewise, it is also possible that similarity acts as a moderator such that those individuals who feel more similar to their assigned perspective will show a different pattern of perspective and due process effects than those low in similarity.

Finally, the participants' familiarity with mental health issues could also moderate the relationship between perspective and anticipated intensity and duration. Specifically, those who are familiar with mental health issues might anticipate a shorter and less intense negative affective experience than those unfamiliar with mental health courts or their clients.

Method

Participants

Two hundred and seventy-two people accessed the welcome page of the Experiment 2 website. Of those 272 potential participants, 54 did not continue past the welcome page or answer any questions about the study. Two hundred and eighteen participants recruited through Amazon's Mechanical Turk online data collection program completed the study and received \$1.50 each for participation.

The mean study completion time was 24.53 ($SD = 17.18$) minutes. Four participants took longer than 76.07 minutes (3 standard deviations above the mean completion time of 24.53 minutes) so the researchers eliminated their data along with four participants who completed the study in less than five minutes and one other who incorrectly answered at least one of the two built-in manipulation check questions. This left a final dataset with 209 participants with a mean age of 34.81 years ($SD = 10.93$). Forty-seven percent of the participants were female and 53% were male. The sample was

81.8% Caucasian, 8.6 % Black, 5.7% Asian or Pacific Islander, and 2.4% Hispanic. Less than 1.5% identified as “other” ethnicity. The sample was primarily well educated with 87.6% completing at least some college. The program randomly assigned these participants to the eight conditions in the fully crossed Experiment 2 design. Condition cell sizes ranged from 22-29.

Materials

The stimulus materials and dependent variable measures in Experiment 2 were identical to those in Experiment 1b (mental health court) without any due process protections and with a modified reported coping strategies questionnaire. Specifically, all participants considered the mental health court scenario in which the judge did not award the defendant any due process protections at the time of the sanction proceeding. Participants completed the same measures as in Experiment 1b (Appendices A, C through H, and N through R). Participants in Experiment 2 did not complete the coping skills questionnaire (Appendix B).

Reported coping strategies questionnaire. In addition to the stimulus materials described in Experiment 1, half of the participants also completed a reported coping strategies questionnaire (in lieu of the coping skills questionnaire). Specifically, the instructions asked each participant to, “think for several minutes about a negative event that Brent [you]¹² might encounter after being sentenced to 30 days in jail.” All participants then wrote a brief paragraph that described the negative event but only those participants in the coping strategies reported condition listed “...as many strategies as you can that Brent [you] might use to cope with this negative event. You might consider the support Brent [you] receive[s] from others, how Brent [you] thought about changing

¹² Self-referenced experiencers answered these questions for themselves as the defendant.

the situation, or how Brent [you] could express his [your] emotions.” Participants freely listed up to ten coping strategies. The other half of the participants, those in the coping strategies not reported condition, described the negative event but did not consider or list potential coping strategies. See Appendix S.

Design and Procedure

Experiment 2 was a 4 (perspective: predictor vs. observer vs. actor-referenced experiencer vs. self-referenced experiencer) x 2 (coping strategies: reported vs. not reported) between-subjects design. Participants who freely chose to participate in the study through Amazon’s Mechanical Turk program linked to a website that randomly assigned them to one of the eight research design conditions. All experiment materials were posted to a website created through Qualtrics.

Upon accessing the online survey, participants completed an informed consent form. Then, as in Experiment 1 those in the observer and experiencer conditions (not the predictor condition) read the one-page problem-solving court description. Next, participants read and thought about the legal case summary from one of the four randomly assigned perspectives described in Experiment 1 (predictor, observer, actor-referenced experiencer, or self-referenced experiencer) and considered the mental health court summary without due process protections. A description of the participant’s assigned perspective also appeared at the top of each subsequent page and section in the online survey to remind participants of their task.

Prior to completing the dependent variable measures, participants completed the short, manipulation-boosting paragraph about their assigned perspective (from Experiment 1) to encourage them to consider the dependent measures from that

perspective. Then, they completed the case fact questionnaire to ensure that they paid sufficient attention to the study materials.

Next, the participants completed the reported coping strategies questionnaire. Half of the participants only described a negative event that Brent [you] might encounter after the sanction hearing, whereas the other half also listed strategies that Brent [you] might use to cope with the negative event. Participants then completed the similarity questionnaire, PANAS-X scales (intensity and duration), well-being questionnaire, and the brief procedural fairness questionnaire. As in Experiment 1, participants considered each of these surveys from their randomly assigned perspective (observer, predictor, actor-referenced experiencer, self-referenced experiencer). Finally, participants completed the demographic survey.

Participants ended the study by reading a thank you note and a debriefing statement. Upon completion, the Mechanical Turk website paid the participants directly for their participation.

Results

Overview

The results are organized into three sections. The first section includes an evaluation of the measures, scale construction, and variable construction for Experiment 2. Section two includes tests of hypotheses 1, 2, 3, and part of 4 through basic, moderation, and mediation analyses similar as those in Experiment 1. Section three tests the relationship of familiarity with mental illness as a potential moderator for each of the dependent variables (hypothesis 4).

Section I: Measures and Variable Construction

Attention check.

Case fact questionnaire. The Case Fact Questionnaire (CFQ) served as a validity check, to determine whether participants paid sufficient attention to the online stimulus materials. CFQ scores ranged from a minimum of 3 correct, to a maximum of 5 correct ($M = 4.72$, $SD = .52$). Thus, the study respondents answered over 94% of the questions correct, verifying that they had paid close attention to the study materials.

Of particular interest were the participants' responses on the perspective check question. Only 5.3% of participants missed the perspective manipulation check question. Because of the small percentage of participants who incorrectly answered this manipulation check question and to maximize sample size across Experiment 1, they were included in all analyses.

Scale construction and reliabilities.

Similarity questionnaire. The similarity questionnaire ($M = 3.34$, $SD = 1.58$, $N = 209$) demonstrated high internal reliability ($\alpha = .94$). High scores indicate greater perceived similarity between the self and the assigned perspective. Table 14 illustrates reliabilities and descriptive statistics of the similarity questionnaire.

PANAS-X revised (intensity). An exploratory principal components factor analysis on the 16 emotion ratings collected on the PANAS-X revised intensity survey with a varimax rotation produced three factors with Eigen values greater than 1.00 and accounted for 63.54% of the variance. Applying a .60 cutoff on the loadings in the rotated factor matrix showed the separate emotions loading on each of three dimensions. Loading on the first factor, or the negative affect intensity scale were angry (.67), upset (.81),

scared (.81), distressed (.78), afraid (.85) and nervous (.80). The second factor, or the positive affect intensity scale included happy (.81), enthusiastic (.82), inspired (.78), relaxed (.77), and excited (.73). The emotions ashamed (.81), and embarrassed (.82) created a third factor. Finally, loadings for alert, surprised, and determined did not reach the .60 cutoff score on any single factor. Table 15 shows the factor loadings for the PANAS-X intensity measure. The derived positive affect intensity scale (happy, enthusiastic, inspired, relaxed, and excited) revealed $\alpha = .87$ ($M = 1.20$, $SD = .50$, $N = 209$). The derived negative affect intensity scale (angry, upset, scared, distressed, afraid, and nervous) resulted in an alpha reliability of .91 ($M = 4.18$, $SD = .88$, $N = 209$). See Table 14 for a summary of the means and standard deviations.

PANAS-X revised (duration). An exploratory principal components factor analysis on the 16 emotion ratings collected on the PANAS-X revised duration survey with a varimax rotation produced four factors with Eigen values greater than 1.00 and accounted for 63.54% of the variance. Applying a .60 cutoff on the loadings in the rotated factor matrix showed the loadings on the four dimensions. Loading on factor one, were scared (.84), afraid (.82), nervous (.73), distressed (.68), and upset (.60). The second factor consisted of happy (.77), enthusiastic (.70), excited (.68), and relaxed (.83). The emotions ashamed (.83) and embarrassed (.85) created a third factor. A fourth factor resulted from inspired (.66) and determined (.87). Finally, angry, alert, and surprised did not reach the .60 cutoff score on any single factor. See Table 16 for the factor loadings for the PANAS-X duration measure. The positive affect duration scale (happy, enthusiastic, excited, and relaxed) revealed $\alpha = .73$ ($M = 2.27$, $SD = 3.70$, $N = 209$). The derived negative affect duration scale (scared, afraid, nervous, distressed, and upset)

resulted in an alpha reliability of .85 ($M = 22.65$, $SD = 9.32$, $N = 209$). See Table 14 for means and standard deviations.

Embarrassed and ashamed scale. As in Experiment 1, The PANAX-X factor analyses showed that embarrassed and ashamed (on both the intensity and duration scales) loaded onto an independent factor. In lieu of creating a scale of two items, the researcher standardized these four, highly correlated emotion measures (embarrassed intensity, ashamed intensity, embarrassed duration, and ashamed duration) and created an embarrassed and ashamed scale ($M = .01$, $SD = .80$, $N = 209$). See Table 17 for the bivariate correlation matrix among the elements of this scale. The scale resulted in an alpha reliability of .82.

Well-being questionnaire (intensity). The well-being intensity questionnaire demonstrated an internal alpha reliability of .87 ($M = 5.39$, $SD = 1.20$, $N = 209$). Higher scores indicate a greater anticipated negative well-being. See Table 14 for means and standard deviations.

Well-being questionnaire (duration). The well-being duration questionnaire demonstrated an internal alpha reliability of .86 ($M = 4.89$, $SD = 1.26$, $N = 209$). Higher scores indicate a longer anticipated negative well-being. See Table 14 for means and standard deviations.

Procedural fairness questionnaire. The procedural fairness questionnaire showed an internal reliability of .89 ($M = 3.02$, $SD = 1.46$, $N = 209$). See Table 14 for means and standard deviations.

Tests of the emotion and well-being hypotheses for Experiment 2 made use of the positive affect intensity, negative affect intensity, positive affect duration, negative affect

duration, the combined embarrassed and ashamed intensity and duration scale, well-being intensity, well-being duration, and procedural fairness scales described in Tables 14, 15, and 16.

Variable construction.

Mental health familiarity and problems. As in Experiment 1b, two questions (for self mental illness and friend mental illness) asked whether the participants had experience with mental illness (had a friend who have experienced mental illness) and whether they (their friend) had experienced problems as a result of that mental illness. See Appendix H for the relevant questions.

The construction of the composite familiarity scale was identical to the process in study 1b. Participants who noted they had not experienced mental illness in the past received a score of 0. All other participants received the scale value derived from the second question, measuring any problems with mental illness for those who admitted having mental health issues. Seventy-six percent of participants reported no experience with self-mental illness, whereas 24% reported at least some experience with mental illness. Creating a composite continuous variable for a measure of those whose friends had mental health problems followed the same format, assigning a zero to all who did not have friends with mental illness. All other participants received the scale value derived from the second question, regarding any problems that friends who had mental illness reported. Here, 59% of participants reported not having a friend who has experienced mental illness and 41% reported knowing a friend who has experienced mental illness. The mean scores for the derived self mental illness problems variable were 1.05 ($SD = 2.07$) and 2.25 ($SD = 2.92$) for the friend mental illness problems variable. Table 18,

presents a summary of the correlations between the self and friend mental health problems variables and each dependent variable.¹³

Section II: Basic, Moderation, and Mediation Analyses for Experiment 2

Section two includes tests of hypotheses 1, 2, 3, and part of 4 for mental health court participants. Specifically, section two is organized by each dependent variable (positive affect duration and intensity, negative affect duration and intensity, embarrassed and ashamed scale, well-being duration and intensity, and procedural fairness). For each dependent variable, the author tested a basic general linear model to identify whether there was a hypothesized perspective effect (hypothesis 1), coping effect (hypothesis 2), or a two-way perspective by coping effect (hypothesis 3). A between-subjects multivariate analysis of variance (MANOVA) with perspective as a four-level manipulated factor (predictor vs. observer vs. actor-referenced experiencer vs. self-referenced experiencer) and coping as a two-level manipulated factor (coping present vs. coping absent) with each of the dependent variables in the section below is the basic model that tests the major hypotheses throughout Experiment 2.

Following the basic model tests are tests of the moderating and mediating effects of similarity (hypothesis 4). Mediation tests only follow where there were main effects for due process or perspective or the interaction between these two factors in the basic or moderation analyses.

Positive affect duration and intensity. The 4 (perspective: predictor vs. observer vs. actor-referenced experiencer vs. self-referenced experiencer) by 2 (coping: present vs. absent) design with positive affect duration and positive affect intensity serving as

¹³ There was some skewness and kurtosis in the self and friend mental health issue variables, which suggested the need for a log transformation. The correlations did not differ between the transformed and untransformed variables so that Table 18 reports the original, untransformed variables.

dependent variables revealed non-significant multivariate effects for coping, $F(2, 200) = .77, p = .47, \eta_p^2 = .01$, perspective, $F(6, 400) = .21, p = .97, \eta_p^2 = .003$, and the interaction, $F(6, 400) = 1.17, p = .32, \eta_p^2 = .02$. Furthermore, the univariate effects for positive affect duration and positive affect intensity were not significant. See Tables 19 and 20 for a summary of the means and standard deviations of each dependent variable by perspective for the coping present condition (Table 19) and the coping absent condition (Table 20) for Experiment 2.

Similarity moderation. Adding perceived similarity (a measured, continuous factor) along with all interactions between similarity and the manipulated factors tested the moderating effects. This was a 4 (perspective) x 2 (coping) general linear model with similarity as a continuous factor and positive affect duration and positive affect intensity as dependent variables. There was a significant multivariate main effect for similarity, $F(2, 192) = 4.32, p = .02, \eta_p^2 = .04$, and significant univariate effects for similarity on positive affect duration, $F(1, 193) = 4.56, p = .03, \eta_p^2 = .02, \beta = .21$, and positive affect intensity, $F(1, 193) = 6.67, p = .01, \eta_p^2 = .03, \beta = .24$. This shows that increases in similarity resulted in significant increases in positive affect duration and positive affect intensity.

The coping main effect was not significant, $F(2, 192) = 1.07, p = .35, \eta_p^2 = .01$, and there were no significant univariate effects for coping on positive affect duration or intensity. The main effect for perspective was also not significant, $F(6, 384) = 1.81, p = .10, \eta_p^2 = .03$, nor were the univariate effects.

Similarity interacted with perspective, $F(6, 384) = 2.59, p = .02, \eta_p^2 = .04$, to qualify the similarity main effect. The univariate interaction for positive affect duration

was significant, $F(3, 193) = 2.88, p = .04, \eta_p^2 = .04$. Follow up tests of the interaction between similarity and perspective used planned comparisons to test each of the manipulated perspective conditions (predictor, observer, actor-referenced experiencer) against the self-referenced experiencer condition and the interaction of similarity with each of those planned comparisons. They resulted in significant interactions between similarity and the observer vs. self-referenced experiencer comparison, $t(193) = 2.06, p = .04$, and the similarity and the predictor vs. self-referenced experiencer comparison, $t(193) = -2.12, p = .04$. The interaction between similarity and the actor-referenced experiencer vs. self-referenced experiencer comparison was not significant, $t(193) = .91, p > .05$.

Figure 12 shows the simple slope tests (Dawson, 2014) for the interaction between similarity and the comparison of observer vs. self-referenced experiencer. For those in the self-referenced experiencer condition, ($\beta = .63, p = .05$), and those in the observer condition, ($\beta = 1.31, p = .007$), increases in similarity led to longer positive affect duration. However, the self-referenced experiencer line depicts a negative slope and the analyses produce a positive slope. To make further sense of these seemingly contradictory findings, the researcher examined the scatterplot of this interaction and found one participant outlier with a positive affect duration value of 31 days, which was greater than three standard deviations ($SD = 3.19$) above the mean of this group ($M = 2.14$). This subject was removed from the group and the interaction of similarity by perspective was recalculated. The analysis showed that without this outlier, there were no significant interactions between similarity and the predictor vs. self-referenced experiencer comparison ($\beta = -.47, p = .08$), observer vs. self-referenced experiencer

comparison, ($\beta = .14, p = .63$), or the actor-referenced experiencer comparison ($\beta = .30, p = .10$). Removing the outlying participant did not change the main effects or interactions in the general linear model for positive affect duration. They were similar to the analyses reported at the beginning of this moderation section.

The univariate interaction for positive affect intensity was also significant, $F(3, 193) = 3.05, p = .03, \eta_p^2 = .05$. Follow up tests of the interaction between similarity and perspective used planned comparisons to test each of the manipulated perspective conditions (predictor, observer, actor-referenced experiencer) against the self-referenced experiencer condition and the interaction of similarity with each of those planned comparisons. They resulted in a significant interaction between similarity and the predictor vs. self-referenced experiencer comparison, $t(193) = -2.94, p = .004$. The interactions between similarity and the observer vs. self-referenced experiencer comparison, $t(193) = .25, p > .05$, and the actor-referenced experiencer vs. self-referenced experiencer comparison, $t(193) = 1.67, p > .05$, were not significant.

The simple slope effects procedure (Dawson, 2014) further examined the interaction between similarity and the comparison of predictor vs. self-referenced experiencer. Figure 13 shows that under low similarity at one standard deviation below the mean, $\beta = .25, t(101) = 1.60, p > .05$, there were no differences in positive affect intensity between the predictor and self-referenced experiencer conditions. However, under high similarity at one standard deviation above the mean, $\beta = -.41, t(101) = -2.53, p = .01$, those in the self-referenced experiencer condition anticipated a more intense positive affect than those in the predictor condition.

The three-way multivariate interaction between similarity, coping, and perspective was also significant, $F(6, 384) = 2.28, p = .04, \eta_p^2 = .03$. The univariate interaction for positive affect duration was not significant, $F(3, 193) = .31, p > .05$. However, there was a significant univariate interaction for positive affect intensity, $F(3, 193) = 3.53, p = .02, \eta_p^2 = .05$. Follow-up analyses showed that the interaction of similarity and coping was non-significant for the predictor, $F(1, 50) = 1.42, p > .05$, and observer conditions, $F(1, 50) = 1.18, p > .05$. However, there were significant interactions for the actor-referenced experiencer condition, $F(1, 46) = 6.80, p = .012, \eta_p^2 = .14$ and the self-referenced experiencer condition, $F(1, 47) = 3.96, p = .05, \eta_p^2 = .08$.

Figure 14 displays the similarity by coping interaction for the actor-referenced experiencer perspective. Follow up tests using simple-slope analyses (Dawson, 2014) showed that increases in similarity led to greater positive affect intensity when coping was present, ($\beta = .32, p < .001$), however, the effect of similarity when coping was absent was not significant, ($\beta = .03, p > .05$). Further, under low similarity at one standard deviation below the mean, there were no significant differences between those in the coping present and coping absent conditions, $\beta = -.13, t(46) = -.75, p = .45$. However, under high similarity at one standard deviation above the mean, participants in the coping present condition experienced greater positive affect intensity than those in the coping absent condition, $\beta = .52, t(46) = 2.95, p = .01$. Figure 15 displays the similarity by coping interaction for the self-referenced experiencer perspective. Follow up tests using simple slope analyses (Dawson, 2014) showed that increases similarity led to more intense positive affect when coping was absent, ($\beta = .21, p = .002$), however, the effect of similarity when coping was present was not significant, ($\beta = -.01, p > .05$).

Negative affect duration and intensity. The basic MANOVA model with negative affect duration and intensity as dependent variables revealed a significant multivariate main effect for coping, $F(2, 200) = 3.27, p = .04, \eta_p^2 = .03$. Specifically, the univariate effect for coping on negative affect duration was significant, $F(1, 201) = 3.74, p = .05, \eta_p^2 = .02$, such that those in the coping absent condition ($M = 23.82, SD = 8.62$) anticipated a longer period of negative affect than those in the coping present condition ($M = 21.37, SD = 9.32$). Similarly, the univariate effect for negative affect intensity revealed a similar significant pattern, $F(1, 201) = .441, p = .04, \eta_p^2 = .01$. Those in the coping absent condition reported more intense anticipated negative affect ($M = 4.30, SD = .80$) than those in the coping present condition ($M = 4.05, SD = .88$).

The multivariate main effect for perspective was not significant, $F(6, 400) = 1.22, p = .30, \eta_p^2 = .02$, nor was the interaction, $F(6, 400) = .57, p = .75, \eta_p^2 = .01$. There were no additional significant univariate effects for negative affect duration or intensity.

Similarity moderation. Adding perceived similarity to the basic MANOVA model to test for moderation produced non-significant multivariate main effects for similarity, $F(2, 192) = 1.02, p = .36, \eta_p^2 = .01$, coping, $F(2, 192) = .82, p = .44, \eta_p^2 = .01$, and perspective, $F(6, 384) = 1.74, p = .11, \eta_p^2 = .03$. The univariate effects for negative affect duration and intensity were also not significant.

The multivariate interactions and univariate interaction effects were not significant.

Similarity mediation. The correlations between similarity and negative affect duration ($r = -.03, p = .71$) and intensity ($r = -.02, p = .82$) were not significant. Therefore, similarity was not a potential mediator for the coping effect.

Embarrassed and ashamed scale. The basic ANOVA with the embarrassed and ashamed scale as the dependent variable indicated no significant main effects for coping, $F(1, 201) = .77, p = .38, \eta_p^2 = .004$, perspective, $F(3, 201) = 2.43, p = .07, \eta_p^2 = .04$, or the interaction, $F(3, 201) = .10, p = .96, \eta_p^2 = .002$.

Similarity moderation. Adding similarity to the basic ANOVA model to test for moderation yielded no significant main effects for similarity, $F(1, 193) = .19, p = .67, \eta_p^2 = .001$, coping, $F(1, 193) = 1.41, p = .24, \eta_p^2 = .01$, or perspective, $F(3, 193) = 1.53, p = .21, \eta_p^2 = .02$. The interactions were also not significant.

Well-being duration and intensity. The basic MANOVA model with well-being duration and intensity as dependent variables revealed a significant multivariate main effect for coping, $F(2, 200) = 6.10, p = .003, \eta_p^2 = .06$. Univariate effects revealed a non significant effect for coping on well-being duration, $F(1, 201) = .48, p > .05$, and a significant effect for well-being intensity, $F(1, 201) = 7.78, p = .01, \eta_p^2 = .04$. Specifically, those in the coping absent condition anticipated a significantly more negative well-being ($M = 5.61, SD = 1.15$) than those in the coping present condition ($M = 5.15, SD = 1.22$).

The multivariate main effect for perspective was not significant, $F(6, 400) = .77, p = .59, \eta_p^2 = .01$, nor was the interaction, $F(6, 400) = 1.48, p = .18, \eta_p^2 = .02$. There were also no additional significant univariate effects.

Similarity moderation. Adding similarity to the basic MANOVA model revealed no significant multivariate main effects for similarity, $F(2, 192) = 1.11, p = .33, \eta_p^2 = .01$, coping, $F(2, 192) = 2.67, p = .08, \eta_p^2 = .03$, or perspective, $F(6, 384) = .98, p = .44, \eta_p^2 =$

.02. The univariate effects for well-being duration and intensity were not significant. The multivariate interactions and univariate interaction effects were also not significant.

Similarity mediation. The correlations between similarity and well-being duration ($r = -.01, p = .92$) and well-being intensity ($r = .06, p = .39$) were not significant.

Therefore, similarity was not a potential mediator for the main effect of coping.

Procedural fairness. The basic ANOVA model with the procedural fairness scale as the dependent variable produced no effects for coping, $F(1, 201) = .02, p = .88, \eta_p^2 < .001$, or perspective, $F(1, 201) = 2.04, p = .11, \eta_p^2 = .03$. The coping by perspective interaction approached significance, $F(3, 201) = 2.54, p = .06, \eta_p^2 = .04$. When coping is present, those in the self-referenced experiencer condition experienced significantly greater procedural fairness ($M = 3.46, SD = 1.26$) than those in the actor-referenced experiencer condition ($M = 2.59, SD = 1.38, p = .03$). There were no other significant pairwise comparisons. When coping was absent, those in the predictor condition ($M = 3.65, SD = 1.78$) experienced significantly greater procedural fairness than those in the actor-referenced experiencer condition, ($M = 2.72, SD = 1.01, p = .03$) and the self-referenced experiencer condition, ($M = 2.56, SD = 1.56, p = .007$). There were no other significant pairwise comparisons. Figure 16 shows the perspective by coping interaction.

Similarity moderation. Adding perceived similarity to the basic model revealed non-significant main effects for similarity, $F(1, 193) = .04, p = .85, \eta_p^2 < .001$, coping, $F(1, 193) = 1.12, p = .29, \eta_p^2 = .06$, and perspective, $F(3, 193) = .62, p = .60, \eta_p^2 = .01$. The interactions were also not significant.

Similarity mediation. The correlation between perceived similarity and procedural fairness ($r = .14, p = .05$) was significant. Thus, similarity was a potential

mediator for the coping by perspective interaction. However, a 4 (perspective) by 2 (coping) between-subjects general linear model which included procedural fairness and its interactions with the manipulated factors revealed a non-significant main effect for similarity, $F(1, 200) = .25, p = .62, \eta_p^2 = .001$, coping, $F(1, 200) = .05, p = .82, \eta_p^2 = .001$, and perspective, $F(3, 200) = 2.00, p = .41, \eta_p^2 = .01$. There was also no significant interaction, $F(3, 200) = 2.47, p = .08, \eta_p^2 = .04$. Mediation requires a significant relationship between similarity and procedural fairness after controlling for the effects of the manipulated variables. No further mediation analyses were necessary because there was no significant relationship between similarity and procedural fairness when coping and perspective were included in the model.

Section III: Familiarity with Mental Illness

Hypothesis 4 explored a potential moderating effect of familiarity with mental health issues on the manipulated factors as they impacted the dependent variables. More specifically, it is possible that participants familiar with mental health issues reacted differently to the dependent measures than those unfamiliar with mental health issues.

Self mental illness. A series of correlations between the self mental illness problems continuous variable and each of the dependent variables (positive affect duration and intensity, negative affect duration and intensity, embarrassed and ashamed scale, well-being duration and intensity, and procedural fairness) measured the potential influence of familiarity on the major dependent measures in Experiment 2. See Table 18 for a summary of the correlation analyses. Self mental illness problems was significantly correlated with well-being duration ($r = .15, p = .03$) and well-being intensity ($r = .23, p = .001$).

The same basic MANOVA model as in the analyses above used self mental illness problems as a continuous factor and well-being duration and intensity as dependent variables. The multivariate main effect for self mental illness problems was not significant, $F(2, 193) = 1.38, p > .05, \eta_p^2 = .02$. The multivariate main effect for coping was significant, $F(2, 193) = 5.30, p = .006, \eta_p^2 = .05$. Specifically, the effect of coping on well-being intensity was significant, $F(1, 193) = 8.62, p = .004, \eta_p^2 = .04$, such that those in the coping absent condition ($M = 5.60, SD = .11$) anticipated a significantly more intense negative well-being than those in the coping present condition, ($M = 5.15, SD = .12$), $F(2, 192) = 6.04, p = .003, \eta_p^2 = .06$. The effect of coping on well-being duration was not significant, $F(1, 193) = 1.62, p > .05$. The perspective multivariate main effect was not significant, $F(2, 193) = 94, p > .05, \eta_p^2 = .02$.

There were no significant multivariate interactions or significant univariate interaction effects. In short, familiarity showed no signs of moderation.

Friend mental illness. Table 18 shows that friend mental illness was not significantly correlated with any of the dependent variables so the researcher did not conduct any further analyses involving friend mental illness problems as a familiarity measure. See Table 18 for a summary of the correlation analyses.

Experiment 2 Discussion

The purpose of Experiment 2 was to reduce the self-other effect findings in Experiment 1 by encouraging participants to actively think about and list mental health court clients' potential coping strategies to deal with the negative sanction.

Hypotheses

Hypothesis 1. Hypothesis 1 stated that there would be a perspective main effect, such that participants who reviewed the mental health court scenario from the predictor perspective would anticipate the longest and most intense negative impact of a sanction, whereas those in the self-referenced experiencer condition would anticipate the shortest and least intense negative impact. The researcher did not find support for hypothesis 1. There were no perspective effects for any of the dependent variables, providing no support for the self-other effect (Gilbert et al., 1998; Hsee & Hastie, 2006; Igou, 2004; 2008; Van Boven & Lowenstein, 2003; Wiener et al., 2013) for mental health court clients.

Hypothesis 2. Hypothesis 2 stated that participants who actively consider the psychological immune system for another person, that is who consider potential coping strategies for the negative jail sanction, would be less likely to overestimate the negative impact of that event. The data illustrate partial support for hypothesis 2.

There was no coping effect for positive affect, feelings of embarrassment and shame, or well-being. However, when participants actively considered the coping strategies that a mental health court participant might employ to effectively deal with the negative sanction, they anticipated a significantly less negative experience. This is unique in that regardless of perspective, encouraging problem-solving court players to think about a mental health court participant's psychological immune system (including the participants themselves) might help them emotionally and more effectively deal with a negative sanction. Given the Cascardi et al. (2000) finding that problem-solving court participants who have a more positive view of the court-mandated program (i.e., do not

experience negative affective experiences, regardless of the source) are more likely to abide by the court's treatment plan and ultimately succeed in the program, the current findings may have far reaching consequences. The general discussion takes up this positive, practical outcome in more detail.

Hypothesis 3. Hypothesis 3 predicted a perspective by coping interaction such that the most negative impact would occur for predictors who do not consider coping strategies and the least negative impact would occur for self-referenced experiences who did consider coping strategies. There were no interaction effects for anticipated positive, negative, or embarrassed and ashamed feelings. While there was no support for hypothesis 3, there was an interesting interaction for coping and perspective on procedural fairness. Providing partial support for the self-other effect (Gilbert et al., 1998; Hsee & Hastie, 2006; Igou, 2004; 2008; Van Boven & Lowenstein, 2003; Wiener et al., 2013), when coping was present, participants in the self-referenced experiencer condition perceived the scenario as more fair than those in the actor-referenced experiencer condition. However, for those in the coping absent condition, participants in the predictor condition perceived the scenario as more fair than those in the actor or self-referenced experiencer conditions. This latter finding was in the opposite direction of the hypothesized self-other effect. These findings make it unlikely that procedural fairness judgments follow the typical pattern of emotion judgments following negative evaluations.

Hypothesis 4.

Similarity. As in Experiment 1, there was a possibility the participants' perceived similarity to the assigned perspective might qualify any perspective findings.

Specifically, similarity could either moderate or mediate the relationship between perspective and anticipated affect.

Perceived similarity moderated the effect of perspective on positive affect intensity. Specifically, under high similarity, participants who considered the mental health court scenario from their own point of view anticipated a more positive affective experience as a result of the sanction than did those who took the perspective of an unfamiliar other. There were no effects under low similarity. This suggests that when a participant perceives him or herself as highly similar to a defendant, they believe the experience will result in a more positive affective experience than if they viewed themselves as similar to an unfamiliar other.

As was the case in Experiment 1, the researcher found mixed, inconsistent results across the dependent variables and although similarity *did* moderate the relationship between perspective and positive affect intensity, the results reveal a pattern that makes a meaningful interpretation difficult. In short, there was no consistent agreement within or across dependent variables about how similarity influenced the strength of the relationship between perspective, coping and the other dependent variables.

Familiarity. Hypothesis 4 also considered the possibility that participants' personal familiarity with mental health issues would moderate the relationship between perspective and anticipated affect. The data did not reveal support for these familiarity effects. Specifically, there were no moderation effects involving self-familiarity or friend-familiarity with mental illness.

As was the case in Experiment 1, only 24% of participants reported some experience with mental illness and 41% reported knowing a friend who had experienced

mental illness. Few of these participants reported *problems* as a result of the mental illness and for this reason, the reader should interpret these findings with care because of a potential statistical power problem.

CHAPTER 4

General Discussion

On April 3, 2007, Brent Stewart entered the Dyer County, Tennessee Drug Court Program. The program's goal was to hold Mr. Stewart accountable for his multiple offenses, but more importantly to provide him with the necessary treatment to overcome his drug addiction. Over the course of the next sixteen months, Mr. Stewart spent a total of nearly six months in jail as sanctions for partial noncompliance of program requirements. At each of the sanction hearings, the court did not provide Mr. Stewart any of the traditional due process protections that defendants receive in probation or parole revocation hearings. As a result of the stop-and-start nature of his participation in the program, and specifically as a result of the six months of jail time, Mr. Stewart received a harsher punishment than he would have received had he chosen not to participate in the program at all. In other words, the therapeutic jurisprudential nature of the court was diminished in favor of a more punitive process. What is most unique about this case and similar others, however, is not the punitive nature of the sanctioning behavior but rather, the surprising finding that Mr. Stewart subsequently thanked the Tennessee Drug Court for "saving his life" (*State of Tennessee v. Stewart*, 2010, p. 5).

Although psycholegal researchers have only recently begun to investigate the influence of emotion on legal decision-making, this experiment advanced the research on the study of emotion as only one of a few to consider the self-other effect in affective forecasting and the first to test the AIK hypothesis (Igou, 2008) in a problem-solving court paradigm.

The goal of this two-experiment study was to apply Igou's (2008) AIK hypothesis to problem-solving courts' practice of sanctioning in the absence of due process. Specifically, it is possible that observers find problem-solving courts' lack of procedural due process more of a problem than do the clients themselves because of differences in perspective and discordant knowledge of the coping strategies that problem-solving court clients utilize. This research sought to test these ideas. Experiment 1 manipulated the perspective from which participants considered a drug or mental health court sanction proceeding, with or without due process present. Experiment 1 also explored the moderating and mediating effects of participants' coping knowledge and similarity as it related to their anticipated affect and well-being as a result of the sanction. Experiment 2 manipulated coping directly to determine whether a discordant coping knowledge would explain the perspective effects identified in Experiment 1. Taken together the findings of Experiment 1 and Experiment 2 provided mixed support for traditional self-other effects in affective forecasting (Gilbert et al., 1998; Hsee & Hastie, 2006; Igou, 2004; 2008; Van Boven & Lowenstein, 2003; Wiener et al., 2013) and even less support for Igou's asymmetric immune knowledge hypothesis (2008). However, several legally relevant findings provide an opportunity to inform future psycholegal research in the area of procedural fairness, due process, and the inherent differences between drug and mental health courts and their clients.

Theoretical Implications

The current research was one of the first to extend the affective forecasting literature and specifically, the self-other effect in affective forecasting to a legal decision-

making paradigm. Likewise, it was the first to examine the applicability of the AIK (Igou, 2008) in modern problem-solving courts.

Although previous research has found support for self-other effects in affective forecasting (Brickman et al., 1978; Gilbert et al., 1998; Hsee & Hastie, 2006; Igou, 2004; 2008; Van Boven & Lowenstein, 2003; Wiener et al., 2013), the current research did not find such unequivocal effects. This was the case for both the durability bias (Gilbert et al., 2002; Wilson & Gilbert, 2003) and the impact bias (Hsee & Hastie, 2006; Wilson & Gilbert, 2003). However, interesting findings emerged for anticipated feelings of embarrassment and shame. While the effect was in the opposite direction of the hypothesized effect (participants anticipated greater embarrassment and shame for themselves than for an unfamiliar drug or mental health court participant), this finding was consistent across all court types in Experiment 1.

Perhaps social-moral emotions such as embarrassment and shame behave differently than other, negatively valenced emotions, such as anger and fear, as they relate to self-other affective forecasts. For example, Keltner and Buswell (1996) note that “embarrassment follows transgressions of conventions that govern social interactions” and “shame follows the failure to live up to central personal expectations or those of significant others” (p. 157). Further, Haidt (2003) in his work on moral emotions suggests that in Western cultures, the evaluation that there is something improper or defective with one’s core self, “generally due to a failure to measure up to standards of morality...or competence” or that one has violated a social-conventional rule elicit feelings of shame and embarrassment (p. 860). In other words, these emotions typically result from a violation of some personal or social norm, whereas other negative emotions may not at

all be related to a personal experience with the event. Thus, it may not be possible to feel shame from the perspective of another person as one does from his or her own perspective, as if the perceiver violated that norm (such as drug use or disruptive behavior as a result of a mental illness). In short, moral emotions (Haidt, 2003; Keltner & Buswell, 1996) such as embarrassment and shame might operate in a way that is contrary and in direct opposition to the typical self-other effect.

This novel finding may suggest some specific boundary conditions for anticipated affect effects for problem-solving court paradigms. Specifically, one theoretical interpretation of these findings may be that affective forecasting for the usual positive and negative emotions does not exist, or at least does not occur in a straightforward manner in scenarios such as those presented in these experiments. On the other hand, the findings for shame and embarrassment may represent a specific boundary condition for anticipated emotion effects for these moral emotions in problem-solving court paradigms. Future research should study this interesting, novel possibility.

Another surprising finding was that perceived similarity between the self and the assigned perspective did not mediate the relationship between perspective and the dependent variables. Even when similarity moderated the relationship between perspective and affective experience, the findings were inconsistent and often spurious. Unfortunately for the theoretical underpinnings of the current project, this was also the case for coping, as both a measured variable (Experiment 1) and a manipulated variable (Experiment 2). In Experiment 1, coping did not mediate the relationship between perspective and any of the dependent variables and when coping moderated this relationship, the findings were also inconsistent and they varied dramatically among the

dependent measures of interest. In Experiment 2 where participants actively listed potential coping strategies to deal with the negative sanction, participants did anticipate longer and more intense negative affect when they did not consider coping strategies. This finding, which is in line with previous coping research (Gilbert et al., 1998; Hoerger et al., 2009; Igou, 2004; 2008; Wilson et al., 2000), suggests that encouraging mental health court clients as well as people unaffiliated with mental health courts to consider coping strategies to deal with a legal sanction reduces the anticipated negative experience of that sanction. However, the finding that participants anticipated more negative well-being when they actively listed potential coping strategies than when they did not complicates this finding.

The lack of a consistent, hypothesized coping effect may also be due in part to the weak perspective-taking manipulation, further discussed in the limitations section below. Because participants presumably did not fully embrace their assigned perspectives, they in turn may not have utilized their psychological immune systems to adjust their emotional forecasts in a predictable way (Gilbert et al., 1998; Hoerger et al., 2009; Igou, 2008; Wiener et al., 2013). For the above reasons, it is difficult to make definitive conclusions about the application of the AIK (Igou, 2008) in these experiments, as the prerequisite perspective differences did not materialize to determine whether participants identified coping strategies would mediate, or reduce the self-other effect.

Finally, the data suggest that not all dependent variables operated similarly across (or within) the Experiments. Specifically, each dependent variable (positive affect, negative affect, embarrassed and ashamed, well-being, and procedural fairness) mapped onto “negative impact” quite differently. The negative affect scales, for example

measured how badly the participant may feel, drawing to mind specific but subjective negative emotional experiences whereas the well-being scales measured more tangible, concrete events the participant might experience, such as financial and social burdens. Therefore, it is reasonable and understandable that different effects emerged for different dependent constructs, each as an independent measure of a “negative impact” of a legal sanction. The variety of scales provided a thorough evaluation of a number of ways a legal sanction may impact an individual. Unfortunately, broadly developed theoretical constructs were problematic in this project because of the lack of consistent findings across constructs between and even within experiments.

Legal Implications

Adopting a therapeutic jurisprudential approach (Wexler & Winick, 1991; Winick & Wexler, 2002; 2003) to drug and mental health courts and their clients, this research has a number of practical, legal implications for these special court systems. Although a common sense discovery, the fact that participants experienced greater procedural fairness across drug and mental health courts when due process was present is an important finding. In both scenarios, the client experienced a sanction of 30 days in jail for noncompliance. While this unequivocally “bad” event would likely upset all clients, the simple inclusion of the opportunity for the client to engage in a brief conversation with the judge about his noncompliance before the judge sanctioned him to 30 days in jail resulted in greater evaluations of fairness and a shorter anticipated negative affective experience.

This significant procedural fairness finding is important because as previous research has found (Cascardi et al., 2000; Lind & Tyler, 1988; Poythress et al., 2002;

Tyler, 2003), high levels of reported procedural fairness positively influences compliance with the law and court ordered treatment plans. Although, this study did not test problem-solving court outcomes or compliance, these findings in conjunction with other results in the literature suggest that providing problem-solving court participants with due process might indirectly result in greater compliance with court treatment plans and ultimate success in the program.

These basic due process protections, also awarded to those on probation or parole (*Gagnon v. Scarpelli*, 1973; *Morrissey v. Brewer*, 1972) are not particularly onerous and in these experiments, they resulted in greater fairness evaluations of the profoundly negative event (jail time). If drug and mental health courts truly operate under a T.J. framework, and the costs of the inclusion of due process protections do not outweigh the benefits of their imposition, it would be prudent for these court systems to adopt a due process practice at sanction proceedings that protects the client's legal and psychological well-being.

The current research also provides some confirmation for psycholegal scholars' concerns about the use of incarceration as a sanction in mental health courts (Redlich et al., 2006). Although the use of jail time as a sanction in drug courts is fairly routine, commentators have been increasingly concerned about the moral and ethical use of incarceration as a sanction for mental health court offenders because it may do nothing less than punish them for their mental illness (Odegaard, 2007; Redlich et al., 2006). The current research provides some empirical support for these concerns. Specifically, mental health court participants (or observers) experienced less procedural fairness and anticipated a more intense negative affective experience than drug court participants (or

observers) as a result of 30 days in jail. This finding requires additional, empirical consideration in the field with actual clients engaged in problem-solving court programs.

In summary, although the major hypotheses in this dissertation research sought evidence for the self-other in a problem-solving court context, these major procedural due process findings, coupled with the fairness and negative affect differences for mental health and drug court clients provide important information for psycholegal scholars who hope to further understand how problem-solving court clients evaluate and subsequently respond to their experiences.

Limitations

The major limitation in these experiments was the research design perspective-taking paradigm. Although previous researchers have successfully utilized perspective-taking procedures in self-other research for a variety of negative events (Van Boven & Loewenstein, 2003, Wiener et al., 2013), those events were typically occurrences that the participant could easily imagine experiencing, such as feeling extreme thirst (Van Boven & Loewenstein, 2003), losing a football game (Gilbert et al., 1998), breaking up with a partner (Igou, 2008), and performing poorly on an exam (Igou, 2008). It is possible that the problem-solving court scenario in this research was too far outside the realm of the participants' imagination for them to fully consider their assigned perspective. According to Van Boven and Loewenstein (2003), emotional perspective taking requires two judgments. The first is how the self would feel in another person's situation. The second is how the self adjusts these predictions to accommodate the difference (or similarity) between the self and the other. This research asked participants to assume the role of a drug or mental health court client or somebody moderately familiar with problem-solving

courts. Although the study provided multiple manipulation boosts to encourage participants to fully embrace their assigned perspective, as well as a variety of manipulation checks to confirm that participants considered the scenario and dependent measures from the assigned perspective, the participants may not have successfully adjusted their predictions to accommodate the inherent differences between the self and the other.

Further, the study not only required participants to actively take the perspective of an unfamiliar other, but also required them to consider the affective experiences from that other's perspective—a very intimate and personal process. The lack of an overall, consistent, and hypothesized perspective effects across both experiments may have resulted because of this ineffective *emotional* perspective taking.

Wiener et al. (2013) effectively utilized an emotional perspective-taking procedure and found novel, significant self-other effects, consistent with the findings of Igou (2008) and others. However, the major distinction between their procedures and the current study is the *actual* experiences of the participants. Specifically, the participants in Wiener et al.'s (2013) sexual objectification research actually participated in mock interviews where a male researcher gazed at the participant's chest for several seconds. In this manner, the participants *experienced*, at a variety of levels depending on perspective, how objectification actually feels. This allowed the participants to experience a straightforward, personal perspective-taking experience. In the current research, the participants did not have an opportunity to experience the sanctioning events.

Even if the participants did have the ability or motivation to fully consider and embrace the negative sanction scenario from their assigned perspective, they may have

been intentionally (or unintentionally) reluctant to take the perspective of a drug user or somebody who commits crimes as a result of his or her mental illness because of the inherently aversive nature of that person or scenario. Thus, participants may not have fully embraced the aversive and off-putting perspective that the study asked them to take on board, especially compared to some of the more benign, everyday negative events utilized in previous research. Finally, participants may not have embraced the perspective-taking manipulation because the perceived “self-inflicted” and stigmatized nature of the behavior in the scenario (drug use, mental illness) may have discouraged participants from embracing the defendant’s character. So although researchers such as Brickman et al. (1978) found that people unfamiliar with paraplegics overestimated the negative effect of paralysis on a paraplegic’s well-being, the paralysis that a paraplegic experiences is outside that individual’s control and is not a choice in the way that drug use may be.

Another potential limitation of the current research was the low numbers of participants who had experience with, or knew somebody who had experience with drug use or mental health issues and the even fewer participants who had experienced problems as a result of drug use or mental health issues. Although Schkade and Kahneman (1998) found that people overestimate negative affective experiences for an unfamiliar other, the current experiments did not find such unequivocal results. Specifically, familiarity with drug problems or mental health issues was not predictive of any of the dependent variables. This may have been, in part due to a small sample of individuals who had experienced drug use or mental illness either directly or even indirectly.

Notwithstanding the methodological limitations, this work represents theoretical advances and legal implications for understanding how the self-other effect in affective forecasting operates in the absence of due process in drug and mental health courts.

Future Directions

This series of experiments serves as a catalyst for future research to further narrow the boundaries of the self-other effect in affective forecasting (Gilbert et al., 1998; Hsee & Hastie, 2006; Igou, 2004; 2008; Van Boven & Lowenstein, 2003; Wiener et al., 2013), as well as the AIK hypothesis (Igou, 2008). Future self-other forecasting research in problem-solving courts should utilize a more effective perspective-taking paradigm. For example, researchers could conduct an in-lab manipulation where participants act as the court client, a social worker, or as themselves in a role-play scenario. While more arduous than an online data collection design, this approach would likely elicit a stronger perspective manipulation and thus, provide a greater opportunity to identify any existing AIK effects in a problem-solving court paradigm. An even more desirable perspective-taking approach would include participants familiar with drug or mental health courts or better yet, actual problem-solving court clients and court players. This latter suggestion is most ideal, as the clients, social workers, judges, and outside observers have a deeper understanding of the courts' functions as well as a deeper understanding of their own coping strategies and motivations for court compliant and noncompliant behavior.

An additional area for further inquiry is the type, or source of coping skills that a person experiences. The researcher acknowledges that there are two distinct types of coping skills. The first includes coping skills that are inherent to an individual who has experienced drug or mental health problems and has interacted with the legal system. The

second source is coping skills that any individual has which forecasters overlook (Igou, 2008). The current research concerned the latter as opposed to the former. The researcher recognizes the difference between the two and acknowledges that future studies should examine the naturalistic coping skills of a drug or mental health court offender as he or she interacts with the legal system.

Future research should also examine the *experienced* emotions of drug and mental health court clients, in addition to forecasted emotions. Affective forecasts do not necessarily translate to affective experiences and in fact, research has shown the durability and impact biases are resilient and consistent across many paradigms (Georges & Wiener, 2013; Gilbert et al., 2000; 2004; Gilbert & Ebert, 2002; Wiener et al., 2014). We also know that actual affective experiences are typically shorter and less intense than the predictor anticipates them to be (Gilbert et al., 1998; Gilbert et al., 2004; Wilson & Gilbert, 2003; 2005). In short, while future research should further examine the boundaries of affective forecasting in problem-solving courts, it should also examine the role of experienced emotions as it relates to offender experience and subsequent program compliance.

Based on the consistent, albeit contradictory self-other effect for anticipated feelings of shame and embarrassment, emotion research should also identify how and under what circumstances these social-moral emotions operate differently from other negatively valenced emotions (Haidt, 2003; Keltner & Buswell, 1996).

Finally, the current research focused exclusively on procedural due process (and subsequently procedural fairness) in problem-solving courts. While there has been significant research in the area of client compliance as it relates to recidivism in problem-

solving courts, a future line of research should examine client affective experiences as it relates to these outcomes. The findings in the current research suggest that when clients experience due process, they perceive the overall sanction experience as more fair. More importantly, psycholegal researchers have noted that a fair evaluation of the process translates into increased compliance with a court-ordered program (Cascardi et al., 2000; Lind & Tyler, 1988; Poythress et al., 2002; Tyler, 2003). Perhaps positive affective experiences in the presence of due process operate in a similar way, which creates a stronger argument for due process protections for problem-solving court clients. In other words, if the inclusion of basic due process protections leads to a more therapeutic jurisprudential practice for the court client and in turn, the court client succeeds in the program (and thus, recidivates less), it is in the courts' fiscal, social, and practical interests to implement such protections. This is an important empirical question worthy of future discovery.

Conclusions

This project integrated the affective forecasting literature in social psychology with the current practices of modern problem-solving courts in the United States. Specifically, the current work applied the self-other effect in affective forecasting to the practice of sanctioning in the absence of due process in drug and mental health courts. While psycholegal researchers have only recently begun to study the influence of emotion on legal decision-making (see Wiener, Bornstein, & Voss, 2006) this experiment advances the research on the study of emotion by testing the boundaries of the self-other effect in affective forecasting in a novel, legal paradigm. By establishing a deeper understanding of these effects, legal practitioners can ensure that problem-solving court

clients receive as much due process as is necessary to uphold the rigor of the justice system, but also maintain the flexibility of a nonadversarial system to ensure a therapeutic outcome.

Although the research questions were not completely supported, the findings demonstrated that while drug and mental health court clients, such as Stewart (*State of Tennessee v. Brent R. Stewart*, 2010) may be satisfied with the outcome of their time in the program, the inclusion of basic due process rights may better serve these clients (*Gagnon v. Scarpelli*, 1973; *Morrissey v. Brewer*, 1972). Further, mock drug and mental health court clients experienced sanctioning practices quite differently, suggesting further research into whether a drug court model can be (or should be) evenly applied in mental health courts. The lack of a hypothesized self-other effect and weak support for Igou's asymmetric immune knowledge hypothesis (2008) do not negate the argument for due process protections in problem-solving courts. On the contrary, while there is likely an alternative explanation for clients' satisfaction with the processes and outcomes in these courts (see Berman & Feinblatt, 2005; Cosden et al., 2005; Freeman, 2002; Gover et al., 2007; Poythress et al., 2002), Bruce Winick's persistent and notable belief that legal actors should protect the clients' interests to every extent reasonable possible still rings true.

Finally, as the number of problem-solving courts, and the variety of these types of courts (e.g., veterans court, homeless court, family court, etc.) continue to increase in the United States, it is important to fully understand and implement best practices as they relate to both processes and outcomes for the client, the court team, and the community. This research provides one such step towards that understanding.

References

- Baron, J. (1992). The effect of normative beliefs on anticipated emotions. *Journal of Personality and Social Psychology*, *63*, 320-330. doi:10.1037//0022-3514.63.2.320
- Baron, R. M., & Kenny, D. A. (1986). The moderator-mediator variable distinction in social psychological research: Conceptual, strategic, and statistical considerations. *Journal of Personality and Social Psychology*, *51*, 1173-1182. doi: 10.1037/0022-3514.51.6.1173
- Batista v. State of Florida, 941 So.2d 1008 (2007).
- Baumeister, R. F., Vohs, K. D., DeWall, C. N., & Zhang, L. (2007). How emotion shapes behavior: Feedback, anticipation, and reflection, rather than direct causation. *Personality and Social Psychology Review*, *11*, 167-203. doi: 10.1177/1088868307301033
- Becker, D. J., & Corrigan, M. D. (2002). Moving problem-solving courts into the mainstream: A report card from the CCJ-COSCA problem-solving courts committee. *Court Review*, *39*, 4-7.
- Berman, G. (2000). What is a traditional judge anyway?: Problem solving in the state courts. *Judicature*, *84*, 78-85.
- Berman, G. (2004). Redefining criminal courts: Problem-solving and the meaning of justice. *American Criminal Law Review*, *41*, 1313-1320.
- Berman, G., & Feinblatt, J. (2001). Problem-solving courts: A brief primer. *Law and Policy*, *23*, 125-140. doi: 10.1111/1467-9930.00107

- Berman, G., & Feinblatt, J. (2005). *Good courts: The case for problem-solving justice*. New York, NY: New Press.
- Bi-Metallic Investment Co. v. State Board of Equalization of Colorado, 239 U.S. 441 (1915).
- Blom, B. B., Galbo-Moyes, J., & Jacobs, R. (2010). Community voice and justice: An essay on problem-solving courts as a proxy for change. *University of Maryland Law Journal of Race, Religion, Gender and Class*, 10, 25-44.
- Boldt, R. (1998). Rehabilitative punishment and the drug treatment court movement, *Washington University Law Quarterly*, 76, 1205-1306.
- Bozza, J. A. (2007). Benevolent behavior modification: Understanding the nature and limitations of problem-solving courts. *Widener Law Journal*, 17, 97-143.
- Brickman, P., Coates, D., & Janoff-Bullman, R. (1978). Lottery winners and accident victims: Is happiness relative? *Journal of Personality and Social Psychology*, 36, 917-927. doi: 10.1037//0022-3514.36.8.917
- Bunch, M. M. (2004). Juvenile transfer proceedings: A place for restorative justice values. *Howard Law Journal*, 47, 909-942.
- Burke, K. S. (2010). Just what made drug courts successful? *New England Journal on Criminal and Civil Confinement*, 36, 39-58.
- Cascardi, M., Poythress, N. G., & Hall, A. (2000). Procedural justice in the context of civil commitment: An analogue study. *Behavioral Sciences and the Law*, 18, 731-740. doi: 10.1002/bsl.421

- Casey, T. (2004). When good intentions are not enough: Problem-solving court and the impending crisis of legitimacy. *Southern Methodist University Law Review*, 57, 1459-1520.
- Casey, P. M. & Rottman, D. (2003). *Problem-solving courts: Models and trends*. Williamsburg, VA: National Center for State Courts.
- Castellano, U., & Anderson, L. (2013). Mental health courts in America: Promise and challenges. *American Behavioral Scientist*, 57, 163-173. doi: 10.1177/0002764212465616
- Chemirinsky, E. (2006). *Constitutional Law: Principles and Policies*. New York, NY: Aspen Publishers.
- Collins, R. L., Taylor, S. E., & Skokan, L. A. (1990). A better world or a shattered vision? Changes in life perspectives following victimization. *Social Cognition*, 8, 263-285. doi: 10.1521/soco.1990.8.3.263
- Cosden, M., Ellens, J., Schnell, J., Yamini-Diouf, Y., & Wolfe, M. (2003). Evaluation of a mental health treatment court with assertive community treatment. *Behavioral Sciences and the Law*, 21, 415-427. doi: 10.1002/bsl.542
- Dawson, J. F. (2014). Moderation in management research: What, why, when and how. *Journal of Business and Psychology*, 29, 1-19. doi: 10.1007/s10869-013-9308-7
- Eckrich, J., & Loudenburg, R. (2012). Answering the call: Drug courts in South Dakota. *South Dakota Law Review*, 57, 171-187.
- Fiske, S. X., & Taylor, S. E. (1991). *Social cognition* (2nd ed.). New York, NY: McGraw-Hill.

Freeman, K. (2002). *New South Wales drug court evaluation: Health, well-being and participant satisfaction*. Sydney, AU: New South Wales Bureau of Crime Statistics and Research.

Fuentes v. Shevin, 407 U.S. 67 (1972).

Gagnon v. Scarpelli, 411 U.S. 778 (1973).

Gardner, M. R. (2003). *Understanding juvenile law* (2nd ed.) New Jersey: LexisNexis.

Georges, L. C., & Wiener, R. L. (2013, March). *The predictive power of jurors' anticipated regret in a sexual assault case*. Paper presented at the American Psychology-Law Society annual meeting, Portland, OR.

Gilbert, D. T., Brown, R. A., Pinel, E. C., & Wilson, T. D. (2000). The illusion of external agency. *Journal of Personality and Social Psychology*, *79*, 690-700. doi: 10.1037/0022-3514.79.5.690

Gilbert, D. T., Driver-Linn, E., & Wilson, T. D. (2002). The trouble with Vronsky: Impact bias in the forecasting of future affective states. In L.F. Barrett & P. Salovey (Eds.), *The wisdom in feeling: Psychological processes in emotional intelligence* (pp. 114-143). New York: Guilford Press.

Gilbert, D. T., & Ebert, J. E. (2002). Decisions and revisions: The affective forecasting of changeable outcomes. *Journal of Personality and Social Psychology*, *82*, 503-514. doi: 10.1037//0022-3514.82.4.503

Gilbert, D. T., Lieberman, M. D., Morewedge, C. K., & Wilson, T. D. (2004). The peculiar longevity of things not so bad. *Psychological Science*, *15*, 14-19. doi: 10.1111/j.0963-7214.2004.01501003.x

- Gilbert, D. T., Morewedge, C. K., Risen, J. L., & Wilson, T. D. (2004). Looking forward to looking backward: The misprediction of regret. *Psychological Science, 15*, 346-350. doi: 10.1111/j.0956-7976.2004.00681.x
- Gilbert, D. T., Pinel, E. C., Wilson, T. D., Blumberg, S. J., & Wheatley, T. P. (1998). Immune neglect: A source of durability bias in affective forecasting. *Journal of Personality and Social Psychology, 75*, 617-638 doi: 10.1037//0022-3514.75.3.617
- Glaser, B. (2003). Therapeutic jurisprudence: An ethical paradigm for therapists in sex offender treatment programs. *Western Criminology Review, 4*, 143-154.
- Goldberg v. Kelly, 397 U.S. 254 (1970).
- Gosha v. State of Indiana, 931 N.E.2d 432 (Ind.App. 2010).
- Gover, A. A., Brank, E. M., & MacDonald J. M. (2007). A specialized domestic violence court in South Carolina: An example of procedural justice for victims and defendants. *Violence Against Women, 13*, 603-626. doi: 10.1177/1077801207301553
- Griffin, P., Steadman, H. J., & Petrila, J. (2002). The use of criminal charges and sanctions in mental health courts. *Psychiatric Services, 53*, 1285-1289. doi: 10.1176/appi.ps.53.10.1285
- Hagar v. State of Oklahoma, 990 P.2d 894 (Okla.Crim.App. 1999).
- Haidt, J. (2003). The moral emotions. In R. J. Davidson, K. R. Scherer, & H. H. Goldsmith (Eds.), *Handbook of affective science* (pp. 852-870). Oxford: Oxford University Press.
- Hamdi v. Rumsfeld, 378 F.3d 426 (2004).

- Harrell, A., & Roman, J. (2001). Reducing drug use and crime among offenders: The impact of graduated sanctions. *Journal of Drug Issues, 31*, 207-232.
- Harris v. Commonwealth, 279 Va. 541, 689 S.E.2d 713 (2010).
- Heider, F. (1958). *The psychology of interpersonal relations*. New York: Wiley.
- Hoerger, M., Quirk, S. W., Lucas, R. E., & Carr, T. H. (2009). Immune neglect in affective forecasting. *Journal of Research in Personality, 43*, 91-94. doi: 10.1016/j.jrp.2008.10.001
- Hoffman, M. B. (2011). Problem-solving courts and the psycholegal error. *University of Pennsylvania Law Review PENNumbra, 129*, 129-139.
- Hopper v. State of Indiana, 546 N.E.2d 106 (1989).
- Hora, P. F., Schma, W. G., & Rosenthal, J.T.A. (1999). Therapeutic jurisprudence and the drug treatment court movement: Revolutionizing the criminal justice system's response to drug abuse and crime in America. *Notre Dame Law Review, 439*, 439-538.
- Hsee, C. K., & Hastie, R. (2006). Decision and experience: Why don't we choose what makes us happy? *Trends in Cognitive Sciences, 10*, 31-37. doi: 10.1016/j.tics.2005.11.007
- Hunt v. Commonwealth of Kentucky, 326 S.W.3d 437 (2010).
- Igou, E. R. (2004). Lay theories in affective forecasting: The progression of affect. *Journal of Experimental Social Psychology, 40*, 528-534. doi: 10.1016/j.jesp.2003.09.004

- Igou, E. R. (2008). "How long will I suffer?" versus "How long will you suffer?" A self-other effect in affective forecasting. *Journal of Personality and Social Psychology, 95*, 899-917. doi: 10.1037/a0011619
- In re Gault, 387 U.S. 1 (1967).
- Jones, E. E., & Harris, V. A. (1967). The attribution of attitudes. *Journal of Experimental Social Psychology, 3*, 1-24. doi: 10.1016/0022-1031(67)90034-0
- Jones, E. E., & Nisbett, R. E. (1971). The actor and the observer: Divergent perceptions of the causes of behavior. In E. Jones, D. E. Kanouse, H. H. Kelly, R. E. Nisbett, S. Valins, & B. Weiner (Eds.), *Attribution: Perceiving the causes of behavior* (pp. 79-94). Hillsdale, NJ: Lawrence Erlbaum.
- Keltner, D., & Buswell, B. (1996). Evidence for the distinctness of embarrassment, shame, and guilt: A study of recalled antecedents and facial expressions of emotion. *Cognition and Emotion, 10*, 155-171. doi: 10.1080/026999396380312
- Kercher, K. (1992). Assessing subjective well-being in the old-old: The PANAS as a measure of orthogonal dimensions of positive and negative affect. *Research on Aging, 14*, 131-168. doi: 10.1177/0164027592142001
- Labriola, M., Rempel, M., O'Sullivan, C. S., & Frank, P. B. (2007). *Court responses to batter program noncompliance: A national perspective*. New York, NY: Center for Court Innovation.
- Lane, E. (2002). Due process and problem-solving courts. *Fordham Urban Law Journal, 30*, 955-1026.

- Levenson, J. S., & Cotter, L. P. (2005). The effect of Megan's Law on sex offender reintegration. *Journal of Contemporary Criminal Justice*, *21*, 49-66. doi: 10.1177/1043986204271676
- Lind, E. A., & Tyler, T. (1988). *The social psychology of procedural justice*. New York: Plenum Publishing.
- Loewenstein, G., & Prelec, D. (1993). Preferences for sequences of outcomes. *Psychological Review*, *100*, 91-108. doi: 10.1037//0033-295X.100.1.91
- Loewenstein, G., & Schkade, D. A. (1999). Wouldn't it be nice? Predicting future feelings. In D. Kahneman, E. Diener, & N. Schwarz (Eds.), *Well-being: Foundations of hedonic psychology* (pp. 85-105). New York: Russell-Sage.
- Mack, J. (1909). The juvenile court. *Harvard Law Review*, *104*, 119-120.
- Mackinnon, A., Jorm, A. F., Christensen, H., Korten, A. E., Jacomb, P. A., & Rodgers, B. (1999). A short form of the Positive and Negative Affect Schedule: Evaluation of factorial validity and invariance across demographic variables in a community sample. *Personality and Individual Differences*, *27*, 405-416. doi:10.1016/S0191-8869(98)00251-7
- Mathews v. Eldridge, 425 U.S. 319 (1975).
- McFarland, C., & Ross, M. (1982). Impact of causal attributions of affective reactions to success and failure. *Journal of Personality and Social Psychology*, *43*, 937-946. doi: 10.1037//0022-3514.43.5.937
- Mescall, T. J. (1999). Legally induced participation and waiver of juvenile courts: A therapeutic jurisprudence analysis. *Revista Juridica Universidad de Puerto Rico*, *68*, 707-719.

- Meyer, W. G. (2009, June). *Constitutional and other legal issues in problem-solving courts*. Symposium presented at the meeting of the National Association of Drug Court Professionals, Anaheim, CA.
- Miller, D. T., & Ross, M. (1975). Self-serving biases in the attribution of causality: Fact or fiction? *Psychological Bulletin*, *82*, 213-225. doi: 10.1037/h0076486
- Morrissey v. Brewer, 408 U.S. 471 (1972).
- National Association of Drug Court Professionals (NADCP). (1997). *Defining drug courts: The key components*. Washington, DC: Office of Justice Programs, U. S. Department of Justice.
- National Drug Court Institute (2000). The critical need for jail as a sanction in the drug court model. *Drug court practitioner fact sheet*. Alexandria, VA: National Association for Drug Court Professionals.
- Nisbett, R. E., Caputo, C., Legant, P., & Marecek, J. (1973). Behavior as seen by the actor and as seen by the observer. *Journal of Personality and Social Psychology*, *27*, 154-164. doi: 0.1037/h0034779
- Nolan, J. L. (2003). Redefining criminal courts: Problem-solving and the meaning of justice. *American Criminal Law Review*, *40*, 1541-1565.
- Odegaard, A. M. (2007). Therapeutic jurisprudence: The impact of mental health courts on the criminal justice system. *North Dakota Law Review*, *83*, 225-259.
- People v. Bishop, 7 P.3d 184 (1999).
- People v. Kimmel, 882 N.Y.S.2d 895 (2009).

- Porter, R., Rempel, M., & Mansky, A. (2010). *What makes a court problem-solving? Universal performance indicators for problem-solving justice*. New York, NY: Center for Court Innovation.
- Poythress, N. G., Petrila, J., McGaha, A., & Boothroyd, R. (2002). Perceived coercion and procedural justice in the Broward mental health court. *International Journal of Law and Psychiatry*, *25*, 517-533. doi: 0.1016/S0160-2527(01)00110-8
- Preacher, K. J., & Hayes, A. F. (2008). Asymptotic and resampling strategies for assessing and comparing indirect effects in multiple mediator models. *Behavior Research Methods*, *40*, 879-891. doi: 10.3758/BRM.40.3.879
- Quinn, M. C. (2000). Whose team am I on anyway? Musings of a public defender about drug treatment court process. *New York University Review of Law and Social Change*, *26*, 37-75.
- Quinn, M. C. (2009). The modern problem-solving court movement: Domination of discourse and untold stories of criminal justice reform. *Journal of Law & Policy*, *31*, 57-82.
- Redlich, A. D., Steadman, H. J., Monahan, J., Robbins, P. C., & Petrila, J. (2006). Patterns of practice in mental health courts: A national survey. *Law and Human Behavior*, *30*, 347-362. doi:10.1007/s10979-006-9036-x
- Richard, R., de Vries, N. K., & Van der Plicht, J. (1998). Anticipated regret and precautionary sexual behavior: Expectancy-value models of attitude and behavior [special issue]. *Journal of Applied Social Psychology*, 1411-1428. doi: 10.1111/j.1559-1816.1998.tb01684.x

- Richard, R., Van der Plicht, J. & de Vries, N. K. (1996). Anticipated regret and time perspective: Changing sexual risk-taking behavior. *Journal of Behavioral Decision Making*, 9, 185-199. doi: 10.1002/(SICI)1099-0771
- Ross, L. (1977). The intuitive psychologist and his shortcomings: Distortions in the attribution process. *Advances in Experimental Social Psychology*, 10, 173-220. doi:10.1016/S0065-2601(08)60357-3
- Rossman, S. B., Willison, J. B., Mallik-Kane, K., Kim, KiDeuk, Debus-Sherrill, S., & Downey, P. M. (2012). *Criminal justice interventions for offenders with mental illness: Evaluation of mental health courts in Bronx and Brooklyn, New York*. Washington, DC: Urban Institute Justice Policy Center.
- Schkade, D. A., & Kahneman, D. (1998). Does living in California make people happy? A focusing illusion in judgments of life satisfaction. *Psychological Science*, 9, 340-346. doi: 10.1111/1467-9280.00066
- Seltzer, T. (2005). Mental health courts: A misguided attempt to address the criminal justice system's unfair treatment of people with mental illnesses. *Psychology, Public Policy, and Law*, 11, 570-605. doi: 10.1037/1076-8971.11.4.570
- Silver, R. L., & Wortman, C. B. (1980). Coping with undesirable life events. In J. Garber & M. E. P. Seligman (Eds.), *Human helplessness: Theory and applications* (pp. 279-340). New York: Academic Press.
- Simmons v. State of Delaware, 788 A.2d 132 (2001).
- Simon, L. M. J. (1995). A therapeutic jurisprudence approach to the legal processing of domestic violence cases. *Psychology, Public Policy, and Law*, 1, 43-79. doi: 10.1037//1076-8971.1.1.43

- Sobel, M. E. (1982). Asymptotic confidence intervals for indirect effects in structural equation models. *Sociological Methodology*, *13*, 290-312. doi: 10.2307/270723
- State of Idaho v. Rogers, 170 P.3d 881 (2007).
- State of Illinois v. Anderson, 833 N.F.2d 390 (2005).
- State of Nebraska v. Shambley, 795 N.W.2d 844 (2011).
- State of Ohio v. Stafford, No. 2000 AP 12 0095. (Ohio Ct. App. Aug. 16, 2001).
- State of Tennessee v. Stewart, No. W2009-00980-CCA-R3-CD (Tenn.Crim.App. Aug. 18, 2010).
- State of Washington v. Cassill-Skilton, 94 P.3d 407 (2004).
- Suh, E., Diener, E., & Fujita, F. (1996). Events and subjective wellbeing: Only recent events matter. *Journal of Personality and Social Psychology*, *70*, 1091-1102. doi: 10.1037//0022-3514.70.5.1091
- Tyler, T. (2003). Procedural justice, legitimacy, and the effective rule of law. *Crime and Justice*, *30*, 283-357.
- U.S. Const. amend. V.
- Van Boven, L. & Loewenstein, G. (2003). Social projection of transient drive states. *Personality and Social Psychology Bulletin*, *9*, 1159-1168. doi: 10.1177/0146167203254597
- Watson, D., Clark, L. A., & Tellegen, A. (1998). Development and validation of brief measures of positive and negative affect: The PANAS scales. *Journal of Personality and Social Psychology*, *54*, 1063-1070. doi: 10.1037//0022-3514.54.6.1063

Watson, A., Hanrahan, P., Luchins, D., & Lurigio, A. (2001). Mental health courts and the complex issue of mentally ill offenders. *Psychiatric Services, 52*, 477-481.

doi: 10.1176/appi.ps.52.4.477

Wexler, D. B., & Winick, B. J. (1991). *Essays in therapeutic jurisprudence*. Durham, NC: Carolina Academic Press.

Wexler, D. B., & Winick, B. J. (1996). *Law in a therapeutic key: Developments in therapeutic jurisprudence*. Durham, NC: Carolina Academic Press.

Wiener, R. L., Bornstein, B. H., & Voss, A. (2006). Emotion and the law: A framework for inquiry. *Law and Human Behavior, 30*, 231-248. doi: 10.1007/s10979-006-9025-0

Wiener, R. L., & Georges, L. C., (2013). Social psychology and problem solving courts: Judicial roles and decision making. In R. L. Wiener & E. Brank (Eds.), *Problem solving courts: Perspectives in law and psychology*. New York, NY: Springer Press.

Wiener, R. L., Georges, L. C., & Cangas, J. (2014). Anticipated affect in sentencing decisions in first degree murder. Paper accepted to *Psychology, Public Policy, and Law*.

Wiener, R. L., Gervais, S. J., Allen, J., & Marquez, A. (2013). Eye of the beholder: Effects of perspective and sexual objectification on harassment judgments.

Psychology, Public Policy, and Law, 19, 206-221. doi: 10.1037/a0028497

Wiener, R. L., Winick, B. J., Skovran Georges, L., & Castro, A. (2010). A testable theory of problem solving courts: Avoiding past empirical and legal failures.

International Journal of Law and Psychiatry, 33, 417-427. doi:
10.1016/j.ijlp.2010.09.012

- Wilson, T. D., & Gilbert, D. T. (2003). Affective forecasting. In M. P. Zanna (Ed.), *Advances in experimental social psychology*, Vol. 35 (pp. 345-407). San Diego, CA: Academic Press.
- Wilson, T. D., & Gilbert, D. T. (2005). Affective forecasting: Knowing what to want. *Current Directions in Psychological Science*, 14, 131-134. doi: 10.1111/j.0963-7214.2005.00355.x
- Wilson, T. D., Wheatley, T., Meyers, J., Gilbert, D. T., & Axson, D. (2000). Focalism: A source of durability bias in affective forecasting. *Journal of Personality and Social Psychology*, 78, 821-836. doi:10.1037/0022-3514.78.5.821
- Winick, B. J. (1997). The jurisprudence of therapeutic jurisprudence. *Psychology, Public Policy, and Law*, 3, 184-206. doi: 10.1037/1076-8971.3.1.184
- Winick, B. J. (2000). Applying the law therapeutically in domestic violence cases. *University of Missouri-Kansas City law Review*, 69, 33-91.
- Winick, B. J. (2003). Therapeutic jurisprudence and problem solving courts. *Fordham Urban Law Journal*, 30, 1055-1090.
- Winick, B. J., & Wexler, D. B. (2002). Drug treatment court: Therapeutic jurisprudence applied. *Touro Law Review*, 18, 479-485.
- Winick, B. J., & Wexler, D. B. (Eds.). (2003). *Judging in a therapeutic key: Therapeutic jurisprudence and the courts*. Durham, NC: Carolina Academic Press.

- Wortman, C. B., & Silver, R. C. (1989). The myths of coping with loss. *Journal of Consulting and Clinical Psychology, 57*, 349-357. doi: 10.1037//0022-006X.57.3.349
- Zeelenberg, M. (1999). Anticipated regret, expected feedback and behavioral decision-making. *Journal of Behavioral Decision Making, 12*, 93-106. doi: 10.1002/(SICI)1099-0771(199906)12:2<93::AID-BDM311>3.0.CO;2-S
- Zeelenberg, M., & Pieters, R. (2004). Consequences of regret aversion in real life: The case of the Dutch postcode lottery. *Organizational Behavior and Human Decision Processes, 93*, 155-168. doi: 10.1016/j.obhdp.2003.10.001
- Zeelenberg, M., van Dijk, W. W., Manstead, A. S. R., & van der Pligt, J. (2000). On bad decisions and disconfirmed expectancies: The psychology of regret and disappointment. *Cognition and Emotion, 14*, 521-541. doi: 10.1080/026999300402781

Table 2

*Exploratory Factor Analysis with Varimax Rotation for the PANAS-X Intensity Scale—
Experiment 1*

| Emotion | Factor | | | |
|--------------|------------|------------|------------|------------|
| | 1 | 2 | 3 | 4 |
| Angry | .76 | -.12 | -.05 | .07 |
| Upset | .74 | -.25 | .26 | .13 |
| Surprised | .70 | .13 | .01 | -.14 |
| Scared | .63 | -.19 | .54 | .10 |
| Distressed | .62 | -.32 | .27 | .29 |
| Afraid | .60 | -.03 | .57 | .09 |
| Nervous | .59 | -.10 | .53 | .05 |
| Happy | -.13 | .79 | -.14 | -.09 |
| Enthusiastic | -.02 | .78 | .03 | .07 |
| Inspired | -.11 | .78 | .06 | .01 |
| Relaxed | -.21 | .74 | -.16 | .01 |
| Excited | .06 | .50 | .08 | .29 |
| Ashamed | .09 | -.08 | .87 | .07 |
| Embarrassed | .14 | .12 | .82 | .09 |
| Alert | .14 | -.04 | .04 | .83 |
| Determined | -.06 | .40 | .19 | .57 |

Note. Entries in the table are factor loadings with a cutoff of .60.

Table 3

*Exploratory Factor Analysis with Varimax Rotation for the PANAS-X Duration Scale—
Experiment 1*

| Emotion | Factor | | | | |
|--------------|------------|------------|------------|------------|------------|
| | 1 | 2 | 3 | 4 | 5 |
| Scared | .86 | -.05 | .17 | .10 | .09 |
| Afraid | .85 | -.01 | .19 | .11 | .02 |
| Nervous | .81 | -.01 | .08 | .12 | -.05 |
| Distressed | .60 | -.10 | .12 | .36 | .05 |
| Happy | -.04 | .84 | -.01 | -.05 | .11 |
| Enthusiastic | -.02 | .81 | .04 | -.05 | .11 |
| Excited | .10 | .74 | .01 | -.11 | .02 |
| Relaxed | -.19 | .68 | -.05 | .07 | .09 |
| Surprised | .35 | .36 | .07 | .35 | -.11 |
| Embarrassed | .21 | .05 | .91 | .06 | .08 |
| Ashamed | .22 | -.04 | .90 | .08 | .07 |
| Angry | .11 | -.01 | .01 | .85 | -.09 |
| Upset | .31 | -.13 | .11 | .75 | .02 |
| Determined | -.09 | .09 | .15 | -.05 | .83 |
| Inspired | -.03 | .24 | -.05 | -.25 | .66 |
| Alert | .30 | -.01 | .05 | .26 | .51 |

Note. Entries in the table are factor loadings with a cutoff of .60.

Table 4

*Bivariate Correlations Between Embarrassed and Ashamed Intensity and Duration—
Experiment 1*

| Item | 1 | 2 | 3 | 4 |
|--------------------------|---|-----|-----|-----|
| 1. Embarrassed Intensity | - | .66 | .49 | .48 |
| 2. Ashamed Intensity | | - | .52 | .56 |
| 3. Embarrassed Duration | | | - | .76 |
| 4. Ashamed Duration | | | | - |

Note. All correlations are significant at $p < .001$.

Table 5

*Correlations between Self and Friend Drug Problems and the Dependent Measures—
Experiment 1a*

| Dependent Variable | Self Drug Problems | | Friend Drug Problems | |
|---------------------------|--------------------|----------|----------------------|----------|
| | <i>r</i> | <i>p</i> | <i>r</i> | <i>p</i> |
| Positive Affect Intensity | .12 | .10 | .01 | .87 |
| Negative Affect Intensity | -.02 | .82 | .12 | .10 |
| Positive Affect Duration | .04 | .60 | .01 | .94 |
| Negative Affect Duration | -.07 | .36 | .08 | .29 |
| Embarrassed and Ashamed | -.11 | .14 | -.004 | .96 |
| Wellbeing Intensity | -.05 | .53 | .08 | .27 |
| Wellbeing Duration | -.10 | .17 | .01 | .91 |
| Procedural Fairness | .01 | .87 | .01 | .17 |

Table 6
Means and Standard Deviations by Perspective for the Due Process Present Condition—Experiment 1a (Drug Court)

| Scale | Perspective | | | | | | | | | | | |
|---------------------------|-------------|-----------|----------|-----------|---------------------------------|-----------|--------------------------------|-----------|--|--|--|--|
| | Predictor | | Observer | | Actor-Referenced Experiencer | | Self-Referenced Experiencer | | | | | |
| | <i>M</i> | <i>SD</i> | <i>M</i> | <i>SD</i> | <i>M</i> | <i>SD</i> | <i>M</i> | <i>SD</i> | | | | |
| Coping Scale | 2.71 | 1.28 | 4.50 | 1.31 | 3.49 | .93 | 3.83 | 1.55 | | | | |
| Similarity Scale | 4.72 | 1.58 | 3.87 | 1.32 | 1.80 | .84 | 2.31 | 1.39 | | | | |
| Positive Affect Intensity | 1.03 | .09 | 1.29 | .53 | 1.12 | .29 | 1.21 | .50 | | | | |
| Negative Affect Intensity | 3.42 | .63 | 3.60 | .90 | 3.52 | .82 | 3.57 | .62 | | | | |
| Positive Affect Duration | 1.41 | 1.64 | 3.36 | 4.62 | 1.30 | 1.01 | 1.73 | 1.86 | | | | |
| Negative Affect Duration | 19.87 | 7.91 | 17.05 | 8.91 | 19.21 | 8.46 | 18.51 | 7.74 | | | | |
| Embarrassed and Ashamed | -.09 | .90 | -.28 | 0.86 | -.28 | .72 | .48 | .80 | | | | |
| Wellbeing Intensity | 4.86 | 1.59 | 4.44 | 1.49 | 4.79 | 1.47 | 5.63 | 1.07 | | | | |
| Wellbeing Duration | 4.40 | 1.52 | 4.01 | 1.16 | 4.44 | 1.17 | 4.83 | 1.03 | | | | |
| Procedural Fairness | 4.21 | 1.45 | 5.06 | 1.17 | 4.46 | 1.27 | 4.60 | 1.40 | | | | |

Note. The embarrassed and ashamed scale is in standardized *Z* scores.

Table 7
Means and Standard Deviations by Perspective for the Due Process Absent Condition—Experiment 1a (Drug Court)

| Scale | Perspective | | | | | | | |
|---------------------------|-------------|-----------|----------|-----------|------------------------------|-----------|-----------------------------|-----------|
| | Predictor | | Observer | | Actor-Referenced Experiencer | | Self-Referenced Experiencer | |
| | <i>M</i> | <i>SD</i> | <i>M</i> | <i>SD</i> | <i>M</i> | <i>SD</i> | <i>M</i> | <i>SD</i> |
| Coping Scale | 2.70 | 1.62 | 4.47 | 1.27 | 3.52 | .85 | 3.88 | 1.51 |
| Similarity Scale | 4.54 | 1.15 | 3.85 | 1.35 | 2.09 | .98 | 2.53 | 1.11 |
| Positive Affect Intensity | 1.09 | .27 | 1.06 | .13 | 1.15 | .43 | 1.19 | .43 |
| Negative Affect Intensity | 3.63 | .62 | 3.69 | .76 | 3.48 | .92 | 3.37 | .75 |
| Positive Affect Duration | 2.11 | 3.33 | 2.15 | 3.67 | 2.33 | 3.66 | 2.05 | 2.97 |
| Negative Affect Duration | 22.7 | 8.09 | 21.10 | 9.50 | 20.03 | 9.37 | 20.40 | 9.68 |
| Embarrassed and Ashamed | -.15 | .69 | .13 | .82 | -.01 | .82 | .19 | .90 |
| Wellbeing Intensity | 5.08 | .99 | 5.38 | 1.17 | 5.01 | 1.41 | 5.32 | .97 |
| Wellbeing Duration | 4.38 | 1.00 | 4.75 | 1.31 | 4.58 | 1.23 | 4.95 | .91 |
| Procedural Fairness | 3.86 | 1.35 | 3.72 | 1.66 | 3.44 | 1.72 | 3.27 | 1.06 |

Note. The embarrassed and ashamed scale is in standardized *Z* scores.

Table 8

MANOVA Results of the Effect of Due Process on Each Dependent Variable – Experiment 1a (Drug Court)

| Dependent Variable | Due Process | | | | <i>F</i> (1, 201) | <i>p</i> |
|---------------------------|-------------|-----------|----------|-----------|-------------------|----------|
| | Present | | Absent | | | |
| | <i>M</i> | <i>SD</i> | <i>M</i> | <i>SD</i> | | |
| Positive Affect Intensity | 1.16 | .39 | 1.12 | .33 | .51 | .48 |
| Negative Affect Intensity | 3.52 | .74 | 3.54 | .77 | .06 | .81 |
| Positive Affect Duration | 1.91 | 2.70 | 2.16 | 3.37 | .32 | .57 |
| Negative Affect Duration | 18.73 | 8.18 | 21.11 | 9.08 | 3.82 | .05 |
| Embarrassed and Ashamed | -.04 | .87 | .04 | .81 | .42 | .52 |
| Wellbeing Intensity | 4.93 | 1.47 | 5.20 | 1.13 | 2.07 | .15 |
| Wellbeing Duration | 4.42 | 1.27 | 4.67 | 1.12 | 2.03 | .16 |
| Procedural Fairness | 4.85 | 1.35 | 3.58 | 1.46 | 41.47 | .00 |

Note. The embarrassed and ashamed scale is in standardized *Z* scores.

Table 9

The Indirect Effects of Procedural Fairness on Negative Affect Duration Due to Due Process – Experiment 1a (Drug Court)

| Mediation Source | Indirect Effect | S.E. | 95th Percent Confidence Interval | |
|---------------------|-----------------|------|----------------------------------|----------------|
| | | | Lower Boundary | Upper Boundary |
| Procedural fairness | -.74 | .55 | -1.86 | .31 |

Note. The coefficient and standard of error come from the bootstrap method.

Table 10

Correlations between Self and Friend Mental Health Problems and Dependent Measures—Experiment 1b (Mental Health Court)

| Dependent Variable | Self Mental Illness Problems | | Friend Mental Illness Problems | |
|---------------------------|------------------------------|----------|--------------------------------|----------|
| | <i>r</i> | <i>p</i> | <i>r</i> | <i>p</i> |
| Positive Affect Intensity | -.08 | .26 | -.12 | .09 |
| Negative Affect Intensity | .14 | .07 | .20 | .01 |
| Positive Affect Duration | .01 | .94 | -.06 | .44 |
| Negative Affect Duration | .06 | .42 | .13 | .08 |
| Embarrassed and Ashamed | .07 | .33 | .04 | .56 |
| Wellbeing Intensity | .04 | .58 | .01 | .94 |
| Wellbeing Duration | -.01 | .85 | -.07 | .34 |
| Procedural Fairness | -.01 | .85 | -.11 | .14 |

Table 11

Means and Standard Deviations by Perspective for the Due Process Present Condition—Experiment 1b (Mental Health Court)

| Scale | Perspective | | | | | | | |
|---------------------------|-------------|-----------|----------|-----------|---------------------------------|-----------|--------------------------------|-----------|
| | Predictor | | Observer | | Actor-Referenced Experiencer | | Self-Referenced Experiencer | |
| | <i>M</i> | <i>SD</i> | <i>M</i> | <i>SD</i> | <i>M</i> | <i>SD</i> | <i>M</i> | <i>SD</i> |
| Coping Scale | 2.57 | 1.04 | 4.42 | 1.20 | 3.67 | 1.17 | 3.06 | 1.26 |
| Similarity Scale | 4.15 | 1.29 | 3.97 | 1.18 | 2.54 | .95 | 2.64 | 1.50 |
| Positive Affect Intensity | 1.16 | .35 | 1.16 | .24 | 1.06 | .14 | 1.10 | .22 |
| Negative Affect Intensity | 3.68 | .95 | 3.44 | .72 | 3.58 | .83 | 3.83 | .98 |
| Positive Affect Duration | 1.63 | 2.07 | 1.90 | 1.95 | 1.53 | 1.94 | 1.93 | 2.50 |
| Negative Affect Duration | 19.67 | 8.81 | 16.21 | 6.98 | 17.89 | 9.70 | 21.42 | 8.78 |
| Embarrassed and Ashamed | -.10 | .68 | -.15 | .80 | .15 | .88 | .18 | .87 |
| Wellbeing Intensity | 4.79 | 1.12 | 5.03 | 1.27 | 5.06 | 1.15 | 5.57 | 1.08 |
| Wellbeing Duration | 4.40 | 1.01 | 4.14 | 1.44 | 4.67 | 0.93 | 4.72 | .96 |
| Procedural Fairness | 5.28 | 1.34 | 5.03 | 1.27 | 3.81 | 1.30 | 3.48 | 1.38 |

Note. The embarrassed and ashamed scale is in standardized *Z* scores.

Table 12

Means and Standard Deviations by Perspective for the Due Process Absent Condition—Experiment 1b (Mental Health Court)

| Scale | Perspective | | | | | | | | | | | |
|---------------------------|-------------|-----------|----------|-----------|---------------------------------|-----------|--------------------------------|-----------|--|--|--|--|
| | Predictor | | Observer | | Actor-Referenced Experiencer | | Self-Referenced Experiencer | | | | | |
| | <i>M</i> | <i>SD</i> | <i>M</i> | <i>SD</i> | <i>M</i> | <i>SD</i> | <i>M</i> | <i>SD</i> | | | | |
| Coping Scale | 2.23 | 1.43 | 3.27 | 1.41 | 3.46 | 1.25 | 3.69 | 1.58 | | | | |
| Similarity Scale | 4.52 | 1.56 | 3.69 | 1.4 | 2.20 | 1.40 | 2.78 | 1.74 | | | | |
| Positive Affect Intensity | 1.10 | .28 | 1.12 | .45 | 1.28 | .92 | 1.15 | .38 | | | | |
| Negative Affect Intensity | 3.79 | .61 | 3.85 | .85 | 3.68 | .92 | 3.92 | .68 | | | | |
| Positive Affect Duration | 1.68 | 1.93 | 2.63 | 5.50 | 2.49 | 3.29 | 4.84 | 9.18 | | | | |
| Negative Affect Duration | 23.04 | 9.35 | 22.43 | 9.72 | 20.28 | 7.82 | 18.96 | 9.90 | | | | |
| Embarrassed and Ashamed | -.14 | .80 | -.03 | .95 | -0.07 | .68 | .29 | .79 | | | | |
| Wellbeing Intensity | 5.60 | 1.00 | 4.87 | 1.79 | 4.99 | 1.30 | 5.54 | 1.33 | | | | |
| Wellbeing Duration | 5.17 | 1.10 | 4.48 | 1.67 | 4.38 | 1.43 | 5.19 | 1.34 | | | | |
| Procedural Fairness | 3.58 | 1.38 | 3.62 | 1.77 | 2.96 | 1.38 | 3.01 | 1.77 | | | | |

Note. The embarrassed and ashamed scale is in standardized *Z* scores.

Table 13

MANOVA Results of the Effect of Due Process on Each Dependent Variable – Experiment 1b (Mental Health Court)

| Dependent Variable | Due Process | | | | <i>F</i> (1, 191) | <i>p</i> |
|---------------------------|-------------|-----------|----------|-----------|-------------------|----------|
| | Present | | Absent | | | |
| | <i>M</i> | <i>SD</i> | <i>M</i> | <i>SD</i> | | |
| Positive Affect Intensity | 1.12 | .25 | 1.14 | .46 | .11 | .74 |
| Negative Affect Intensity | 3.63 | .88 | 3.80 | .77 | 2.13 | .15 |
| Positive Affect Duration | 1.72 | 2.09 | 2.92 | 5.74 | 3.58 | .07 |
| Negative Affect Duration | 18.86 | 8.70 | 21.11 | 9.26 | 3.01 | .08 |
| Embarrassed and Ashamed | -.02 | .81 | .02 | .81 | .42 | .72 |
| Wellbeing Intensity | 5.11 | 1.17 | 5.28 | 1.40 | .89 | .35 |
| Wellbeing Duration | 4.47 | 1.11 | 4.81 | 1.44 | 3.25 | .07 |
| Procedural Fairness | 4.51 | 1.48 | 3.29 | 1.59 | 30.5 | .00 |

Note. The embarrassed and ashamed scale is in standardized *Z* scores.

Table 14

Alpha Reliabilities, Means, and Standard Deviations for Experiment 2 Scales

| Scale | Overall | | |
|---------------------------|----------|-------|------|
| | α | M | SD |
| Similarity Scale | .94 | 3.34 | 1.58 |
| Positive Affect Intensity | .87 | 1.20 | .50 |
| Negative Affect Intensity | .91 | 4.18 | .88 |
| Positive Affect Duration | .73 | 2.27 | 3.70 |
| Negative Affect Duration | .85 | 22.65 | 9.32 |
| Embarrassed and Ashamed | .82 | .01 | .80 |
| Wellbeing Intensity | .87 | 5.39 | 1.20 |
| Wellbeing Duration | .86 | 4.89 | 1.26 |
| Procedural Fairness | .89 | 3.02 | 1.46 |

Note. The embarrassed and ashamed scale is in standardized Z scores

Table 15

*Exploratory Factor Analysis with Varimax Rotation for the PANAS-X Intensity Scale—
Experiment 2*

| Emotion | Factor | | |
|--------------|------------|------------|------------|
| | 1 | 2 | 3 |
| Afraid | .85 | -.19 | .10 |
| Scared | .81 | -.23 | .15 |
| Upset | .81 | -.29 | .05 |
| Nervous | .80 | -.26 | .12 |
| Distressed | .78 | -.32 | .08 |
| Angry | .67 | -.20 | .19 |
| Surprised | .56 | .14 | .31 |
| Alert | .38 | .34 | .21 |
| Enthusiastic | -.03 | .82 | .04 |
| Happy | -.30 | .81 | -.05 |
| Inspired | -.24 | .78 | -.08 |
| Relaxed | -.39 | .77 | .07 |
| Excited | .09 | .73 | -.14 |
| Embarrassed | .33 | -.09 | .82 |
| Ashamed | .32 | -.15 | .81 |
| Determined | -.24 | .43 | .45 |

Note. Entries in the table are factor loadings with a cutoff of .60.

Table 16

*Exploratory Factor Analysis with Varimax Rotation for the PANAS-X Duration Scale—
Experiment 2*

| Emotion | Factor | | | |
|--------------|------------|------------|------------|------------|
| | 1 | 2 | 3 | 4 |
| Scared | .84 | -.09 | .04 | -.003 |
| Afraid | .82 | -.09 | .08 | .05 |
| Nervous | .73 | -.08 | .16 | .13 |
| Distressed | .68 | -.10 | .28 | -.05 |
| Upset | .60 | -.03 | .52 | -.07 |
| Angry | .49 | -.04 | .42 | -.15 |
| Surprised | .37 | .22 | .23 | .11 |
| Relaxed | -.12 | .83 | -.09 | .04 |
| Happy | -.14 | .77 | -.06 | .13 |
| Enthusiastic | -.12 | .70 | .14 | .01 |
| Excited | .23 | .68 | -.12 | .01 |
| Embarrassed | .20 | -.02 | .85 | .12 |
| Ashamed | .21 | -.07 | .83 | .11 |
| Determined | .03 | .04 | .06 | .87 |
| Inspired | -.17 | .30 | .05 | .66 |
| Alert | .39 | -.02 | .07 | .51 |

Note. Entries in the table are factor loadings with a cutoff of .60.

Table 17

*Bivariate Correlations Between Embarrassed and Ashamed Intensity and Duration—
Experiment 2*

| Item | 1 | 2 | 3 | 4 |
|--------------------------|---|-----|-----|-----|
| 1. Embarrassed Intensity | - | .71 | .48 | .41 |
| 2. Ashamed Intensity | | - | .39 | .47 |
| 3. Embarrassed Duration | | | - | .79 |
| 4. Ashamed Duration | | | | - |

Note. All correlations are significant at $p < .001$.

Table 18

Correlations Between Self and Friend Mental Health Problems and Dependent Measures—Experiment 2

| Dependent Variable | Self Mental Illness Problems | | Friend Mental Illness Problems | |
|---------------------------|------------------------------|----------|--------------------------------|----------|
| | <i>r</i> | <i>p</i> | <i>r</i> | <i>p</i> |
| Positive Affect Intensity | -.09 | .19 | -.10 | .16 |
| Negative Affect Intensity | .10 | .14 | .10 | .16 |
| Positive Affect Duration | .05 | .45 | .08 | .26 |
| Negative Affect Duration | .12 | .09 | .05 | .49 |
| Embarrassed and Ashamed | .03 | .63 | .09 | .20 |
| Wellbeing Intensity | .23 | .001 | .10 | .16 |
| Wellbeing Duration | .15 | .03 | .03 | .66 |
| Procedural Fairness | -.05 | .45 | -.03 | .64 |

Table 19
Means and Standard Deviations by Perspective for the Coping Present Condition—Experiment 2

| Scale | Perspective | | | | | | | |
|---------------------------|-------------|-----------|----------|-----------|---------------------------------|-----------|--------------------------------|-----------|
| | Predictor | | Observer | | Actor-Referenced Experiencer | | Self-Referenced Experiencer | |
| | <i>M</i> | <i>SD</i> | <i>M</i> | <i>SD</i> | <i>M</i> | <i>SD</i> | <i>M</i> | <i>SD</i> |
| Similarity Scale | 4.15 | 1.38 | 3.47 | .99 | 2.11 | 1.02 | 2.65 | 1.18 |
| Positive Affect Intensity | 1.13 | .21 | 1.37 | .87 | 1.28 | .57 | 1.18 | .31 |
| Negative Affect Intensity | 4.38 | .54 | 3.96 | .78 | 3.98 | 1.19 | 3.86 | 1.16 |
| Positive Affect Duration | 2.56 | 5.28 | 2.89 | 4.2 | 1.91 | 1.92 | 2.32 | 2.69 |
| Negative Affect Duration | 23.22 | 9.33 | 19.19 | 9.7 | 21.54 | 10.98 | 21.38 | 9.79 |
| Embarrassed and Ashamed | .25 | .71 | -.16 | .74 | .20 | .78 | -.03 | .86 |
| Wellbeing Intensity | 5.55 | 1.07 | 5.01 | 1.05 | 4.88 | 1.29 | 5.15 | 1.42 |
| Wellbeing Duration | 5.12 | 1.17 | 4.55 | 1.14 | 4.74 | 1.30 | 4.87 | 1.48 |
| Procedural Fairness | 3.03 | 1.30 | 3.09 | 1.52 | 2.59 | 1.38 | 3.46 | 1.27 |

Note. The embarrassed and ashamed scale is in standardized *Z* scores.

Table 20
Means and Standard Deviations by Perspective for the Coping Absent Condition—Experiment 2

| Scale | Predictor | | Observer | | Actor-Referenced Experiencer | | Self-Referenced Experiencer | |
|---------------------------|-----------|-----------|----------|-----------|---------------------------------|-----------|--------------------------------|-----------|
| | <i>M</i> | <i>SD</i> | <i>M</i> | <i>SD</i> | <i>M</i> | <i>SD</i> | <i>M</i> | <i>SD</i> |
| | | | | | | | | |
| Similarity Scale | 5.02 | 1.47 | 4.01 | 1.2 | 2.03 | .95 | 2.95 | 1.56 |
| Positive Affect Intensity | 1.24 | .50 | 1.12 | .21 | 1.10 | .24 | 1.17 | .67 |
| Negative Affect Intensity | 4.30 | 0.87 | 4.33 | .74 | 4.39 | .50 | 4.19 | .98 |
| Positive Affect Duration | 1.60 | 1.71 | 2.53 | 6.00 | 2.67 | 3.22 | 1.78 | 1.98 |
| Negative Affect Duration | 23.49 | 8.21 | 21.87 | 8.89 | 24.24 | 9.11 | 25.72 | 8.27 |
| Embarrassed and Ashamed | .05 | .83 | -.24 | .86 | .11 | .75 | -.06 | .84 |
| Wellbeing Intensity | 5.33 | 1.43 | 5.48 | 1.24 | 5.51 | .80 | 6.09 | .89 |
| Wellbeing Duration | 4.76 | 1.37 | 4.88 | 1.56 | 4.74 | .88 | 5.38 | .97 |
| Procedural Fairness | 3.65 | 1.78 | 3.12 | 1.45 | 2.72 | 1.01 | 2.56 | 1.56 |

Note. The embarrassed and ashamed scale is in standardized *Z* scores.

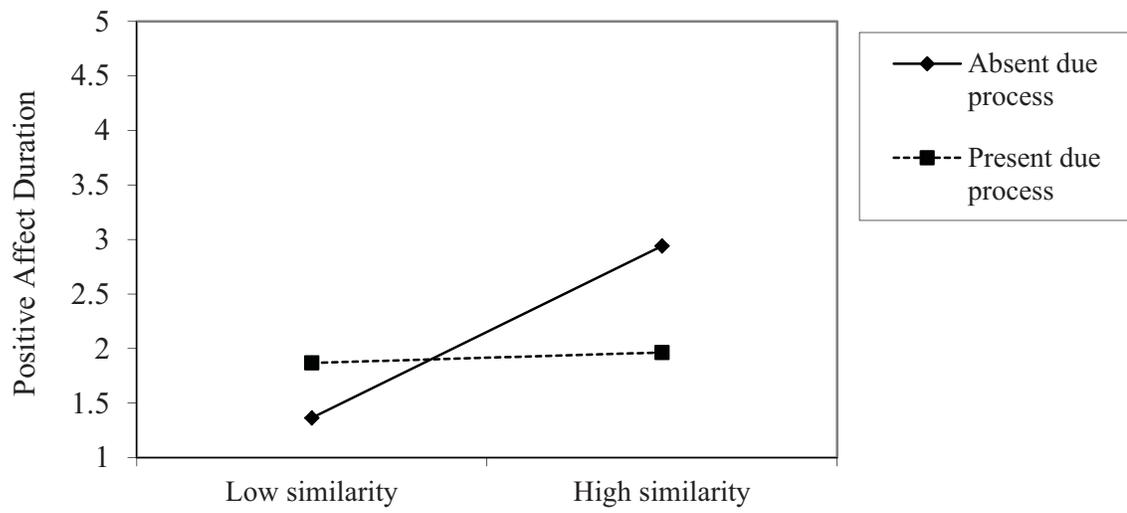


Figure 1. Similarity by due process interaction for positive affect duration – Experiment 1a (drug court). The positive affect duration scale ranges from 0-35. A truncated scale is presented for clarity. Similarity mean centered, +/- 1 *SD*.

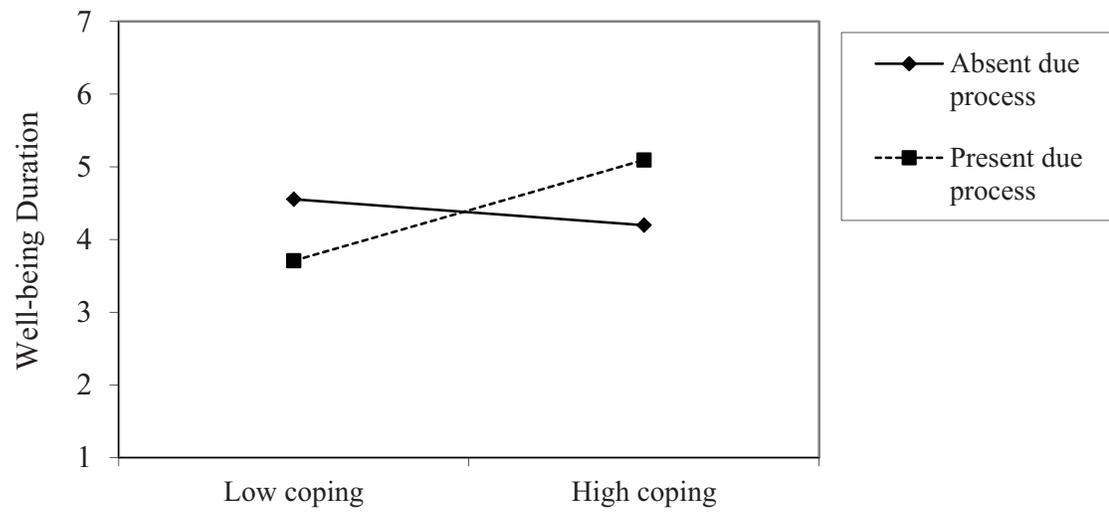


Figure 2. Coping by due process interaction for the predictor perspective for well-being duration – Experiment 1a (drug court). The well-being duration scale ranges from 1-7.

Coping mean centered, +/- 1 *SD*.

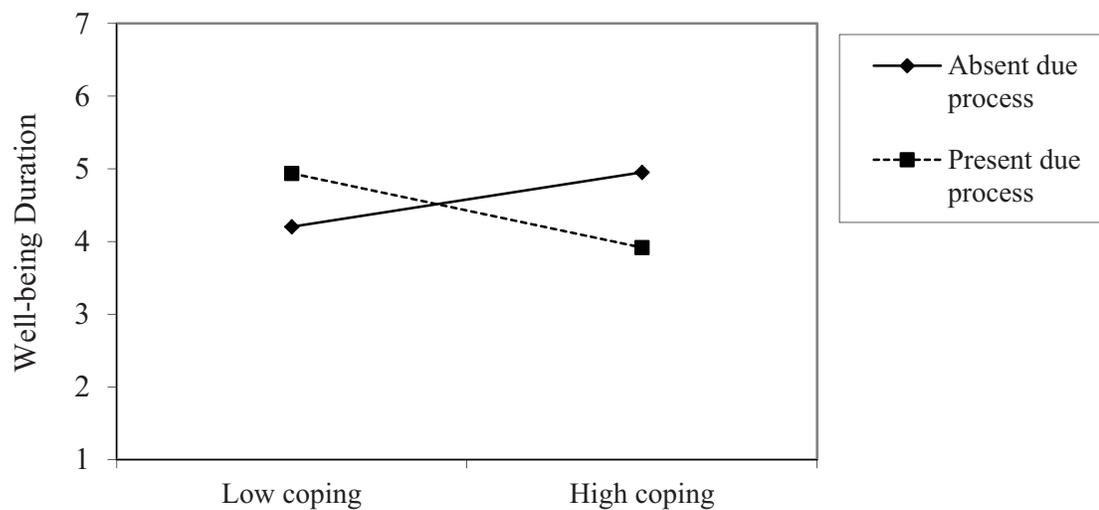


Figure 3. Coping by due process interaction for the actor-referenced experiencer perspective for well-being duration – Experiment 1a (drug court). The well-being duration scale ranges from 1-7. Coping mean centered, +/- 1 *SD*.

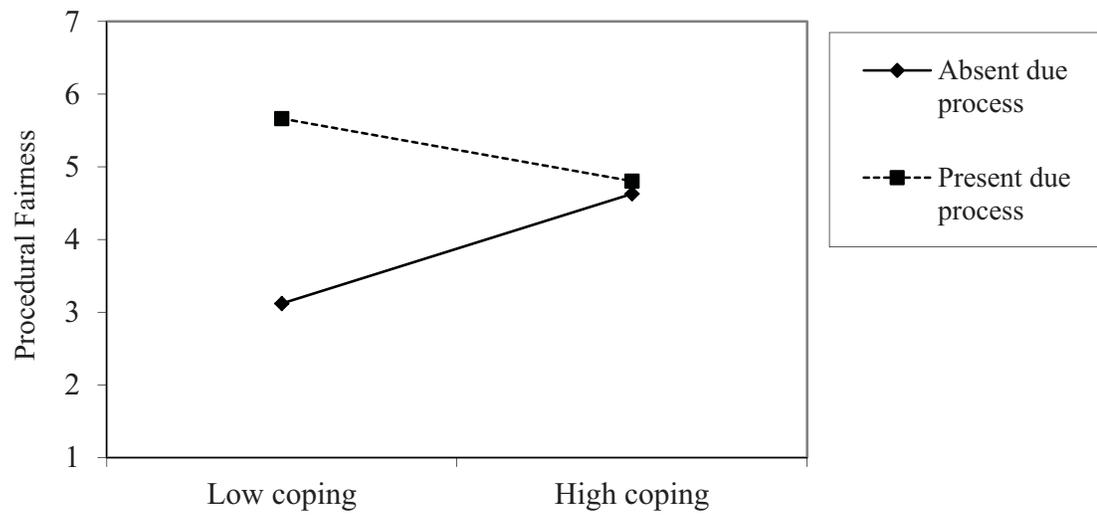


Figure 4. Coping by due process interaction for the predictor perspective for procedural fairness – Experiment 1a (drug court). The procedural fairness scale ranges from 1-7.

Coping mean centered, +/- 1 *SD*.

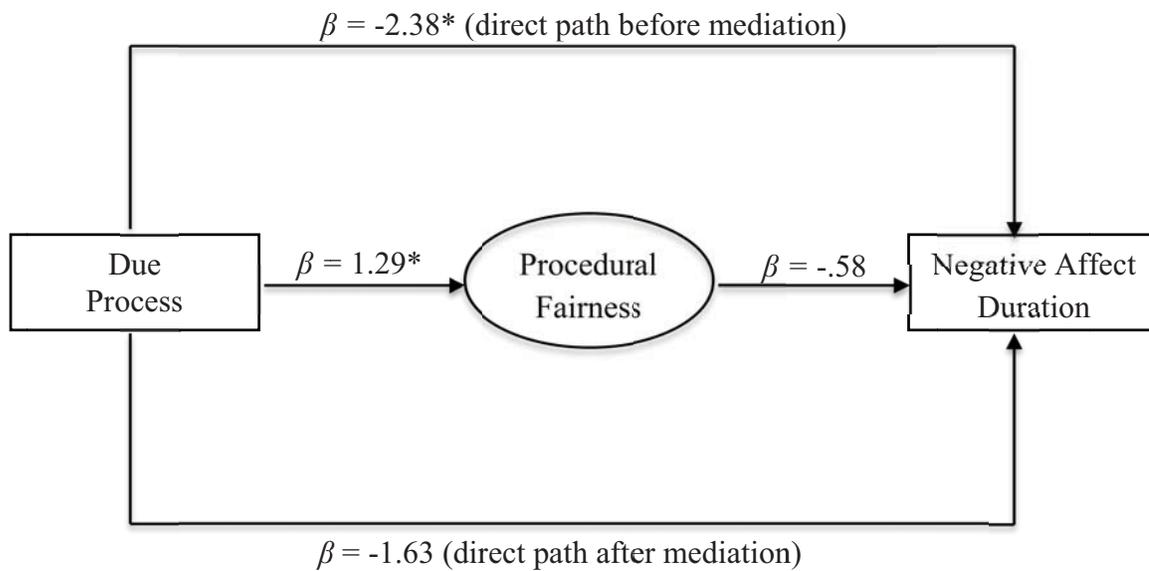


Figure 5. Model testing the mediating relationship of procedural fairness on the predictive value of due process on negative affect intensity—Experiment 1a (drug court).

* $p < .05$.

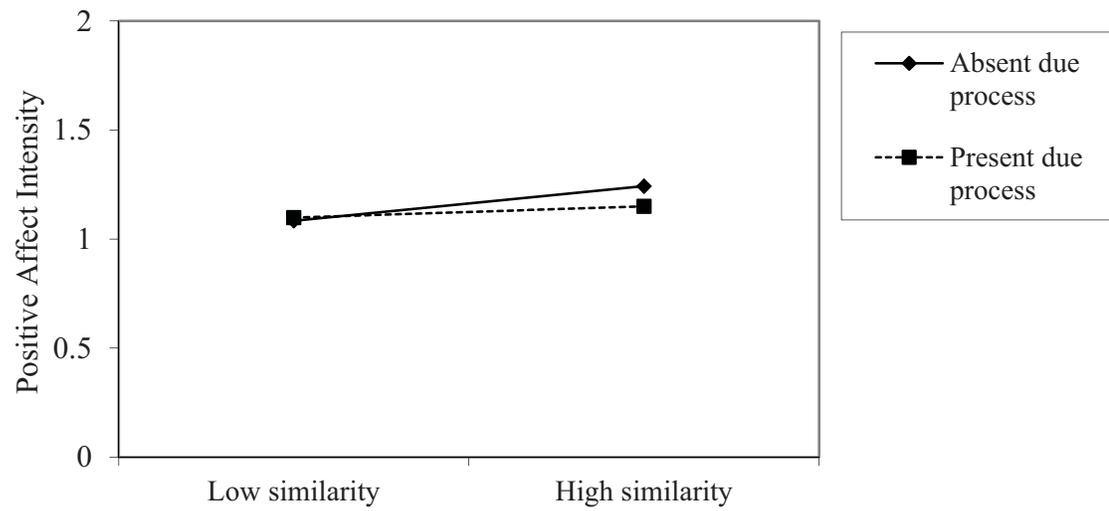


Figure 6. Similarity by due process interaction for positive affect intensity – Experiment 1b (mental health court). The positive affect intensity scale ranges from 1-7. A truncated scale is presented for clarity. Similarity mean centered, +/- 1 *SD*.

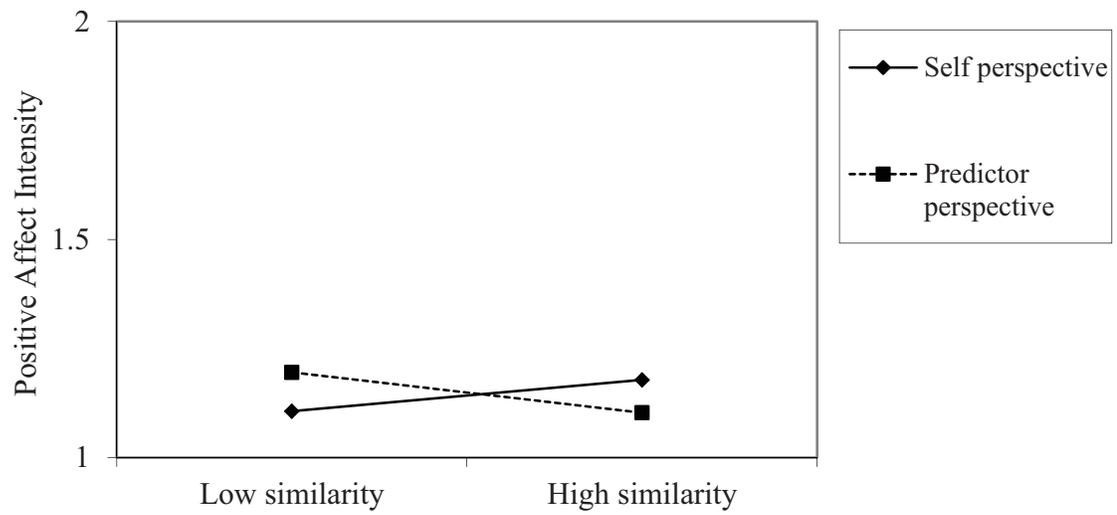


Figure 7. Similarity by the predictor vs. self-referenced experiencer perspective comparison interaction for positive affect intensity – Experiment 1b (mental health court). The positive affect intensity scale ranges from 1-7. A truncated scale is presented for clarity. Similarity mean centered, +/- 1 *SD*.

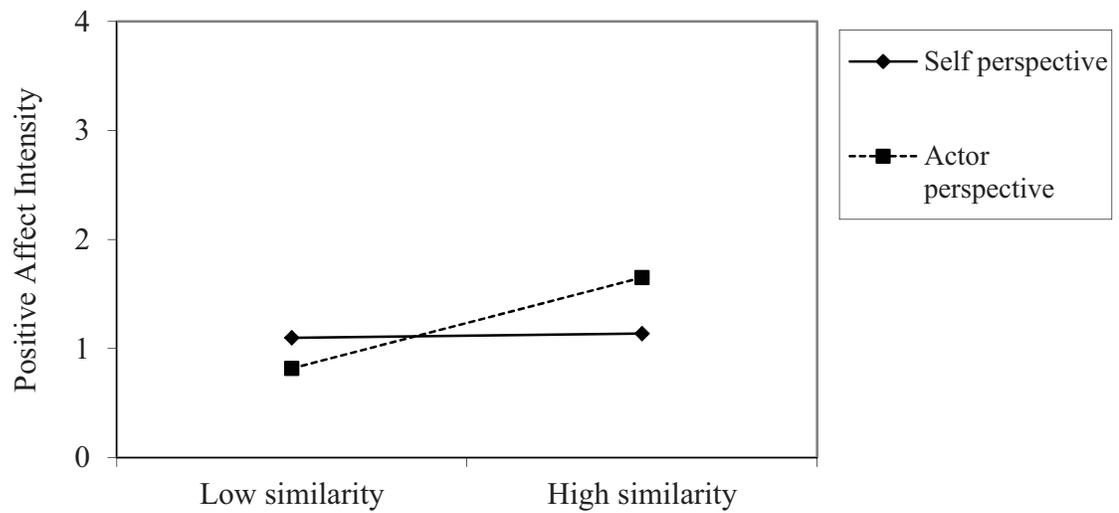


Figure 8. Similarity by the actor-referenced experiencer vs. self-referenced experiencer perspective comparison interaction for positive affect intensity – Experiment 1b (mental health court). The positive affect intensity scale ranges from 1-7. A truncated scale is presented for clarity. Similarity mean centered, +/- 1 *SD*.

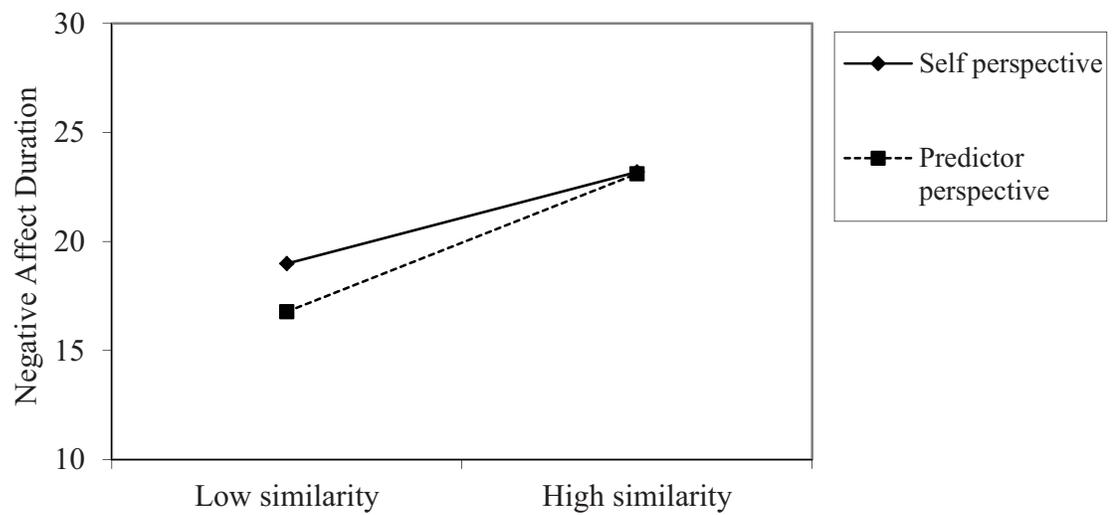


Figure 9. Similarity by the predictor vs. self-referenced experiencer perspective comparison interaction for negative affect duration – Experiment 1b (mental health court). The negative affect duration scale ranges from 0-35. A truncated scale is presented for clarity. Similarity mean centered, +/- 1 *SD*.

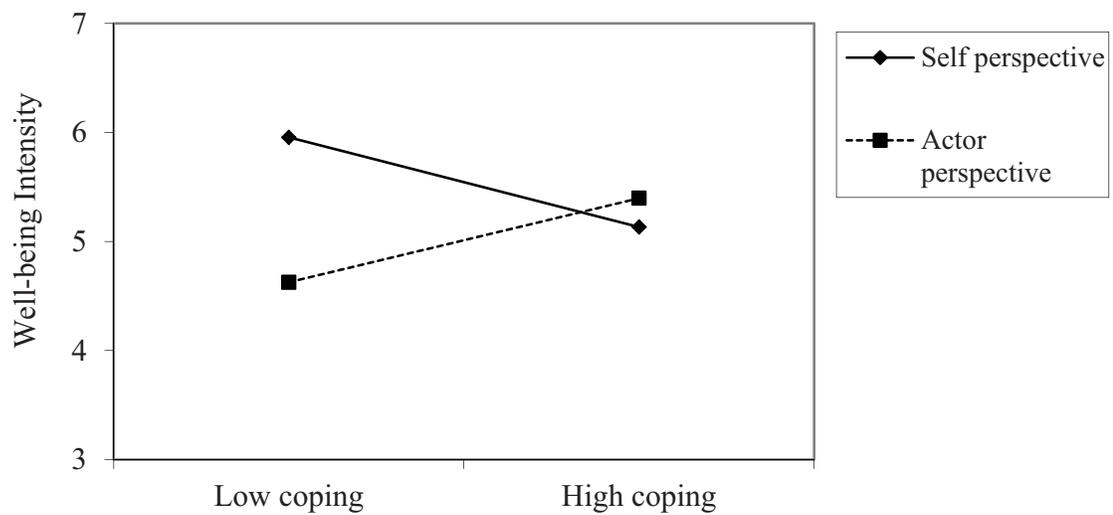


Figure 10. Coping by the actor-referenced experiencer vs. self-referenced experiencer perspective comparison interaction for well-being intensity – Experiment 1b (mental health court). The well-being intensity scale ranges from 1-7. A truncated scale is presented for clarity. Coping mean centered, ± 1 *SD*.

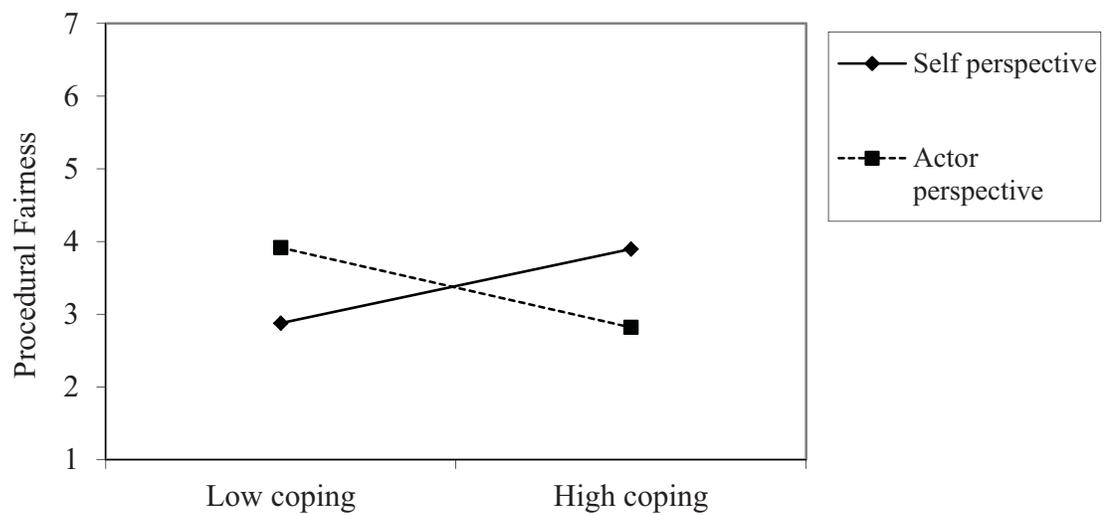


Figure 11. Coping by the actor-referenced experiencer vs. self-referenced experiencer perspective comparison interaction for procedural fairness – Experiment 1b (mental health court). The procedural fairness scale ranges from 1-7. Coping mean centered, +/- 1 *SD*.

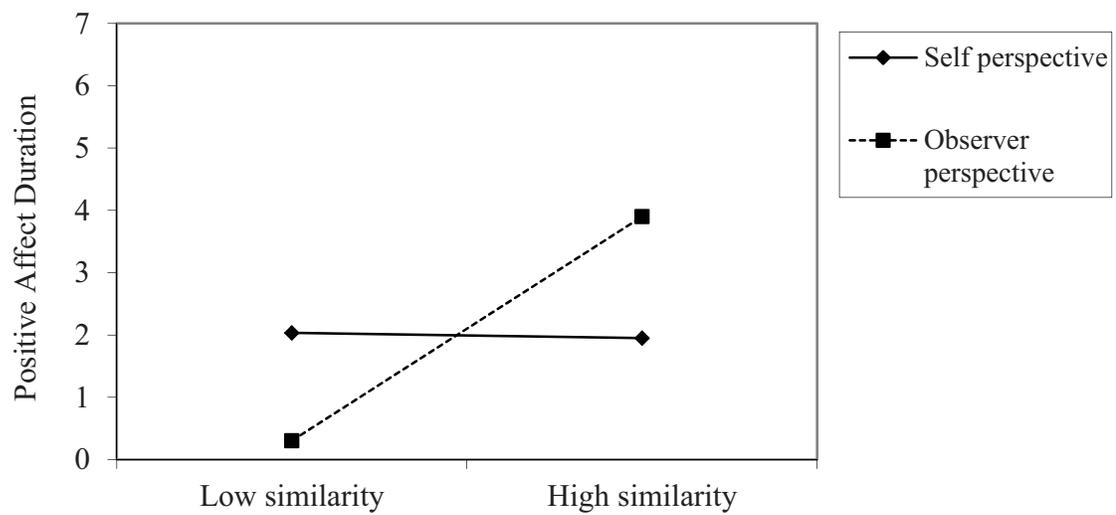


Figure 12. Similarity by the observer vs. self-referenced experiencer perspective comparison interaction for positive affect duration – Experiment 2. The positive affect duration scale ranges from 0-35. A truncated scale is presented for clarity. Similarity mean centered, +/- 1 *SD*.

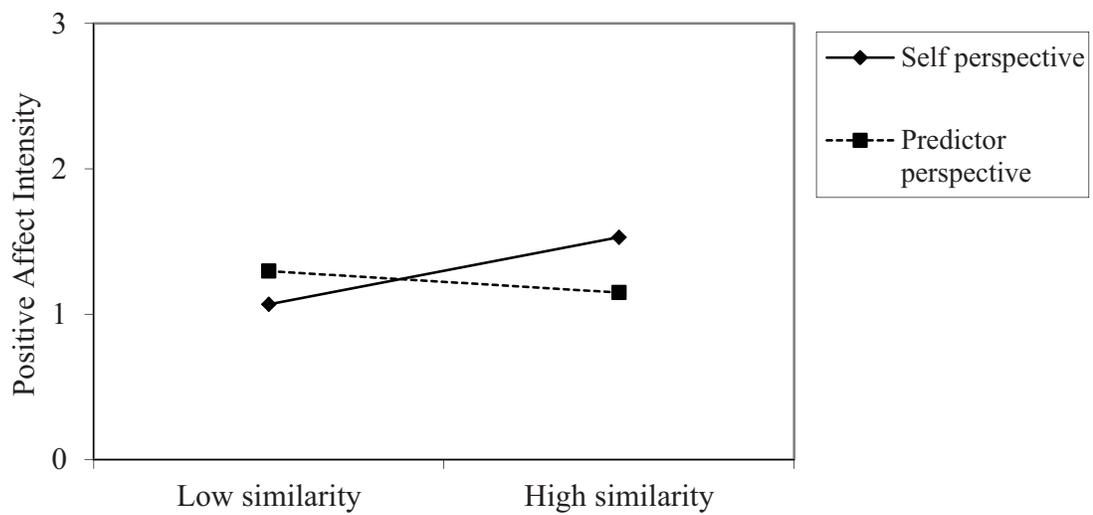


Figure 13. Similarity by the predictor vs. self-referenced experiencer perspective comparison interaction for positive affect intensity – Experiment 2. The positive affect intensity scale ranges from 1-7. A truncated scale is presented for clarity. Similarity mean centered, +/- 1 *SD*.

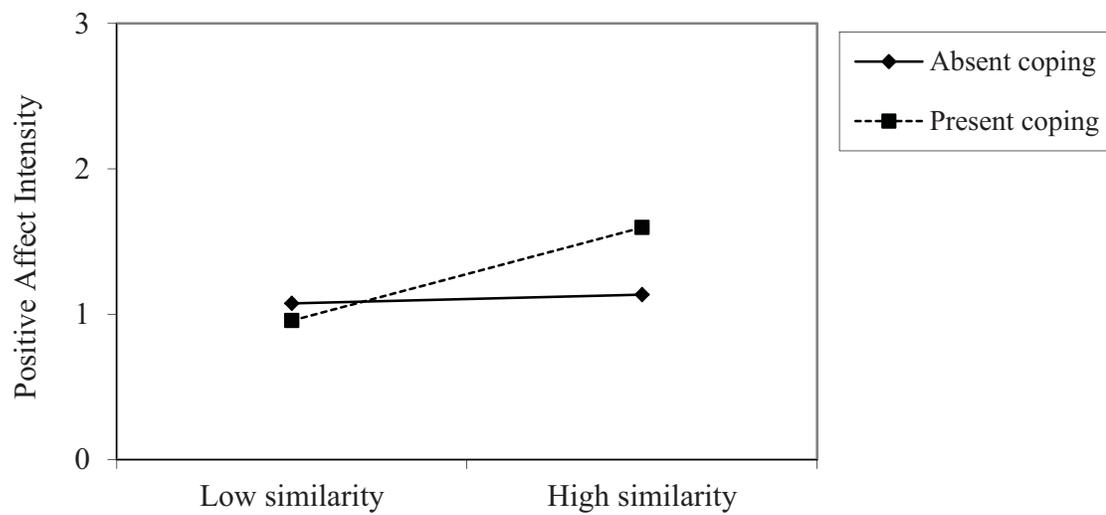


Figure 14. Similarity by coping interaction for the actor-referenced experiencer condition for positive affect intensity– Experiment 2. The positive affect intensity scale ranges from 1-7. A truncated scale is presented for clarity. Similarity mean centered, +/- 1 *SD*.

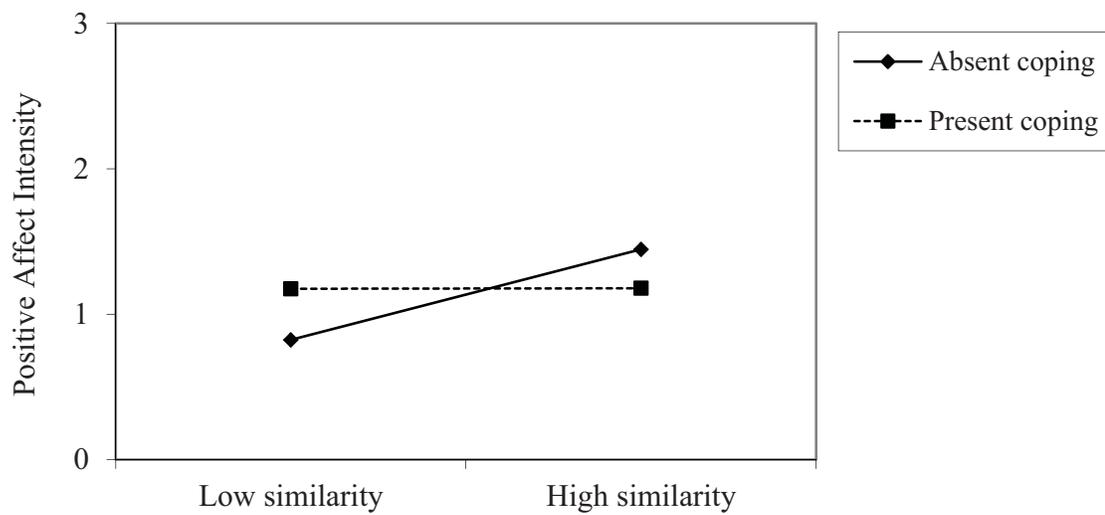


Figure 15. Similarity by coping interaction for the self-referenced experiencer condition for positive affect intensity– Experiment 2. The positive affect intensity scale ranges from 1-7. A truncated scale is presented for clarity. Similarity mean centered, +/- 1 *SD*.

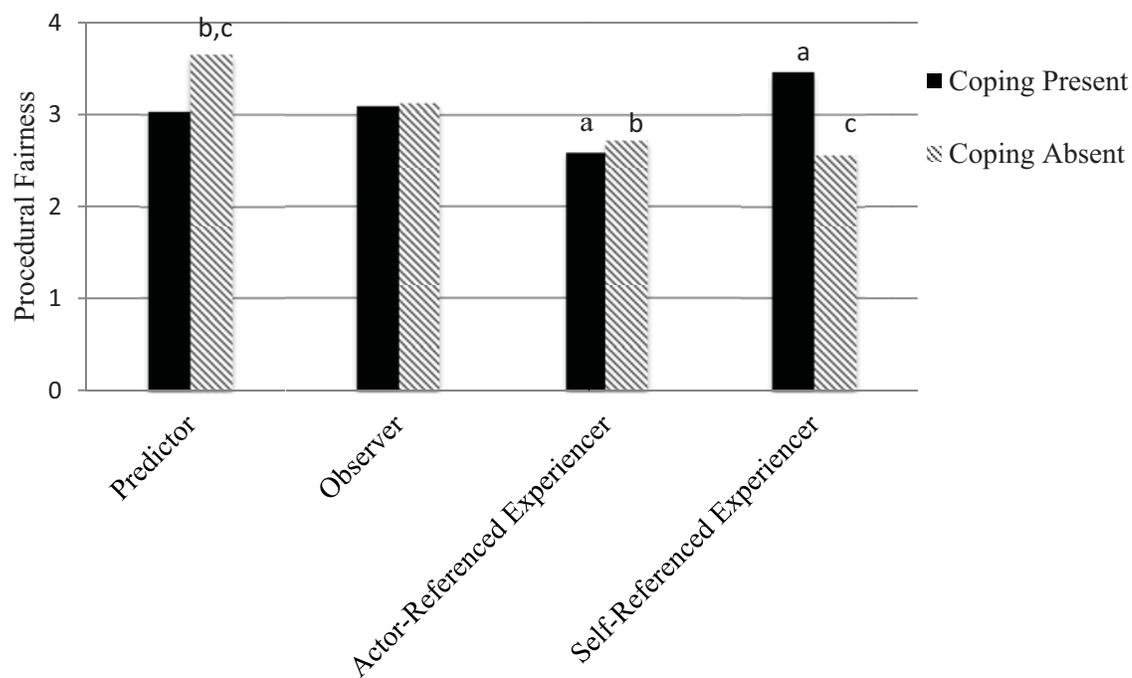


Figure 16. Perspective by coping interaction for procedural fairness—Experiment 2.

Means that share an alphabetic superscript within coping condition are significantly different at $p < .05$.

Appendix A

Case Fact Questionnaire

Instructions: Please respond to the following questions about the case summary you just read.

1. The client in the legal case summary was a (an):
 - a. drug court client
 - b. mental health court client
 - c. arsonist

2. From which perspective did you read and think about the legal summary?
 - a. a random person who is unfamiliar with court clients
 - b. a person who interacts frequently with court clients (such as a social worker or case worker)
 - c. Brent, the client portrayed in the legal case
 - d. yourself, as if you were the client in the legal case

3. The client was afforded due process at the time of the review hearing
 - a) True
 - b) False

4. The client was sanctioned to ___ days in jail
 - a) 00
 - b) 30
 - c) 90

5. Please choose 'true' for the following question if you have read and paid sufficient attention up to this point.
 - a) True
 - b) False

Appendix B

Coping Skills Questionnaire

Instructions: Please complete the following scale about Brent's [your] coping skills and how Brent [you] would cope with the experience after the judge announced the sanction of 30 days in jail.

1. Do you know how Brent [you] would deal with this experience *emotionally*?

| | | | | | | |
|-------------|---|---|-----------------|---|---|----------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Do not know | | | Moderately know | | | Know very well |

2. Do you know how Brent [you] would deal with this experience *psychologically*?

| | | | | | | |
|-------------|---|---|-----------------|---|---|----------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Do not know | | | Moderately know | | | Know very well |

3. Do you know how Brent [you] would deal with this experience *socially*?

| | | | | | | |
|-------------|---|---|-----------------|---|---|----------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Do not know | | | Moderately know | | | Know very well |

4. Do you know how Brent [you] would deal with this experience *financially*?

| | | | | | | |
|-------------|---|---|-----------------|---|---|----------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Do not know | | | Moderately know | | | Know very well |

5. Do you know how Brent [you] would deal with this experience *practically*?

| | | | | | | |
|-------------|---|---|-----------------|---|---|----------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Do not know | | | Moderately know | | | Know very well |

6. Can you indicate the degree to which you *know* what Brent [you] does[do] in such a situation?

| | | | | | | |
|------------|---|---|------------|---|---|------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Not at all | | | Moderately | | | Much |

Appendix C

Similarity Questionnaire

Instructions: Please answer each question in the next section based upon your knowledge of yourself in your daily life during the last six months. How similar do you think you are (that is, during your daily life) to [insert assigned perspective]?

Answer by circling the number that best represents your own response to each item.

1. Physical characteristics

| | | | | | | |
|--------------------|---|---|-----------------------|---|---|-----------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Very dissimilar | | | Moderately similar | | | Very similar |

2. Personality

| | | | | | | |
|--------------------|---|---|-----------------------|---|---|-----------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Very dissimilar | | | Moderately similar | | | Very similar |

3. Emotional reactions

| | | | | | | |
|--------------------|---|---|-----------------------|---|---|-----------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Very dissimilar | | | Moderately similar | | | Very similar |

4. Motivations

| | | | | | | |
|--------------------|---|---|-----------------------|---|---|-----------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Very dissimilar | | | Moderately similar | | | Very similar |

5. Social life

| | | | | | | |
|--------------------|---|---|-----------------------|---|---|-----------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Very dissimilar | | | Moderately similar | | | Very similar |

6. Overall

| | | | | | | |
|--------------------|---|---|-----------------------|---|---|-----------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Very dissimilar | | | Moderately similar | | | Very similar |

Appendix D

PANAS-X revised (intensity)

Instructions: From [your assigned perspective], please think about how Brent [you] would feel about the sanction outcome (jail time) described in the above scenario. Please complete the following scale, which consists of a number of feelings and emotions. Please indicate the extent Brent [you] would feel each emotion after the judge announced his [your] 30 day jail-time sanction. Use the following scale to record your answers.

| | | | | |
|-----------------------------|----------|------------|-------------|-----------|
| 1 | 2 | 3 | 4 | 5 |
| Very slightly or not at all | A little | Moderately | Quite a bit | Extremely |

| | |
|-------|--------------|
| _____ | Inspired |
| _____ | Distressed |
| _____ | Alert |
| _____ | Scared |
| _____ | Excited |
| _____ | Nervous |
| _____ | Enthusiastic |
| _____ | Upset |
| _____ | Determined |
| _____ | Afraid |
| _____ | Happy |
| _____ | Angry |
| _____ | Surprised |
| _____ | Embarrassed |
| _____ | Relaxed |
| _____ | Ashamed |

Appendix E

PANAS-X (duration)

Instructions: Now we would like you to go back to each of these emotions and indicate, from [your assigned perspective] how **long** you think the experience of that emotion would last for Brent [you] after the judge announced the sanction outcome (jail time).

Indicate how **long in days** you believe Brent [you] would feel each emotion after the judge announced his sentence in the scenario that you just read. Your answer could range anywhere from 0 days (the emotion would last less than a day) to 35 days (the emotion would last even after Brent [you] were released from jail).

| | |
|-------|--------------|
| _____ | Inspired |
| _____ | Distressed |
| _____ | Alert |
| _____ | Scared |
| _____ | Excited |
| _____ | Nervous |
| _____ | Enthusiastic |
| _____ | Upset |
| _____ | Determined |
| _____ | Afraid |
| _____ | Happy |
| _____ | Angry |
| _____ | Surprised |
| _____ | Embarrassed |
| _____ | Relaxed |
| _____ | Ashamed |

Appendix F

Well-Being Questionnaire

Instructions: From [your assigned perspective], think about how Brent [you] would feel about the situation and outcome (jail time) described in the legal summary. Please answer the following questions

Well-Being Intensity

1. As you think about the legal summary from the perspective of [insert assigned perspective], how *intensely* would Brent's [your] **emotional** well-being be negatively influenced by this experience?

| | | | | | | |
|-----------------------------|---|---|------------|---|---|-----------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Very slightly or not at all | | | Moderately | | | Extremely |

2. As you think about the legal summary from the perspective of [insert assigned perspective], how *intensely* would Brent's [your] **psychological** well-being be negatively influenced by this experience?

| | | | | | | |
|-----------------------------|---|---|------------|---|---|-----------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Very slightly or not at all | | | Moderately | | | Extremely |

3. As you think about the legal summary from the perspective of [insert assigned perspective], how *intensely* would Brent's [your] **social** well-being be negatively influenced by this experience?

| | | | | | | |
|-----------------------------|---|---|------------|---|---|-----------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Very slightly or not at all | | | Moderately | | | Extremely |

4. As you think about the legal summary from the perspective of [insert assigned perspective], how *intensely* would Brent's [your] **financial** well-being be negatively influenced by this experience?

| | | | | | | |
|-----------------------------|---|---|------------|---|---|-----------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Very slightly or not at all | | | Moderately | | | Extremely |

5. As you think about the legal summary from the perspective of [insert assigned perspective], how **intensely** would Brent's [your] **overall** well-being be negatively influenced by this experience?

| | | | | | | |
|-----------------------------|---|---|------------|---|---|-----------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Very slightly or not at all | | | Moderately | | | Extremely |

6. Please choose the value '4,' or Moderately to ensure you have read this question.

| | | | | | | |
|-----------------------------|---|---|------------|---|---|-----------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Very slightly or not at all | | | Moderately | | | Extremely |

Well-Being Duration

7. As you think about the legal summary from the perspective of [insert assigned perspective], how **long** would Brent's [your] **emotional** well-being be negatively influenced by this experience?

| | | | | | | |
|---|---|---|-------------------------|---|---|----------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Very short amount of time or not at all | | | Moderate amount of time | | | Very long time |

8. As you think about the legal summary from the perspective of [insert assigned perspective], how **long** would Brent's [your] **psychological** well-being be negatively influenced by this experience?

| | | | | | | |
|---|---|---|-------------------------|---|---|----------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Very short amount of time or not at all | | | Moderate amount of time | | | Very long time |

9 As you think about the legal summary from the perspective of [insert assigned perspective], how **long** would Brent's [your] **social** well-being be negatively influenced by this experience?

| | | | | | | |
|------------|---|---|----------|---|---|-----------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Very short | | | Moderate | | | Very long |

| | | | | | | |
|------------------------------------|--|--|-------------------|--|--|------|
| amount of time or not at all | | | amount of time | | | time |
|------------------------------------|--|--|-------------------|--|--|------|

10. As you think about the legal summary from the perspective of [insert assigned perspective], how **long** would Brent's [your] **financial** well-being be negatively influenced by this experience?

| | | | | | | |
|--|---|---|-------------------------------|---|---|-------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Very short amount of time or not at all | | | Moderate amount of time | | | Very long time |

11. As you think about the legal summary from the perspective of [insert assigned perspective], how **long** would Brent's [your] **overall** well-being be negatively influenced by this experience?

| | | | | | | |
|--|---|---|-------------------------------|---|---|-------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Very short amount of time or not at all | | | Moderate amount of time | | | Very long time |

12. How many **days** would Brent's [your] well-being be negatively influenced by this experience?

_____ days

Appendix G

Procedural Fairness Questionnaire

Instructions: Please use the following scale to indicate the extent to which Brent [you]:

| | | | | | | |
|------------|---|---|------------|---|---|--------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Not at All | | | Moderately | | | A great deal |

1. ____ was [were] treated with respect by the Judge
2. ____ had the opportunity to share information about Brent's [your] personal and legal situation
3. ____ thought the Judge seemed genuinely interested in Brent [you] as a person
4. ____ was [were] treated fairly by the judge
5. ____ was [were] satisfied with how the judge treated Brent [you] dealt with the case.

6. As you consider the case as a whole, should Brent be [are you] **satisfied** with the judge's decision today to sanction Brent [you] to thirty days in jail?

| | | | | | | |
|------------|---|---|------------|---|---|------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Not at All | | | Moderately | | | Definitely |

Appendix H

Demographic Survey and Problem-Solving Court Familiarity Questionnaire

1. What is your age? _____ Years
2. What is your gender? Check one: _____ Male _____ Female
3. Which of the following categories best reflects your ethnic/racial identity? (check only one)

| | |
|-------------------------------|----------------------------|
| _____ African American | _____ Asian/Pacific Island |
| _____ Caucasian: Non-Hispanic | _____ Hispanic |
| _____ Native American | _____ Other |
4. What is the highest education level you have completed?

| | |
|--------------------------------------|--|
| _____ less than high school graduate | _____ graduated college |
| _____ high school graduate | _____ some graduate or professional school |
| _____ some college | _____ finished graduate or professional school |
5. What is your religious preference (if any)?

| | | |
|------------------|---------------|----------------|
| _____ Protestant | _____ Islamic | _____ Catholic |
| _____ Hindu | _____ Jewish | _____ Atheist |
| _____ Agnostic | _____ Other | |
6. What is your current work status? Check one:

| | | | |
|--------------------------|--------------------------|------------------|---------------|
| _____ Employed full time | _____ Employed part time | _____ Unemployed | _____ Retired |
|--------------------------|--------------------------|------------------|---------------|
7. What is your occupation? _____
8. What is your current marital status? Check one:

| | | | |
|--------------|---------------|----------------|---------------|
| _____ Single | _____ Married | _____ Divorced | _____ Widowed |
|--------------|---------------|----------------|---------------|

9. Do you have any children? _____ Yes _____ No

a. If yes, how many _____

10. Which of the following best describes your **overall ideology**?

| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|------------------|--------------------|----------------|-----------------------------|---------------------|-------------------------|-----------------------|
| Strongly Liberal | Moderately Liberal | Weakly Liberal | Centrist/Middle of the Road | Weakly Conservative | Moderately Conservative | Strongly Conservative |

11. Which of the following best describes your views on **economic** issues?

| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|------------------|--------------------|----------------|-----------------------------|---------------------|-------------------------|-----------------------|
| Strongly Liberal | Moderately Liberal | Weakly Liberal | Centrist/Middle of the Road | Weakly Conservative | Moderately Conservative | Strongly Conservative |

12. Which of the following best describes your views on **social** issues?

| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|------------------|--------------------|----------------|-----------------------------|---------------------|-------------------------|-----------------------|
| Strongly Liberal | Moderately Liberal | Weakly Liberal | Centrist/Middle of the Road | Weakly Conservative | Moderately Conservative | Strongly Conservative |

13. Have you used drugs in the past?

_____ Yes _____ No

If yes, have you experienced problems as a result of your drug use?

| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|-------------|---|---|-----------------------------|---|---|---------------|
| No problems | | | Moderate amount of problems | | | Many problems |

14. Has a close friend or family member used drugs in the past?

_____ Yes _____ No

If yes, has a close friend or family member experienced problems as a result of their drug use?

| | | | | | | |
|-------------|---|---|-----------------------------|---|---|---------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| No problems | | | Moderate amount of problems | | | Many problems |

15. Have you experienced mental illness in the past?

_____ Yes _____ No

If yes, have you experienced problems as a result of your mental illness?

| | | | | | | |
|-------------|---|---|-----------------------------|---|---|---------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| No problems | | | Moderate amount of problems | | | Many problems |

16. Has a close friend or family member experienced mental illness in the past?

_____ Yes _____ No

If yes, has a close friend or family member experienced problems as a result of their mental illness?

| | | | | | | |
|-------------|---|---|-----------------------------|---|---|---------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| No problems | | | Moderate amount of problems | | | Many problems |

17. Have you personally been involved with a drug court?

_____ Yes _____ No

If yes, in what capacity (e.g., client, social worker, etc.)? _____

18. Have you personally been involved with a mental health court?

_____ Yes _____ No

If yes, in what capacity (e.g., client, social worker, etc.)? _____

19. Have you ever served as a juror? Check one:

_____ Yes

_____ No

20. State of residence _____

Appendix I

Drug Court Description

Instructions: Please read the following description carefully. It describes a typical drug court in the United States. Soon, you will see a number of questions about a specific drug court case. This information will help you understand that case.

What is a Drug Court?

A drug court is a problem-solving court that handles cases involving substance abuse and drug addiction. Drug courts offer offenders who face criminal charges and who have a drug abuse problem the opportunity to voluntarily enter a substance abuse treatment program, instead of going through the traditional criminal court system. There are currently more than 2,100 drug courts in the United States. Each court functions a bit differently, however the goal is to address the underlying cause of illegal behavior—drug use.

A drug court is more informal than a criminal court. For example, the teams refer to the offenders as “clients,” and the judge often speaks directly with the client, as opposed to his attorney. The drug court creates a treatment team to work with the client to remedy his drug abuse. Specifically, this treatment team might include a judge, prosecutor, defense attorney, educational and vocational experts, drug counselors, and social workers. While the client participates in the drug court treatment plan, the client attends frequent meetings or “check-ins” with the treatment team. This team supports the client, but also holds the offender accountable when he does not follow the court’s guidelines.

While clients voluntarily participate in drug-court (instead of going to criminal court), they are:

- provided with intense treatment and services to get and stay clean and sober
- held accountable by the drug court treatment team
- regularly and randomly tested for drug use
- required to frequently appear in court so the team may review client progress and
- rewarded for doing well or sanctioned when they do not meet program requirements

Drug courts recognize that recovery from a drug addiction is a process and thus, expect setbacks. When a setback occurs, such as a positive drug test, the judge sanctions the client to increased drug testing, additional counseling visits, or occasionally to brief periods of jail time. The ultimate goal is for the client to successfully complete the drug court program to overcome drug addiction **and** thus, not commit future crimes.

If a client successfully completes the program, the court often drops the charges against the offender. However, after repeated violations of the treatment program, the court may choose to send the case back to traditional criminal court. In this situation, the criminal court will settle the case as usual and the offender will be eligible for the full range of

punishments the law traditionally applies (e.g., conviction, probation, jail time, etc.). For this reason, an offender has a strong incentive to voluntarily participate in drug court and meet the expectations of the treatment team to successfully complete the drug court program.

Appendix J

Participant Perspective Instructions

Instructions: You have just read some important information about drug courts and their purpose and approach to drug abuse. Next, you will be asked to read and think about a legal case, *State of Nebraska v. Kahler* (2012). As you consider the following scenario, please read and think about it from the perspective of:

Predictor: A random person who is unfamiliar with drug court clients

Observer: A person who interacts frequently with drug court clients (this could be a social worker or case worker)

Actor-Referenced Experiencer: Brent, the drug court client portrayed in the legal case

Self-Referenced Experiencer: Yourself, as if you are the drug court client portrayed in the legal case

Please take several minutes before you move on to put yourself in the place of this person and think about what he may be like.

*Appendix K*Legal Case Summary
*State of Nebraska v. Brent Kahler (2012)***Drug Court Summary**

Instructions: Please read the following summary of the *State of Nebraska v. Brent R. Kahler [you]* (2012) from the perspective of [insert previously assigned perspective]. Please read the summary carefully as you will answer questions about this case at the end of the study.

Brent R. Kahler is a thirty-two year old who was recently charged with theft of property of over \$1,000—a felony. On April 17, 2011, Brent entered a local YMCA and took three wallets out of a number of unlocked lockers. A criminal court found Brent guilty of theft and sentenced him to probation. Six months later, on October 20, 2011, while still on probation, Brent entered the open garage of a home and stole a number of expensive tools. The police subsequently charged Brent with burglary.

Brent began using drugs at the age of 23 and experienced a number of negative consequences because of his drug use, including failed relationships with family and friends, an inability to keep a job, and most recently trouble with the law. Brent had wanted to quit using drugs for a long time, however, because of his recent legal trouble, he now feels particularly motivated to do so.

Based on the facts of Brent's burglary charge as well as Brent's history of drug abuse, Judge Zubrod, the presiding judge in the case, gave Brent the option to voluntarily have his case diverted to the local drug court. If Brent complied with the court's expectations and successfully completed the treatment program, the court would drop the charges against him. Brent was excited and grateful for the opportunity to kick the drug addiction, but he was equally excited to see the case handled out of the criminal court.

As part of his voluntary agreement in the drug court program, Brent read and signed a waiver that described the rules and obligations of the program. Specifically, the court required Brent to abstain from using drugs and alcohol, attend weekly meetings with the treatment team, attend weekly Alcoholics Anonymous (AA) meetings, and provide regular and random samples for drug testing.

Brent also signed a document that stated any violation of the court's treatment plan would result in a variety of sanctions, including but not limited to increased drug testing, additional court appearances, and potentially brief periods of incarceration.

He was particularly motivated to do well in the program because if the judge believed Brent repeatedly failed to comply with the program, he could send Brent's case back to

the criminal court, where he likely would be convicted and sentenced to jail time for the burglary offense.

During Brent's time in the drug court program, he struggled to comply with the basic program requirements. On December 15, 2011 and again on January 18, 2012, Brent failed to appear for scheduled weekly meetings. As a sanction, Judge Zubrod increased the frequency of Brent's required meetings from every week to every five days. Additionally, Brent tested positive for drugs during random drug tests on December 28, 2011, January 30, 2012 and again on February 9, 2012. In an effort to deter Brent from using drugs, Judge Zubrod required Brent to submit to scheduled weekly drug tests, in addition to random testing.

Two days ago, the drug court team heard that Brent missed a required weekly drug test and scheduled a review hearing for today.

This morning, Brent came before Judge Zubrod and the treatment team for review. The Judge explained that he was disappointed in Brent's performance in the program and was also disappointed that he had not taken the opportunity to create a better life for himself. For Judge Zubrod, missing the most recent scheduled drug test was the last straw. However, Brent insisted that the court scheduled the drug test for the following day and thus, he did not believe there was evidence that he missed a scheduled drug test. Brent explained that he wrote down the date and time of the scheduled drug test on a card, which indicated the test was *tomorrow*, and Brent could show the court if the judge allowed him to retrieve it and present it as evidence. He also wanted to tell his side of the story about why he had missed and failed previous drug tests.

[INSERT DUE PROCESS DESCRIPTION HERE]

Brent explained his desire to continue in the program and promised Judge Zubrod that he would see improvement if he gave him another chance. Based on Brent's rocky history in the program, and most importantly because Brent missed a scheduled drug testing appointment (although Brent disagrees), Judge Zubrod determined that Brent violated the drug court agreement. As a consequence, Judge Zubrod sentenced Brent to **thirty days in jail** as a sanction. Brent was immediately taken into custody and would be released after serving his thirty-day sentence.

Appendix L

Due Process Description

Due Process Rights Awarded

At this time, Judge Zubrod enacted several protections to honor Brent's [your] due process rights. Specifically, the judge gave Brent [you] a written notice of the claimed violations of the program and a written disclosure of the evidence against him [you]. The statement explained that Judge Zubrod was seeking jail time for Brent [you] to help him [you] appreciate the seriousness of the violated drug court agreement. At that point, Judge Zubrod left the bench and a different, neutral judge presided over the remainder of the hearing. The new judge called several drug court staff to testify that Brent [you] had failed drug testing and did not show up for one of the drug testing sessions. The judge then allowed Brent to question the drug court staff, show the judge his [your] appointment card with the next day's date written on it, and give a statement about why he [you] failed previous drug tests.

Due Process Rights Not Awarded

In drug court, judges do not give clients the same due process rights as they would in a criminal court. Judge Zubrod did not provide Brent [you] with a written notice of the claimed violations of the program or a written disclosure of the evidence against him [you]. The judge gave no reason why he was seeking jail time for Brent [you] other than that Brent [you] had failed the drug tests and failed to attend a drug testing session. Several drug court staff members reported to the judge that Brent [you] had failed several drug tests and did not show up for one of the drug testing sessions. Judge Zubrod did not allow Brent [you] to question the drug court staff, he did not examine Brent's [your] appointment card, or allow a statement about why Brent [you] failed previous drug tests.

Appendix M

Perspective Manipulation Booster

Instructions: In the space provided, please answer the following question.

Predictor: Please put yourself in the place of a random person, who is unfamiliar with drug courts. From this perspective, briefly write about what you know about drug courts and the services they provide.

Observer: Please put yourself in the place of a person who interacts frequently with drug court clients (this could be a social worker or case worker). From this perspective, briefly write what you do know about drug courts and the services they provide.

Actor-Referenced Experiencer: Please put yourself in the place of Brent, the drug court client portrayed in the legal case. From this perspective, briefly write about what Brent knows about drug courts and the services they provide.

Self-Referenced Experiencer: From your perspective, as if you were the drug court client portrayed in the legal case, briefly write about what you know about drug courts and the services they provide.

Appendix N

Mental Health Court Description

Instructions: Please read the following description carefully. It describes a typical mental health court in the United States. Soon, you will see a number of questions about a specific mental health court case. This information will help you understand that case.

What is a Mental Health Court?

A mental health court is a problem-solving court that handles cases involving mental illness and related disorders. Mental health courts offer offenders who face criminal charges and who have a diagnosed mental illness the opportunity to voluntarily enter a mental health treatment program, instead of going through the traditional criminal court system. There are currently more than 240 mental health courts in the United States. Each court functions a bit differently, however the goal is to address the underlying cause of illegal behavior—mental illness.

A mental health court is more informal than a criminal court. For example, offenders are known as “clients,” and the judge often speaks directly with the client, as opposed to his attorney. The mental health court creates a treatment team to work with the client to facilitate a long-term treatment plan for the client’s mental illness and related issues. Specifically, this treatment team might include a judge, prosecutor, defense attorney, educational and vocational experts, trained mental health professionals, counselors, and social workers. While the client participates in the mental health court treatment plan, the client attends frequent counseling sessions and meetings or “check-ins” with the treatment team. This team supports the client, but also holds the offender accountable when he does not follow the court’s guidelines.

While the clients voluntarily participate in mental health court (instead of going to criminal court), they are:

- provided with intense treatment and services (such as counseling and medication) to treat the mental illness and any related issues (such as drug or alcohol use)
- held accountable by the mental health court treatment team
- regularly and randomly tested for drug use (if substance abuse is suspected)
- required to frequently appear in court so the team may review client progress and
- rewarded for doing well or sanctioned when they do not meet program requirements

Mental health courts recognize that successful treatment of any mental illness is a process and thus, expect setbacks. When a setback occurs, such as missed counseling sessions or non-compliance with medication, the judge sanctions the client to increased check-ins, additional counseling visits, or occasionally to brief periods of jail time. The ultimate goal is for the client to successfully complete the mental health court program to decrease the negative impact of his mental illness **and** thus, not commit future crimes.

If a client successfully completes the program, the court often drops the charges against the offender. However, after repeated violations of the treatment program, the court may choose to send the case back to traditional criminal court. In this situation, the criminal court will settle the case as usual and the offender will be eligible for the full range of punishments the law traditionally applies (e.g., conviction, probation, jail time, etc.). For this reason, an offender has a strong incentive to voluntarily participate in a mental health court and meet the expectations of the treatment team to successfully complete the mental health court program.

Appendix O

Participant Perspective Instructions

Instructions: You have just read some important information about mental health courts and their purpose and approach to resolving mental health issues that lead to criminal activity. Next, you will be asked to read and think about a legal case, *State of Nebraska v. Kahler* (2012). As you consider the following scenario, please read and think about it from the perspective of:

Predictor: A random person who is unfamiliar with mental health court clients

Observer: A person who interacts frequently with mental health court clients (this could be a social worker or case worker)

Actor-Referenced Experiencer: Brent, the mental health court client portrayed in the legal case

Self-Referenced Experiencer: Yourself, as if you are the mental health court client portrayed in the legal case

Please take several minutes before you move on to put yourself in the place of this person and think about what he may be like.

*Appendix P*Legal Case Summary
*State of Nebraska v. Brent Kahler (2012)***Mental Health Court Summary**

Instructions: Please read the following summary of the *State of Nebraska v. Brent R. Kahler [you]* (2012) from the perspective of [insert previously assigned perspective]. Please read the summary carefully as you will answer questions about this case at the end of the study.

Brent R. Kahler is a thirty-two year old who was recently charged with theft of property of over \$1,000—a felony. On April 17, 2011, Brent entered a local YMCA and took three wallets out of a number of unlocked lockers. A criminal court found Brent guilty of theft and sentenced him to probation. Six months later, on October 20, 2011, while still on probation, Brent entered the open garage of a home and stole a number of expensive tools. The police subsequently charged Brent with burglary.

Brent began experiencing signs of mental illness at the age of 23 and experienced a number of negative consequences because of his mental illness (specifically bipolar disorder and related mental illnesses), including failed relationships with family and friends, an inability to keep a job, and most recently trouble with the law. Brent had wanted to get help for his mental illness for a long time, however, because of his recent legal trouble, he now feels particularly motivated to do so.

Based on the facts of Brent’s burglary charge as well as Brent’s history of mental illness, Judge Zubrod, the presiding judge in the case, gave Brent the option to voluntarily have his case diverted to the local mental health court. If Brent complied with the court’s expectations and successfully completed the treatment program, the court would drop the charges against him. Brent was excited and grateful for the opportunity to gain appropriate treatment for his mental illness, but he was equally excited to see the case handled out of the criminal court.

As part of his voluntary agreement in the mental health court program, Brent read and signed a waiver that described the rules and obligations of the program. Specifically, the court required Brent to attend regular psychological counseling sessions, adhere to a prescribed medication regimen, attend weekly National Alliance on Mental Illness (NAMI) support group meetings, take regular drug and alcohol tests, and attend weekly meeting with the court treatment team.

Brent also signed a document that stated any violation of the court’s treatment plan would result in a variety of sanctions, including but not limited to increased psychological counseling sessions, additional court appearances, and potentially brief periods of incarceration.

He was particularly motivated to do well in the program because if the judge believed Brent repeatedly failed to comply with the program, he could send Brent's case back to the criminal court, where he likely would be convicted and sentenced to jail time for the burglary offense.

During Brent's time in the mental health court program, he struggled to comply with the basic program requirements. On December 15, 2011 and again on January 18, 2012, Brent failed to appear for scheduled weekly meetings. As a sanction, Judge Zubrod increased the frequency of Brent's required meetings from every week to every five days. Additionally, Brent failed to attend his psychological counseling sessions on December 28, 2011, January 30, 2012 and again on February 9, 2012. In an effort to encourage Brent to continue taking his medication, Judge Zubrod required Brent to submit to scheduled medical weekly check-ins to ensure he adhered to his prescribed medication regimen.

Two days ago, the mental health court team heard that Brent missed a required weekly medical check-in and scheduled a review hearing for today.

This morning, Brent came before Judge Zubrod and the treatment team for review. The Judge explained that he was disappointed in Brent's performance in the program and was also disappointed that he had not taken the opportunity to create a better life for himself. For Judge Zubrod, missing the most recent medical check-in was the last straw. However, Brent insisted that the court scheduled the check-in for the following day and thus, he did not believe there was evidence that he missed a scheduled evaluation. Brent explained that he wrote down the date and time of the scheduled evaluation on a card, which indicated the test was *tomorrow*, and Brent could show the court if he was allowed to retrieve it. He also wanted to tell his side of the story about why he had missed previous counseling sessions.

[INSERT DUE PROCESS DESCRIPTION HERE]

Brent explained his desire to continue in the program and promised Judge Zubrod that he would see improvement if he gave him another chance. Based on Brent's rocky history in the program, and most importantly because Brent missed a scheduled medical check-in appointment (although Brent disagrees), Judge Zubrod determined that Brent violated the mental health court agreement. As a consequence, Judge Zubrod sentenced Brent to **thirty days in jail** as a sanction. Brent was immediately taken into custody and would be released after serving his thirty-day sentence.

Appendix Q

Due Process Description (Mental Health Court)

Due Process Rights Awarded

At this time, Judge Zubrod enacted several protections to honor Brent's [your] due process rights. Specifically, the judge gave Brent [you] a written notice of the claimed violations of the program and a written disclosure of the evidence against him [you]. The statement explained that Judge Zubrod was seeking jail time for Brent [you] to help him [you] appreciate the seriousness of the violated mental health court agreement. At that point, Judge Zubrod left the bench and a different, neutral judge presided over the remainder of the hearing. The new judge called several mental health court staff to testify that Brent [you] had missed scheduled counseling sessions and did not show up for one of the required weekly medical check-ins. The judge then allowed Brent [you] to question the mental health court staff, show the judge his [your] appointment card with the next day's date written on it, and give a statement about why he [you] missed previous counseling sessions.

Due Process Rights Not Awarded

In mental health court, judges do not give clients the same due process rights as they would in a criminal court. Judge Zubrod did not provide Brent [you] with a written notice of the claimed violations of the program or a written disclosure of the evidence against him [you]. The judge gave no reason why he was seeking jail time for Brent [you] other than that Brent [you] had missed scheduled counseling sessions and did not show up for a required weekly medical check-in. Several mental health court staff members reported that Brent [you] had missed counseling sessions and missed a medical check in. Judge Zubrod did not allow Brent [you] to question the mental health court staff, he did not examine Brent's [your] appointment card, or allow a statement about why Brent [you] missed previous counseling sessions.

Appendix R

Perspective Manipulation Booster (Mental Health Court)

Instructions: In the space provided, please answer the following question.

Predictor: Please put yourself in the place of a random person who is unfamiliar with mental health courts. From this perspective, briefly write about what you know about mental health courts and the services they provide.

Observer: Please put yourself in the place of a person who interacts frequently with mental health court clients (this could be a social worker or caseworker). From this perspective, briefly write what you do know about mental health courts and the services they provide.

Actor-Referenced Experiencer: Please put yourself in the place of Brent, the mental health court client portrayed in the legal case. From this perspective, briefly write about what Brent knows about mental health courts and the services they provide.

Self-Referenced Experiencer: From your perspective, as if you were the mental health court client portrayed in the legal case, briefly write about what you know about mental health courts and the services they provide.

Appendix S

Reported Coping Strategies Questionnaire

Instructions: From [assigned perspective], think for several minutes about a negative event that Brent [you] might encounter after being sentenced to 30 days in jail.

Please briefly describe that negative event.

Please **list up to 10 strategies** that Brent [you] might use to cope with this negative event. You might consider the support Brent [you] receive[s] from others, how Brent [you] thought about changing the situation, or how Brent [you] could express Brent's [your] emotions.

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.