USING PROCEDURAL JUSTICE TO ASSESS CLIENT EVALUATION OF LEGAL INSTITUTIONS: THE CASE OF MIDDLE-CLASS LAW

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With a click of the remote, the public has turned to the American legal system as the producer of its twenty-first-century morality plays. Whether viewing the Byzantinian intrigue of the O.J. Simpson trial or the haunting travails of the JonBenet Ramsey murder case, the public's hunger for this unintentional product of our court system appears to be insatiable. Yet despite their immersion in the sensational, most Americans have only limited contact with the legal system; and, in the vast majority of cases, the services sought are for the ordinary and mundane. The televised world is full of crusading lawyers saving their clients from trumped-up murders charges, while real-world attorneys draft real estate contracts and file petitions for divorce.

Given the central role that the legal system plays in the social as well as the political realm, the questions of how and why the public supports its legal institutions are primary concerns of legal theorists. Building upon the assumption that such institutions can function effectively only when citizens can support their holdings, socio-legal scholars have conducted ongoing research to identify those beliefs that have a critical bearing on the establishment and maintenance of institutional legitimacy.[1] Current wisdom holds that American political and legal institutions are suffering a crisis of public confidence.[2] One possible source of this discontent is the nature of the interaction that the citizenry has with the justice system and the dissatisfying experiences they may have had with it.[3]

In creating a theoretical foundation for this research, many scholars have adopted the procedural justice framework.[4] *Procedural justice* refers to the perceived level of fairness of the procedures and policies used by institutions in arriving at decisions.[5] Unlike distributive justice, which examines outcomes, procedural justice is concerned with the means of achieving these outcomes; the even- handedness of the process is seen as the primary determinant of how participants adjudge overall fairness.[6]

Procedural justice has been used to explain how participants evaluate satisfaction with institutions and legal procedures in a number of scenarios, such as

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[1] *See infra* notes 81-95 and accompanying text.

[2] *See infra* notes 17-28 and accompanying text.

[3] *See* Austin Sarat, *Studying American Legal Culture: An Assessment of Survey Evidence*, 11 L. & SOC'Y REV. 427 (1977).

[4] *See infra* notes 103-144 and accompanying text.

[5] JOHN THIBAUT & LAURENS WALKER, PROCEDURAL JUSTICE: A PSYCHOLOGICAL ANALYSIS (1975).

[6] *Id.* at 3.

plea bargaining[7] and small claims mediation.[8] In addition, the framework has been used in explaining how those directly affected by a political decision making scenario *(i.e.*, the voters) accept the rulings of the body. For instance, Tyler found that the public was often willing to vote for a member of Congress, even if his position was inconsistent with that of the voter, if the method at arriving at the public policy decision was deemed fair.[9] Finally, the concept has been introduced to a number of scenarios outside the legal7political realm, most notably in management[10] and marketing.[11]

What is common to most of these scenarios is the presence of a third-party decision-maker: the judge, mediator, or a legislative body. The typical individual, as opposed to corporate, client, however, will consult with a lawyer only three times in his life.[12] The three most prominent areas on which individuals typically consult with lawyers are transactions involving real property, estate planning and noncontested divorces.[13] Although in each of these areas, a third party decision maker may ultimately render a decision, in many cases this decision maker only ratifies the decision derived by the client and his or her attorney. It is this "middle-class law"— the routine, non-litigious matters, in which the client's only contact is with his lawyer —that form the nucleus of many lawyers' practices; yet, little research has been conducted on how clients evaluate the court systems that administer these laws.

[7] *See generally* Jonathan Casper, *Having Their Day in Court: Defendant Evaluations of the Fairness of their Treatment,* 12 L. & Soc'Y Rev. 237 (1978); Jonathan Casper, Tom Tyler & Bonnie Fisher, *Procedural Justice in Felony Cases,* 22 L. & Soc'Y Rev. 483 (1988); Anne Heinz & Wayne Kerstetter, *Pretrial Settlement Conference: Evaluation of a Reform in Plea Bargaining,* 13 L. & SOC'Y Rev. 349 (1979); Pauline Houlden, *The Impact of Procedural Modifications on Evaluations of Plea Bargaining,* 15 L. & SOC'Y Rev. 267 (1980); Jean Landis & Lynne Goodstein, *When is Justice Fair?* 1986 Am. B. FOUND. Res. J. 675 (1986).

[8] *See generally* Craig McEwen & Richard Maiman, *Arbitration and Mediation as Alternatives to Court,* 10 POL'Y Stud. j. 712 (1982); Craig McEwen & Richard Maiman, *Mediation in Small Claims Court: Achieving Compliance Through Consent,* 18 L. & SOC'Y Rev. 11 (1984), Craig McEwen & Richard Maiman, *The Relative Significance of Disputing Forum and Dispute Characteristics for Outcome and Compliance,* 20 L. & SOC'Y REV. 439 (1986); William O'Barr & John Conley, *Lay Expectations of the Civil Justice System,* 22 L. & SOC'Y REV. 137 (1988); Austin Sarat, *Alternatives in Dispute Processing: Litigation in a Small Claims Court, 22* L. & SOC'Y REV. 137 (1976); Neil Vidmar, *The Small Claims Court: A Reconceptualization of Disputes and an Empirical Investigation,* 18 L. & SOC'Y REV. 515
(1984) ; Neil Vidmar, *An Assessment of Mediation in Small Claims Court,* 41 J. SOC. ISSUES 127 (1985); Neil Vidmar, *Assessing the Effects of Case Characteristics and Settlement Forum on Dispute Outcomes and Compliance,* 21 L. & SOC'Y REV. 156 (1986).

[9] Tom Tyler, *Governing Amid Diversity: The Effect of Fair Decisionmaking Procedures on the Legitimacy of Government,* 28 L. & SOC'Y REV. 809 (1994).

[10] *See* Roger Folger & Jerald Greenberg, *Procedural Justice: An Interpretative Analysis of Personnel Systems* in KENDRITH ROWLAND & GERALD FERRIS, 3 RESEARCH IN PERSONNEL AND HUMAN RESOURCE MANAGEMENT 141 (1985); Jerald Greenberg & Roger Folger, *Procedural Justice, Participation, and the Fair Process Effect in Groups and Organizations* in P. PAULUS, BASIC GROUP PROCESSES 235 (1983).

[11] *See* Cathy Goodwin & Ivan Ross, *Consumer Responses to Service Failures: Influence of Procedural and Interactional Fairness Perspectives,* 25 J. Bus. RES. 149 (1992); Jeffrey Blodgett, Donna Hill & Stephen Tax, *The Effects of Distributive, Procedural, and Interactional Justice on Post-complaint Behavior,* 73 J. RETAILING 185 (1997).

[12] BARBARA CURRAN & FRANCIS SPALDING, THE LEGAL NEEDS OF THE PUBLIC (1974).

13. Id. at 13.

In such a case of "middle-class law" we may ask: what mechanisms do clients use in evaluating their satisfaction with the institution ultimately responsible for rendering the decision? Do clients separate the assessment of their lawyer from that of the institution? To what extent are lawyers perceived to represent the court system? How do clients evaluate legal institutions when their only contact is with their representative, *i.e.,* lawyer?

The purpose of this article is to present and test a model, using a procedural justice theoretical framework, for assessing how clients of lawyers practicing middle-class law evaluate the broader legal environment. In this specific case, the researcher examined how persons evaluate the bankruptcy judicial system by surveying those persons represented by counsel who were recently discharged under Chapter 7 of the Bankruptcy Code.[14] The researcher found that a significant amount of the variance in how clients assess the legal system could be explained by three elements derived from a procedural justice framework: *trustworthiness, interpersonal respect* and *voice.* The first part of this article will present, by way of background, a description of how the public evaluates the current legal environment and the need for understanding the assessment processes involved. The next section will explore the theoretical basis and possible application of the procedural justice model to a middle-class law environment. The researcher will next present hypotheses[15] that relate how elements of a modified procedural justice model may influence perception criteria. The researcher will then present the methodology, analyses and results, followed by a discussion of the results and implications for the legal profession.

I. PUBLIC PERCEPTION OF THE LEGAL ENVIRONMENT

Derek Bok, former Dean of the Harvard Law School, has said, "The legal system is grossly inequitable and inefficient. There is far too much law for those who can afford it and far too little for those who cannot."[16] Unfortunately, in our

[14] 11 U.S.C.A. § 701-66 (West 1993). Nearly 70% of all petitioners file Chapter 7 or so-called "straight" bankruptcy, which permits the debtor to be totally discharged from most unsecured debts, such as credit cards. Upon the filing of the Chapter 7 bankruptcy petition, two events occur. First, the court issues an automatic stay, which halts typical creditors' actions, such as repossessions, garnishments, utility shut- offs, foreclosures and evictions. Second, virtually all of the debtor's interests in property are transferred to the trustee of the bankrupt estate for the benefit of creditors. The debtor is allowed to exempt certain classes of property from distribution; any overage is then allotted to the creditors according to their status: those who lent money on the basis of secured collateral, then those creditors with non-secured debts. *See generally* HENRY SOMMER, NATIONAL CONSUMER LAW CENTER'S CONSUMER BANKRUPTCY LAW AND PRACTICE (1988).

[15] From a social science perspective, in *hypothesis testing,* The researcher derive statistics to support or discredit the hypotheses or reasoned speculations that were formed *a priori.* The goal of hypothesis testing is to tell us something from a sample about a population characteristic or *parameter.* It is important to note that, because the researcher is working with a sample, one can never be 100% certain that the data from the sample are supported in the population. One can be 90% or 95% confident, but never absolutely certain. *See* SAM KACHIGAN, MULITIVARIATE STATISTICAL ANALYSIS 160-192 (1991).

[16] Derek Bok, *A Flawed System of Law Practice and Training,* 33 J. LEGAL EDUC. 570 (1983).

society, this view has become the unavoidable stereotype, as the law, lawyers and the court system have become America's punching bag, the target of an incredible amount of acrimony. Yet, despite the *fait accompli* posited by countless punch lines and op-ed pieces, the debate is far from over, as serious questions remain concerning the nature and extent of the public's ill feelings toward an admittedly dynamic legal environment. The first subpart of this section will examine the nature of public dissatisfaction. The researcher will then present some possible sources of the adverse sentiment, with special emphasis upon the transformation of the legal profession to the legal industry, that will provide some background upon the unique aspects of middle-class law and the need for understanding the institutional assessment process by participants.

A. *The Nature of Public Dissatisfaction*

There is no question, on a purely descriptive level, that the public is dissatisfied with the current functioning of the legal system. Recent surveys reveal that Americans typically have low levels of confidence in lawyers and the legal system. This lack of confidence extends across all segments of society.[17] A 1993 study conducted by the National Law Journal found that 73% of the public believed lawyers are "less honest than most people."[18] The American Bar Association, perceiving the need to take the initiative in this area, has conducted several surveys concerning public attitudes toward the profession; each reflected a very negative image of the profession.[19] For instance, in a 1993 survey sponsored by the ABA, fewer than one in five persons characterized lawyers as "caring and compassionate."[20] Only 22 percent stated that the phrase "honest and ethical" describes lawyers, while nearly 40 percent said that this description most definitely does not apply to the group.[21]

Yet, while the public unmistakably has serious issues with the profession and its representatives, it also clear that the public possesses positive ideas about the role of lawyers in society, even if these perceptions are similarly misinformed. When asked, from a list of six responsibilities, which were the most important, 52 percent chose "a protector of basic rights," while 37 percent chose "a prosecutor of wrongdoers."[22] These numbers reveal that the public has two contradictory mindsets concerning attorneys: "shyster" and "zealous protector." While both of these roles

[17] Gary Hengstler, *Vox Populi: The Public Perception of Lawyers: ABA Poll,* A.B.A. J. (Sept. 1993).

[18] Reported in Paul Grant, *Lawyer-bashing Revisited,* 33 QUALITY 12 (1994).

[19] In response to the perceived decline in public image, the ABA publicly acknowledged it with the publication of the "Blueprint" study to evaluate how changes in the profession may impact public perception. For a general discussion directed at this movement and the "blueprint" study, see Bumele Powell, *Lawyer Professionalism as Ordinary Morality, Address for the John Turner Professionalism Lecture, South Texas College of Law* (Mar. 10,1993), in 35 S. Tex. L. Rev. 275 (1994).

[20] *See* Hengstler, *supra* note 17, at 62.

[21] *Id.* at 63.

[22] *Id.* at 64.

have some basis in truth, arguably the vast majority of lawyers do not fall into either mythical camp.

When it comes to engaging lawyers for actual representation, the reasons given by the public for their disdain for the profession often conflict with the qualities that they are seeking in a lawyer. For instance, one study asked the respondents which view most closely represented the most negative aspects of attorneys.[23] Twenty-two percent stated that lawyers "manipulate the legal system without any concern for right or wrong."[24] Yet when asked what qualities they wish to see in their attorney, 38 percent said "their first priority was their client" and 31 percent said "knowing how to cut through red tape."[25] Thus Robert Post concludes, "Lawyers, it seems, can't win for trying."[26] Apparently, though everyone hates a shyster, when a legal problem presents itself, a shyster is exactly what is desired.[27]

B. *Sources of Change in the Legal Environment*

The last twenty years have seen an explosive increase in both the growth and scope of the legal services industry. Between 1977 and 1997, overall expenditures on legal services in the United States increased from $16 billion to $106 billion, currently constituting 1.3% of the gross domestic product.[28] As of 1995, there were nearly 164,000 law firms[29] operating in the United States, directly employing nearly a million people.[30] According the 1997 National Occupational Employment and Wage Estimate, 425,000 people were employed as attorneys, with a mean annual wage of $72,840.[31]

Most legal scholars and commentators are in agreement that legal professionalism[32] has declined precipitously in the last twenty-five years.[33] These

[23] *What Americans Really Think About Lawyers,* NAT'L L.J., Aug. 18,1986, at s-3.

[24] *Id.* at s-4.

[25] *Id.* at s-5.

[26] Robert Post, *On the Popular Image of the Lawyer: Reflections in a Dark Glass,* 75 CALIF. L. REV. 379 (1987).

[27] Podgers, *Public: "Shyster" OK—If He's On Your Side,* 67 A.B.A. J. 695 (1981).

[28] Bureau of Economic Analysis, *Industry and Wealth Data* (visited Oct. 1999) <http//www.bea.doc/bea/dn2.htirC>.

[29] U.S. DEPARTMENT OF CENSUS, COUNTY BUSINESS PATTERNS (1995). In 1995 only 52 law firms had more than 500 employees. The 163,554 law firms can be broken down as follows:

Firm Size	1-4	5-9	10-19	20-49	50-99	100-249	250-499
# of Firms	120,745	23,432	11,251	5,801	1,443	668	162

30.Id. at 70.

[31] Bureau of Labor Statistics, *National Occupational Employment and Wage Estimates* (visited Jan. 2000) <http//www.stats.bls.gov/oes/national/oes28108.htm>. This number does not include judges, administrative officers, etc.

[32] *Professionalism* is a term that has been defined in a variety of ways. First, it has been used as nomenclature for the licensing of certain businesses that typically require some type of advanced training or education. Second, professionalism can refer to a set of ideas or beliefs that members follow voluntarily

commentators point to evidence such as the "win-at-all-cost" approach taken by many attorneys, which has had the effect of lowering both ethical standards and common civility.[34] As lawyers become more competitive, loyalty both inside and outside the law firm has waned, resulting in a profession suffering from wrenching change.[35] The once staid legal industry has witnessed the advent of abrupt dissolutions of large firms, as partners switch allegiances with little thought to traditional modes of fidelity.[36]

Public dissatisfaction with the legal profession arises from multiple sources.[37] First, many commentators have linked the public's negative image to the "hired gun" approach common to litigation in the United States.[38] Dean Pound cites abuses of the adversarial system in which litigation has been turned into a game, the "Sporting Theory of Justice."[39] Although nearly a hundred years have passed since Pound's observations, abuse of procedural tactics, including discovery, accompanied by a decrease in civility have only increased, resulting in the public receiving a tainted picture of the law.[40]

A second reason put forth is the increasing materialism of attorneys, resulting in a picture of lawyers scrambling to do anything to enhance their "billable hours."[41] Many critics charge that the focus on billable hours takes time away from mentoring and teaching associates. It is ironic to note that billable hours were first introduced to help corporate clients control legal costs.[42] Instead, maximizing billable hours has become the mantra of many lawyers, resulting in many cases in which the lawyer is accused of overcharging the client, further eroding the client/attorney relationship.[43] Skyrocketing salaries are often given as an example of a

that enhances society. *See generally* Don Young & Louise Hill, *Professionalism: The Necessity for Internal Control,* 61 TEMPLE L. REV. 205 (1988); Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism,* 46 AM. U. L. REV. 1337 (1997).

[33] *See generally* Warren Burger, *The Decline of Professionalism,* 63 FORDHAM L. REV. 949 (1995); Louis DiLorenzo, *Civility and Professionalism,* 68 N.Y. ST. B.J. 8 (1992); William Gates, *Lawyers' Malpractice: Some Recent Data About a Growing Problem,* 37 MERCER L. Rev. 559 (1996); Amy Mashbum, *Professionalism as Class Ideology: Civility Codes and Bar Hierarchy,* 28 Val. U. L. Rev. 657 (1994).

[34] *See* John Buchanan, *The Demise of Legal Professionalism: Accepting Responsibility and Implementing Change,* 28 VAL. U. L. REV. 563 (1994); Carrie Menkel-Meadow, *Is Altruism Possible in Lawyering,* 8 Ga. St. U. L. REV. 385 (1992).

[35] William Rehnquist, *The State of the Legal Profession,* LEGAL ECONOMIST, Mar. 1988, at 44.

[36] Paula A. Franzese, *Back to the Future: Reclaiming Our Noble Profession,* 25 SETON Hall L. Rev. 488 (1994).

[37] A thorough discussion concerning public dissatisfaction with legal institutions is beyond the scope of this article. The conceptual framework for the following discussion is largely derived from Edward Re, *The Causes of Popular Dissatisfaction with the Legal Profession,* 68 ST. JOHN'S LAW REVIEW 85 (1994).

[38] *Id. at* 94.

[39] Roscoe Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice,* 29 A.B.A. REP. 395 (1906).

[40] *See* Re, *supra* note 37, at 86.

[41] Roger Miner, *A Profession at Risk,* 21 TRIAL LAW. Q. 3 (1991).

[42] *See generally* Richard Reed. *How Did We Get to Where We Are—And What Are We Going to Do About It?* In BEYOND THE BILLABLE HOUR: AN ANTHOLOGY OF ALTERNATIVE BILLING METHODS 3 (Richard Reeded., 1989).

[43] *See* Stephanie Goldberg, *The Ethics of Billing, A Roundtable,* A.B.A. J. (March, 1991).

profession going through major turmoil.[44] The current state of lawyer materialism definitely has an effect upon public perception. Fifty-nine percent of the respondents to a 1993 ABA survey said that lawyers were greedy and 55 percent said that they charged excessive fees.[45]

A third reason often cited by commentators for the decline in public respect for the legal profession is the profusion of lawyer advertising.[46] Whether one is being flanked on the interstate by giant billboards heralding "Have you been hurt at work?" or immersed in a sea of TV ads exclaiming "We're on your side!," lawyer advertisements have become a staple of American life. The first televised advertisement was broadcast over twenty years ago on the basis of *Bates* v. *State Bar of Arizona*,[47] in which the Supreme Court held that states could not prohibit lawyer advertising. Although the ABA Model Rules of Professional Conduct offer some restraints on deliberately misleading the public, there are no rules affecting the tackiness of such commercials.[48] Edward Re has observed that, when this explosion of advertising was coupled with the contingent fee, it gave the fee a "new and odious meaning."[49] Although it was developed as a means to allow persons of low income to obtain representation, the extension of the contingent fee has been regarded by many critics as giving the attorney too much of a stake in a contest, precipitating unneeded or frivolous lawsuits.[50] There is also an agency problem: Where do the interests of the lawyer and the client diverge? Recent research would seem to indicate that clients are not always best served by contingent fees, because at some

[44] *See* Michael Orey, *Law Firms Ponder Major Changes to Fund Leap in Starting Salaries*, Wall St. J., May 21, 2000, at Bl. Although law firm income has been the subject of numerous studies and commentaries over the years, renewed interest is being directed at income increases directed at the non-partner level. At the largest law firms, salaries for associates have increased dramatically in the last two years. A trend that emerged in Silicon Valley, primarily as a means of slowing attorney defections to "dot corns," is starting salaries for new lawyers at the largest firms that have increased as much as 40%, from an average base salary of $90,000 to $125,000. These increases are playing havoc with law firm profitability. For example, Akin, Gump, Strauss, Hauer and Feld, which has about 650 salaried attorneys, has had to increase salaries by $17.5 million, reducing each of the 245 partners' income by nearly $71,000. Law firms are responding to these increases in a number of ways, ranging from downsizing the firm to its "core practices" to shifting work to staff and non-partner track lawyers.

[45] *See* Hengstler, *supra* note 17, at 63.

[46] *See generally* John Watkins, *Lawyer Advertising, the Electronic Media, and the First Amendment*, 49 ARK. L. Rev. 739(1997).

[47] 433 U.S. 350(1977).

[48] Model Rules of Professional Conduct (1983). The general rule is that, as long as there are no "false or misleading communications," (Rule 7.1) then an attorney may use the public media to present advertisements (Rule 7.2(a)). What constitutes false or misleading? A "material misrepresentation," an omission of a fact "necessary to make the statement considered as a whole not materially misleading," the expression, either state or implied, that the lawyer can achieve guaranteed results, and a comparison with another lawyer or law firm, "unless the comparison can be factually substantiated" (Rule 7.1) are possible elements of a false or misleading communication. *See generally*, John Watkins, *Lawyer Advertising, the Electronic Media, and the First Amendment*, 49 Ark. L. REV. 739 (1997).

[49] *See* Re, *supra* note 37, at 102.

[50] *Id.* at 103.

point during the relationship, the relative awards to the parties start to differ dramatically, resulting in the lawyer maximizing his or her return and not the client's.[51]

Another factor often cited as counterproductive for lawyers' images is the litigation explosion, especially in such areas as medical malpractice and products liability, and the growth of the tort reform movement.[52] There is little doubt that, in the last thirty years, the country has seen a dramatic increase in the number of lawsuits filed.[53] There is considerable debate, however, as to the extent and cause of this increase.[54] Nevertheless, the public tends to see the increase in litigation in a primarily negative light, with major concerns involving the compensation of the lawyers and delay of case resolution, as well as the personal responsibility of the plaintiffs.[55]

A final reason that is often offered for the regrettable public image of lawyers is the increasing commercialization of the legal profession. Economic and social forces are leading lawyers to think and act less as attorneys and more as business people, with a very simple goal: increase revenues.56 The basic approach to this topic in the legal community from many commentators has been to deplore the emergence of this commercialization mindset and to call for reforms.57 In a counter argument that Jeffrey Stempel refers to as the "business-forcing movement," some practitioners and theorists have advanced the thesis that many rules of professionalism hamper the ability for lawyers to render assistance in the modem world, creating a veneer of romanticism that serves neither the client or the lawyer.58

[51] *See generally* Ronald Gilson & Robert Mnookin, *Disputing Through Agents: Cooperation and Conflict Through Lawyers in Litigation*, 94 COLUM. L. REV. 509 (1994).

[52] *See* TORT POLICY WORKING GROUP, UNITED STATES ATTORNEY GENERAL, AN UPDATE ON THE LIABILITY CRISIS (1987); Deborah Hensler, *Trends in Tort Litigation: Findings from the Institute for Civil Justice's Research*, 48 OHIO ST.L.J. 479 (1987).

[53] *See* STEPHEN DANIELS & JOANNE MARTIN, CIVIL JURIES AND THE POLITICS OF REFORM 5 (1995); ERIK MOLLER, TRENDS IN CIVIL JURY VERDICTS SINCE 1985 (1996); CAROL DEFRANCES, BUREAU OF JUSTICE STATISTICS, U.S. DEPARTMENT OF JUSTICE, CIVIL JUSTICE SURVEY OF STATE COURTS, 1992: CIVIL JURY CASES AND VERDICTS IN LARGE COUNTIES (1995).

[54] A recent study by the National Center for States Courts found that only 364 out of 762,000 cases resulted in punitive damages, or 0.048 percent. In a follow-up study of sixteen states, the Center found that the number of liability suits has declined around nine percent since 1986. *See* William Glaberson, *When the Verdict is Just a Fantasy*, N.Y. Times, June 6,1999, at A1.

[55] *See* Re, *supra* note 37, at 108.

[56] *See generally* David Bamhizer, *Princes of Darkness and Angels of Light: The Soul of the American Lawyer*, 14 N.D. J.L. ETHICS & PUB. POL'Y 371 (2000).

[57] *See generally* MARY ANN GLENDON, A NATION UNDER LAWYERS: How THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY (1994); ANTHONY KRONMAN, THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION (1993); SOL LINOWITZ & MARTIN MAYER, THE BETRAYED PROFESSION: LAWYERING AT THE END OF THE TWENTIETH CENTURY (1994); Ronald Gilson, *The Devolution of the Legal Profession: A Demand Side Perspective*, 49 MD. L. REV. 869 (1990); Elizabeth Kovachevich & Geri Waksler, *The Legal Profession: Edging Closer to Death with Each Passing Hour*, 20 STETSON L. REV. 419 (1991).

[58] Jeffrey Stempel, *Symposium: Embracing Descent: The Bankruptcy of A Business Paradigm for Conceptualizing and Regulating the Legal Profession*, 27 Fla. St. U. L. Rev. 25, 32 (1999). Stemple argues that Steven Brill and Howard Finkelstein, founders of the influential American Lawyer magazine

Regardless of the normative stance being advanced, the reality is clear: the profession is changing in important, even profound, ways.

C. *The Transformation of the Legal Environment: From Profession to Business*

There is no question that the legal services industry has adopted many business practices that have altered the face of the profession. As previously noted, advertising of legal services, seen as anathema only a generation ago, now clogs our airwaves.[59] Lawyers find themselves facing new entrants in their once more protected environment, resulting in a buyer's market for many legal services.[60] For example, accounting firms, tax preparers, paralegals, walk-in legal clinics, Internet web sites and form preparers are now competing with traditional legal practices.[61] This, along with the dramatic increase in the population of attorneys, makes the industry much more competitive, with lawyers resorting to such time-honored business techniques as cost-cutting and extensive marketing.[62] The legal profession, once aptly described as a gentlemen's club, is now a brawling marketplace, in which new attitudes and business techniques are profoundly changing the nature of the law.

These changes are especially apparent in the practices of those lawyers who serve individual, as opposed to corporate, clients. Whereas corporations have the resources to assess the quality of the work of their attorneys either qualitatively or even quantitatively, many critics believe that individual citizens have neither the resources nor the knowledge to assess their lawyers and their services.[63] As these lawyers who serve individuals move from their traditional, although mythical, position of benign neutrality to that of competing businesspeople, their role is becoming increasingly cloudy.

The traditional image of the organized bar is that of a profession of well- educated generalists, all acknowledged equals, who cater to private individuals.[64] However, this image, reinforced through professional ethical rules and admission standards, is a myth; the legal profession is highly stratified, with a ranking system that is well known, both within and outside the profession. The stratification is based upon the nature of the lawyers' clientele: those attorneys who serve mostly individuals and those who serve corporate interests.[65] In legal circles, attorneys

and National Law Journal respectively, have promoted a world view that is mostly concerned with firm size and profitability.

[59] *See* Watkins, *supra* note 49, at 740.

[60] F. Leary Davis, *Back to the Future: The Buyer's Market and the Need for Law Firm Leadership, Creativity, and Innovation,* 16 CAMPBELL L. REV. 147 (1994).

[61] Roger Cramton, *The Future of the Legal Profession: Delivery of Legal Services to Ordinary Americans,* 44 CASE W.RES. L. Rev. 531 (1994).

[62] Robert Nelson, *The Future ofAmerican Lawyers: A Demographic Profile of a Changing Profession in a Changing Society,* 44 CASE W.RES. L. REV. 345 (1994).

[63] *See generally* JOHN HEINZ & EDWARD LAUMANN, CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR (1982); RICHARD ABEL, AMERICAN LAWYERS (1989).

[64] *See* Cramton, *supra* note 61, at 538.

[65] *Id.* at 539.

practicing corporate law (securities, corporate tax, mergers and acquisitions) are at the apex of the profession, while lawyers serving individuals rank near the bottom.[66]

Yet, while corporate lawyers are seen as practicing in the more prestigious areas of the law, they have far less control over their business clients than do lawyers practicing middle-class law. Corporations have created a number of institutional (the advent of in-house corporate counsel) and structural (billing standards and audits) controls that have had the effect of reducing lawyer power.[67] In contrast, individual clients have limited means of control: the power and information bases between the parties are extremely asymmetrical and the typical client is a decision taker rather than a decision maker.[68]

Historically, the legal profession addressed this issue of asymmetric power by restricting licensure to people entering the field and by pursuing certain anticompetitive strategies, *i.e.*, the creation of the legal monopolies found in all fifty states, which helped to keep legal prices consistently high and stable.[69] In return, the legal profession exerted control upon a law firm's marketing practices, by sharply curtailing what a lawyer or law firm could do in signage, advertising, etc.[70] Building upon the assumption that clients are simply incapable of assessing lawyer quality, the bar associations, through their cartels, have created a static model based upon a nineteenth-century, idealized view of lawyer-client relationships, with the anticipated outcome being a level of trust, institutional in nature, between the lawyer and the client.

However, attorneys' responses to market conditions have done much to reduce this conjectural level of trust. With the weakening of the bar association's efforts to keep non-lawyers out of the practice of law and the emergence of a more competitive marketplace, certain legal services have become commodities, with a resulting decline in the prices charged.[71] Personal bankruptcy practice is a case in point. The background knowledge and the mechanics for preparing the necessary paperwork for most consumer bankruptcies are fairly elementary. The bankruptcy courts of each district may exert some control on attorney fees, but competitive pressures tend to erode even these.[72] Many solo practitioners and firms aggressively advertise their bankruptcy practices. Within even smaller communities, it is not uncommon to have a bankruptcy clinic or a law firm that provides the "$99 bankruptcy." As a result, in many communities, bankruptcies have become a type of commodities legal service. The end effect is that the margins on providing such services tend to be lowered over time. In controlling costs, lawyers may employ a

[66] *Id.* at 540.

[67] Abraham Chayes & A.H. Chayes, *Corporate Counsel and the Elite Law Firm*, 37 STAN. L. REV. 277 (1985).

[68] *See* Cramton, *supra* note 61, at 540.

[69] *Id.* at 544.

[70] Fredrick Trilling, *The Strategic Application of Business Methods to the Practice of Law*, 38 WASHBURN L.J. 13 (1998).

[71] *Id.* at 40.

[72] Gary Neustadter, *When Lawyer and Client Meet: Observations of Interviewing and Counseling Behavior in the Consumer Bankruptcy Law Office*, 35 BUFF. L. REV. 177 (1986).

number of strategies: reducing counseling time with the client; having paralegals and other non-lawyers prepare most of the paperwork; or using commercially available bankruptcy software.[73]

Personal bankruptcy is an area that is rapidly gaining middle-class law status. By 1998, over 1.4 million Americans were filing for consumer bankruptcy each year, an all-time record.[74] The growth in the number of people declaring personal bankruptcy has been explosive.[75] Since 1981, the filing rate has tripled. Despite being part of the greatest peacetime economic expansion in history, Americans increased their filing rate by 113% from 1994 to 1997.[76]

Personal bankruptcy possesses the hallmarks of middle-class law. First, it tends to be non-confrontational. Although the bankruptcy process is set up to accommodate creditors' claims, most notably in the "meeting of creditors," the creditors rarely make appearances.[77] For example, in this sample of 89 respondents, each with his or her meeting, only three creditors in total showed up at these meetings. Second, the client's only interaction tends to be with his or her attorney. Although the bankruptcy code does provide for a selection of the Chapter 7 trustee, rarely will the client have more than perfunctory contact with the trustee and rarely will he have any with the bankruptcy judge, unless extreme circumstances dictate a meeting.[78] Third, the legal processes involved tend to be, from the lawyer's perspective, routine and non-imposing.[79] In summary, in a middle-class law scenario, the

[73] *Id.* at 199-256.

[74] American Bankruptcy Institute, *U.S. Bankruptcy Filings 1980-1998* (visited Sept. 1999). <http//www.abiworld.org>

[75] Many theories, some conflicting, have been proposed to explain this rapid increase. What appears to be incontrovertible, though, is that today's public is viewing bankruptcy in a different light from previous generations. Some commentators have argued that persons facing major debt are much more likely to view bankruptcy as just another consumer option, one with consequences that are manageable. While historically bankruptcy was viewed as an option of last resort, today it is seemingly just another financial management tool. *See generally*, TERESA A. SULLIVAN, ELIZABETH WARREN & JAY L. WESTBROOK, As
WE FORGIVE OUR DEBTORS: BANKRUPTCY AND CONSUMER CREDIT IN AMERICA (1989); Ian Domowitz
& Thomas L. Eovaldi, *The Impact of the Bankruptcy Reform Act of 1978 on Consumer Bankruptcy*, 36 J.L. & ECON. 803 (1993); Michael J. Herbert & Domenic E. Pacitti, *Down and Out in Richmond, Virginia: The Distribution of Assets in Chapter 7 Bankruptcy Proceedings Closed During 1984-1987*, 22 U. RICH. L. Rev. 303 (1988); Phillip Shuchman & Thomas L. Rhorer, *Personal Bankruptcy Data For Opt- Out Hearings and Other Purposes*, 56 Am. BANKR. L.J. 1 (1982); Teresa A. Sullivan, Elizabeth Warren & Jay Westbrook, *Consumer Debtors Ten Years Later: A Financial Comparison of Consumer Bankrupts 1981-1991*, 68 Am. BANKR. L.J. 121 (1994) [hereinafter Sullivan, Warren & Westbrook, Ten years Later]; Teresa A. Sullivan, Elizabeth Warren & Jay Westbrook, *The Persistence of Local Legal Culture: Twenty Years of Evidence From the Federal Bankruptcy Courts*, 17 Harv. J. L. & PUB. POL' Y 801 (1994) [hereinafter Sullivan, Warren & Westbrook, Local Legal Culture]; William J. Woodward, Jr. & Richard S. Woodward, *Exemptions as an Incentive to Voluntary Bankruptcy: An Empirical Study*, 88 COM. L.J. 309 (1983).

[76] VISA U.S.A., CONSUMER BANKRUPTCY: ANNUAL BANKRUPTCY DEBTOR SURVEY (1998).

[77] 11 U.S.C. S. § 341 (Law. Coop. 1987).

[78] All of the respondents reported extremely limited contact with the bankruptcy judge.

[79] *See* Carl Hosticka, *We Don't Care About What Happened, We Only Care About What is Going to Happen: Lawyer-Client Negotiations of Reality*, 26 SOC. PROBS. 559 (1979). Bellow, in describing the relationship between lawyer and client involving routine services, states:

client's only contact is with his or her attorney, who therefore assumes a different role than he or she would play in a litigation setting.

In a middle-class law scenario, there arise critical questions concerning how the client evaluates the legitimacy of the institution. In a litigation setting, the client has many players that influence his or her satisfaction with the institution and its decisions. However, in a middle-class law scenario, there is only one active player; the client must take his or her cues, and the resulting beliefs concerning the system from a single contact point, the attorney.

This assessment of the institution is only made more complex by the high credence properties of the services involved and the resultant decisions. Although much of middle-class law may be thought of as procedurally mundane, to the average client, the services presented constitute a "black box." Thus, we have the conundrum that middle-class law presents: how do clients evaluate an institution with which they have only minimal contact for services and decisions that the clients have neither the skills or education to properly evaluate? How do clients in this scenario evaluate the legitimacy of the institution?

n. THE THEORETICAL FRAMEWORK

A. *Institutional Legitimacy and Social Dilemmas*[80]

The ultimate goal of the legal system, indeed any social system, is not to coerce, but to facilitate voluntary compliance with its rules and regulations.[81] With only limited resources, government has, at the best, only a restricted ability to induce changes in behavior. Compulsion of the populace generates significant costs. From an economic and social perspective, costs include the direct costs, the outlays associated with forcing individuals to moderate their behavior and opportunity costs, the costs for not directing community resources to another venue.[82] Resources directed toward coercion signal to the community that disobedient behavior will be accorded

> Problems presented by clients ... are dealt with routinely. ... If the case is considered appropriate for a lawyer, it is typically "slotted" into a standardized pattern.... Relationships with clients are dominated by . . . routines. The definition of the client's problems and the "best" available solutions are not mutually explored and elaborated: they are imposed by the lawyer's view of the situation and what is possible within it.

Gary Bellow, *Turning Solutions Into Problems: The Legal Aid Experience*, 34 NLADA BRIEFCASE 106, 108(1977).

[80] *See generally* Tom Tyler & Peter Degoey, *Collective Restraint in Social Dilemmas: Procedural Justice and Social Identification Effects on Support for Authorities*, 69 J. PERSONALITY & SOC. PSYCHOL. 482 (1995).

[81] Tom Tyler, *Citizen Discontent with Legal Procedures: A Social Science Perspective on Civil Procedure Reform*, 45 AM. J. COMP. L. 871 (1997).

[82] For example, Ross (1982) argues that it would be economically impossible to supply enough police to "get after" all drunk drivers. Voluntary compliance is essential.

attention, possibly diverting needed resources from positive reinforcement models. The impetus for compliance is the legitimacy of the institution as perceived by the public.

Lack of confidence in governmental institutions creates problems for players at all levels: judges, lawyers, representatives, the police and so forth. There is compelling evidence that, even when confronted with direct orders, the parties often fail to comply.[83] Civil disobedience is a serious threat to governmental institutions that goes beyond simply not following direct judicial orders to all mandates issued by government: from the very obvious, tax evasion,[84] to the least trying of laws.[85]

Institutional legitimacy refers to the beliefs held by members of the community that the institution has both the authority and power to render decisions for the entire community.[86] The essence of institutional legitimacy rests upon an understanding of what Garrett Hardin refers to as "social dilemmas."[87] *Social dilemmas* exist when members of a community are faced with a scarcity of communal resources resulting in the dilemma: short-term self-interests of individuals may conflict with the long-term interests of the broader community, *i.e.*, the institutional interests.

Self-interest is widely seen as a principle component of the basis of human behavior.[88] Recent research in social dilemmas has focused upon the concept of collective self-restraint, that is, the creation of institutions that regulate individual self-interest by controlling assess to and distribution of scarce resources.[89] The creation and continuing success of an institutional authority is seen by many as an ongoing, dynamic political process, in which individuals must constantly decide whether to cede a degree of personal freedom and submit to the higher authority.[90]

The public's perception of the legitimacy of its authority is key to the institution's survival. Legitimacy enhances the power of leaders to secure voluntary

[83] Craig McEwen & Richard Maiman, *Small Claims Mediation in Maine: An Empirical Assessment*, 33 Me. L. Rev. 237 (1981).

[84] J. ROTH & J. DARLEY, TAXPAYER COMPLIANCE: SOCIAL SCIENCE PERSPECTIVES 2 (1989).

[85] TOM TYLER, WHY PEOPLE OBEY THE LAW (1990).

[86] RONALD ROGOWSKI, RATIONAL LEGITIMACY: A THEORY OF POLITICAL SUPPORT (1974). M. Stephen Weatherford, *Measuring Political Legitimacy*, 15 AM. POL. SCI. REV. 149 (1992).

[87] Garrett Hardin, *The Tragedy of the Commons*, 165 SCIENCE 1243 (1968).

[88] T. Tyler & R. Dawes, *Fairness of Groups: Comparing the Self-interest and Social Identity Perspectives*, in B. MELLERS & J. BARON, PSYCHOLOGICAL PERSPECTIVES ON JUSTICE: THEORY AND APPLICATIONS (1993).

[89] Research supporting this proposition has focused on such areas as elections of governing officials, rule creation and sanctioning systems. *See* D. Messick, et al., *Individual Adaptations and Structural Change as Solutions to Social Dilemmas*, 44 J. PERSONALITY & SOC. PSYCHOL. 294 (1983); C. Samuelson, *Perceived Task Difficulty, Causal Attribution, and Preferences for Structural Change in Resource Dilemmas*, 17 PERSONALITY AND SOCIAL PSYCHOLOGY BULLETIN 181 (1991); K. Sato, *Distribution of the Cost of Maintaining Common Resources*, 23 J. EXPERIMENTAL SOC. PSYCHOL. 19 (1987); and Toshio Yamagishi, *Seriousness of Social Dilemmas and the Provision of a Sanctioning System*, 51 SOC. PSYCHOL. Q. 32 (1988).

[90] B. Crowe, *The Tragedy of the Commons Revisited*, 166 SCIENCE 169 (1969); J. Edney & C. Harper, *The Commons Dilemma: A Review of Contributions of Psychology*, 2 ENVTL. MGMT. 491 (1978).

compliance with their decisions.[91] Legitimacy is a multi-faceted construct that should be understood in light of three key aspects.[92] The first aspect involves how authorities measure the trust that people possess concerning the nature of the authority figures themselves: are they seen as competent and honest in their decision making? Second, one needs to examine the people's willingness to submit to the authority figure's decisions: how willing are the people to follow a holding of the institution? The third aspect involves people's willingness to follow the rules in order to address a shortage of community resources: how willing are the people to follow a ruling even when it goes against their own short-term self-interest?

Integral to the concept of the legitimacy is the idea of authority. *Authority* is the formal power of an organization to enact change in its environment.[93] Levels of authority may change, as the institution faces varying degrees of difficulty in its environment. An extreme form of authority is the concept of the *autocratic authority*, in which the governing players have the ability to make binding decisions with only minimal input from the community. Much more common, and descriptive of our political and legal institutions, is the concept of *consensual or democratic authority*, *i.e.*, empowerment of institutional leaders by the people, resulting in their possible replacement if they fail to perform satisfactory.[94] Delivering satisfaction and, hence, the measurement of satisfaction, becomes of paramount importance to democratic institutions.

B. *Assessing Satisfaction with Institutions: Distributive Justice*

In the literature concerning the evaluation of social systems and institutions, two theories dominate the field: distributive justice and procedural justice. Social exchange theory suggests that outcome measures of satisfaction are evaluated by personal standards, as opposed to objective standards.[95] In other words, people are satisfied when the outcomes exceed their personal expectations and are dissatisfied when these fail to meet their expectations.[96] Because the entire process of setting

[91] *See generally* Tyler, *supra* note 85.

[92] *Id.* at 20-40.

[93] STEPHEN ROBBINS, ORGANIZATIONAL BEHAVIOR (1996).

[94] Dahl describes five publicly held beliefs that facilitate the development of consensual authority: (1) belief in the legitimacy of the institution; (2) belief in the governing figures' authority; (3) confidence in governmental problem solving ability; (4) trust; and (5) belief in the importance of political cooperation. *See* ROBERT DAHL, POLYARCHY (1971).

[95] *See generally* PETER BLAU, EXCHANGE AND POWER IN SOCIAL LIFE (1964); J. Adams, *Toward an Understanding of Inequity*, 67 J. ABNORMAL & SOC. PSYCHOL. 422 (1963); J. Adams, *Inequity in Social Exchange*, in 2 ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY (1965); Peter Blau, *Interaction: Social Exchange*, in INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL SCIENCES (1968).

[96] HAROLD KELLEY & JOHN THIBAUT, INTERPERSONAL RELATIONS: A THEORY OF INTERDEPENDENCE (1978).

expectations is personal and idiosyncratic, one would expect that satisfaction levels would differ among all parties.[97]

Distributive justice refers to how parties to a dispute, negotiation or decision perceive the fairness of the tangible outcome.[98] Distributive justice, having its origin in exchange theory, focuses on the role of equity in shaping transactions.[99] Under a distributive justice model, a fair decision is one in which each party to an exchange receives an outcome in proportion to that party's contribution.[100] Although equity is the primary decision rule in distributive justice, it is not the only one. *Need*, defined as whether the outcomes met the standards of all parties in the transaction, and *equality*, defined as whether all parties received the same outcomes regardless of contribution, are complementary or competing distribution rules.[101] However, equity has received the most attention and is the default distribution rule in most studies using a distributive justice framework.

C. *Procedural Justice: Psychological Foundations*

The second major theory explaining how people assess institutions was introduced by Thibaut and Walker in their seminal work, "Procedural Justice: A Psychological Analysis," in 1975.[102] In contrast to distributive justice's focus on outcomes, procedural justice emphasizes the process through which decisions are made in the presence of conflicts of interest.[103] Theorists have proposed two possible rationales for the underlying psychological process of this construct. One group, as exemplified by Thibaut and Walker, contends that parties in a dispute or those affected by institutional decisions wish for a degree of control in order to improve their own outcomes.[104] This instrumental control position assumes that persons typically will take a short-term perspective, in order to enhance their position or relationship with the other party in the dispute.[105] Exerting some control over the transaction process is seen as providing necessary information to the decision maker, in order for him or her to arrive at an equitable decision.[106]

In contrast, relational control proponents emphasize the nature of the relationship between the parties involved in a dispute and the institution that will render a decision.[107] The perspective of the players is assumed to be more long-term in nature and emphasizes the social relationship between the parties and the institution rendering the decision.[108] The procedures are seen as the embodiment of the values of the institution.[109] The nature of the social interaction between the parties

[97] E. Lind, Robert MacCoun, Patricia Ebener, William Felstiner, Deborah Hensler, Judith Resnik & Tom Tyler, *In the Eye of the Beholder: Tort Litigants' Experiences in the Civil Justice System*, 24 L. & SOC'Y REV. 953 (1990).

[98] Jeffrey Blodgett, Donna Hill & Stephen Tax, *The Effects of Distributive, Procedural and Interactional Justice on Postcomplaint Behavior*, 73 J. RETAILING 185 (1997).

[99] *See generally* Blau, *supra* note 95.

[100] David Messick & Karen Cook, *Psychological and Sociological Perspectives on Distributive Justice: Convergent, Divergent, and Parallel Lines*, in DAVID MESSICK & KAREN COOK, EQUITY THEORY: PSYCHOLOGICAL AND SOCIOLOGICAL PERSPECTIVES (1983).

[101] M. DEUTSCH, DISTRIBUTIVE JUSTICE (1985).

and the institution allows the parties to take on the values themselves, thus promoting, more than simply attaining, the goals sought.[110] Procedures that create the appearance of a mature, full-status relationship are seen to be more equitable than those that seem to embody a negative relationship.[111] Both psychological foundations have found support, leading some scholars to observe that the relationship between the two is probably complementary.[112]

D. *Procedural Justice: Theoretical Basics*

Thibaut and Walker's theory of procedural justice is unique in several aspects. The authors contend that the two primary goals of any dispute resolution procedure are truth and justice, the fair apportionment of the outcomes.[113] They contend that decision-makers with autocratic authority produce the most accurate results.[114] Conversely, systems with consensual authority are more likely to be perceived as being more just or fair.[115] Thibaut and Walker account for the apparent dichotomy and possible conflict between truth and justice by proposing a bifurcated dispute resolution system, in which the first phase is characterized by lesser control by the participants *(i.e.,* more autocratic), thus focusing on truth seeking.[116] The second stage is characterized by more participation by the affected parties *(i.e.,* more consensual) allowing them the opportunity to feel that justice has been achieved.[117]

Even more critical is the authors' differentiation between decision and process control. Decision control is the control that the affected parties have over the actual decision. Process control is the control they have over the procedures and processes. Thibaut and Walker found that persons view those decisions as fair that give them control over aspects of the litigation process, that is process control. However, this is not to say that litigants do not wish decision control. According to Thibaut and Walker, persons involved in a dispute prefer to maximize decision control. Even when this control is reduced, the litigants seek to enhance their control, through the indirect means of controlling evidence presentation, thus enhancing

[102] *See* Thibaut & Walker, *supra* note 6.
103 Id. at 3.
[104] *Id.* at 6-16.
[105] *Id.* at 6.
[106] *Id.* at 7.
[107] E. LIND & TOM TYLER, THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE (1988).
108 Id. at4.
[109] *Id.* at 5.
[110] *Id.* at 3.
[111] *Id.* at 6.
[112] *Id.it* 7.
[113] *See* Thibaut & Walker, *supra* note 6, at 102.
[114] *Id* .at 103.
115 Id. at 117.
[116] *Id.* at 117-119.
[117]/d. at 117-119.

their own short-term involvement and interest, a concept previously defined as instrumental control.[118]

Thibaut and Walker suggest that process control is more important than decision control in assessing fairness with the overall legal system. This is a view confirmed by recent research. The most important issue to people is the process by which their case was handled.[119] After the fairness of the process, the most important issue is the perceived fairness of the outcome. The degree to which they "win" is seen as the least important factor in assessing satisfaction with the ruling institution.[120]

Research examining litigants' reactions to alternative dispute resolution techniques supports this contention. In studying an arbitration program, it was found that judgments concerning fairness were more important in the decision to accept an award than were feelings of "winning" or "losing."[121] Likewise, in a study examining willingness to accept mediation decisions in federal court, it was found that the primary factor was the perceived fairness of the decision.[122]

Lind and Tyler postulate that there are, in fact, two types of procedural justice: subjective and objective.[123] Subjective procedural justice has been defined as "the capacity of each procedure to enhance the fairness judgments of those who encounter procedures."[124] Thibaut and Walker argue that the optimal form of procedural justice is joint control between the parties to the case and the decision maker.[125] Furthermore, the authors argue that participants prefer trial-like proceedings[126] and that adversarial proceedings enhance feelings of fairness.[127]

Lind and Tyler differentiate objective procedural justice from a normative perspective as being closely associated with accuracy in decision making, reducing bias and prejudice.[128] As noted earlier, research reveals that inquisitorial and adversarial procedures produce differing perceptions as to the degree of truthfulness revealed in the proceeding.[129] This line of research does raise the following public policy issue: is it preferable to choose procedures that are perceived as fairer (adversarial) or to choose those that enhance the accuracy of the information obtained and interpreted?[130]

118 Id. at 117.

[119] *See generally* Lind &Tyler, *supra* note 107.

[120] *See generally* Tyler, *supra* note 81.

[121] R. MACCOUN, E. LIND, D. HENSLER, D. BRYANT & P. EBNER, ALTERNATIVE ADJUDICATION: AN EVALUATION OF THE NEW JERSEY AUTOMOBILE ARBITRATION PROGRAM (1988).

[122] E. Lind, C. Kulik, M. Ambrose & M. de Vera Park, *Individual and Corporate Dispute Resolution: Using Procedural Fairness as a Decision Heuristic*, 38 ADMIN. SCI. Q. 224 (1993).

[123] *See* Lind & Tyler, *supra* note 107, at 10.

[124] *Id.* at 3-4.

[125] *See* Thibaut & Walker, *supra* note 5, at 117-119.

[126] *Id.* at 14.

[127] *Id.* at 94.

[128] *See* Lind & Tyler, *supra* note 107, at 3.

[129] *See infra* notes 114-118 and accompanying text.

[130] *See* Mark Fondacaro, *Toward A Synthesis of Law and Social Science: Due Process and Procedural Justice in the Context of National Health Care Reform*, 72 DENV. U. L. REV. 303 (1995).

E. *Procedural Justice: Elements of the Model*

Tyler, in his model of procedural justice, argues that four elements— trustworthiness, respect, voice, and neutrality—explain how most participants assess the fairness or unfairness of institutional procedures, and by implication, satisfaction with the institution itself.[131] Tyler contends that these elements are essential in order for the participants to experience satisfaction with the decision reached, mattering as much as, or even more than, the nature of the actual outcome.

Trustworthiness refers to how the participants assess the fairness of the third party decision-maker: was the decision-maker motivated to treat them in an equitable manner?[132] Trust has been shown to be a key consideration in how people are willing to accept the outcome of a case.[133] Research reveals that trustworthiness is the major factor most people consider when evaluating the fairness of decisions.[134]

Being treated with respect and dignity has been suggested by several studies to enhance feelings of fairness. Interpersonal respect addresses the social standing of the participants. Being treated with civility and politeness reaffirms the self-worth of the participant, leading to a greater willingness to accept even unfavorable rulings.[135]

Voice refers to the parties' opportunity to participate in affecting the decision.[136] As referred to earlier, voice holds both practical and self-esteem value for the participants.[137] A number of studies reaffirm the importance of voice in a variety of legal scenarios, ranging from sentencing hearings[138] to alternative dispute resolution techniques.[139]

The final element, neutrality, refers to the decision-maker's use of unbiased criteria in arriving at a decision. As a result of their lack of knowledge and uncertainty as to the outcome, the participants' wish to find the fabled "even playing field" becomes exceedingly important. The decision-maker's honesty and apparent impartiality contribute much to the neutrality concept and the acceptance of decisions.[140]

In conclusion, the procedural justice framework provides a potent mechanism for understanding how people assess their satisfaction with an institution, in this case, the judiciary system. The framework, through its core elements, will next

[131] Tom Tyler, *Citizen Discontent with Legal Procedures: A Social Science Perspective on Civil Procedure Reform,* 45 AM. J. COMP. L. 871 (1997).

[132] *Id.* at 889.

[133] *Id.* at 889.

[134] Tom Tyler & E. Lind, *A Relational Model of Authority in Groups,* 25 ADVANCES IN EXPERIMENTAL SOC. PSYCHOL. 115-191 (1992).

[135] *See* Tyler, *supra* note 131, at 892.

[136] *Id.* at 887.

[137] *See infra* notes 105-113 and accompanying text.

[138] *See* Heinz & Kerstetter, *supra* note 7.

[139] *See* Katherine Kitzmann & Robert Emery, *Procedural Justice and Parents ' Satisfaction in a Field Study of Child Custody Dispute Resolution,* 17 L. & HUM. BEHAV. 553 (1993).

[140] *See* Tyler, *supra* note 131, at 892.

be presented in terms of hypotheses relating them to the dependent variable, *satisfaction with the bankruptcy system*.[141]

III. HYPOTHESES: MODIFYING THE PROCEDURAL JUSTICE FRAMEWORK

Much of the prior research addressing this framework was directed at institutions employing third party decision-makers—judges, mediators, arbitrators and legislative bodies. Interaction with these third parties is important for the participants to receive the signals necessary to create a sentiment of fairness, leading to satisfaction with the institution itself.

However, in middle-class law scenarios, such as consumer bankruptcy, clients rarely interact with these third parties. Rather, their sole interaction tends to be with their attorney. This necessitates a role for the attorney practicing middle- class law different from the one in a litigation setting.

In the classic confrontational courtroom setting, the lawyers act as advocates, while the judge sits as a neutral decision-maker. Clients base their satisfaction as much upon the institutional processes as upon the behavior of their attorney. An underlying assumption of procedural justice theory is that, in assessing satisfaction with various legal or political institutions, people are more likely to be satisfied with decisions in which the underlying procedures are perceived as being fair.[142] Even when removed from the third party decision-maker, the client still wishes for institutional justification for the decision rendered. For example, in a bankruptcy setting, the client not only wishes to be relieved of his or her debt burden, but also of the guilt for no longer being responsible for this debt. Institutional based decisions help the client to rationalize the outcome, making it more palatable, whether the results are favorable or unfavorable.

Since the lawyer's primary role is that of advocate, strict neutrality is not an available option. However, the client still wishes for the benefits of a neutrally derived decision. The researcher believes that limited neutrality and participation are closely related in a middle-class law scenario. The perceived competence of the attorney not only serves as a proxy for neutrality, but also helps to establish the narrative for the client. Because typical clients do not possess the knowledge to participate freely in a complex legal decision, their trust in their lawyer's competence or skill sets allows them the opportunity to enhance their participation.[143] Therefore,

[141] The *dependent variable* refers to the characteristic that one suspects will be affected, in some way, by other characteristics, the independent variables.

[142] *See* Thibaut & Walker, *supra* note 6.

[143] Enhancing participation by the client is a key element of the "client-centered" approach to legal interviewing and counseling currently popular in many law schools. *See generally* DAVID BINDER & SUSAN PRICE, LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH (1977); DAVID BINDER, SUSAN PRICE & PAUL BERGMAN, LAWYERS AS COUNSELORS: A CLIENT CENTERED APPROACH (1991); Serena Stier, *Reforming Legal Skills: Relational Lawyering*, 42 J. LEGAL EDUC. 303 (1992); Robert Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, 32 ARIZ. L. REV. 501 (1990); Stephen Pepper, *The Lawyer's Amoral Ethical Role: A Defense, A Problem, and Some Possibilities*, 1986 AM. B. FOUND. RES. j. 613 (1986).

voice in a middle-class law setting should possess both participation and competence elements. The author proposes that voice as well as trustworthiness and interpersonal respect act as cues for clients in assessing their satisfaction with the broader judicial system. Therefore:

HI: The greater the perceived trustworthiness of the lawyer, the greater will be the level of client satisfaction with the bankruptcy judicial system.

H2: The greater the level of voice facilitated by the lawyer, the greater will be the level of client satisfaction with the bankruptcy judicial system.

H3: The greater the level of interpersonal respect shown by the lawyer, the greater will be the level of client satisfaction with the bankruptcy judicial system.

IV. METHODOLOGY

A. Qualitative Study

In constructing the survey instrument, the researcher concluded that measures developed in other setting were of only limited use. This is particularly true here, because of the lack of active involvement by a third party decision-maker in a Chapter 7 bankruptcy case, quite atypical from other reported procedural justice scenarios. Thus, the study used both exploratory interviews and models developed in the literature to assist us in developing the items of interest to measure the procedural justice construct used in this study.

The process of establishing the framework began with the researcher conducting a thorough literature review of extant research on procedural justice. The researcher then conducted a series of in-depth interviews with bankruptcy attorneys who work with a large number of individual debtors. However, the researcher was stymied by the need to obtain qualitative data from persons who recently have declared bankruptcy, but because of the sensitive nature of such inquiries were hesitant to meet with the researchers. To remedy this, several focus groups were conducted with consumer debt counselors, to assess what they believed might constitute reasonable items for such an instrument. It was felt that these counselors, who work with debtors with quite a different mindset from that of bankruptcy attorneys, could provide insights into the typical debtor's mind to assist in the creation of the instrument. These interviews led to identification of the domain of items that were to be included in the survey instrument. These items were next referred back to the interviewed subjects, who concluded that these items, with some modifications, constituted a sufficient measure of the key factors explaining client assessment of the broader bankruptcy system.

B. Questionnaire Design

Based largely upon the qualitative interviews, a preliminary version of the questionnaire was developed next.[144] The questionnaire instructed the participants to rate the items using a seven-point Likert scale.[145] Each item was anchored at the numeral 1 with the verbal statement "Strongly Disagree" and at the numeral 7 with the verbal statement "Strongly Agree." Pre-testing was accomplished by having a group of persons who had received legal services from a lawyer within the last five years answer the questionnaire, to ensure that the wording, format, length, sequencing of questions and range of the scale items were appropriate.

C. Sampling and Data Collection

The population studied was all persons obtaining a Chapter 7 bankruptcy discharge from the Bankruptcy Court of the United States, Western District of Pennsylvania, Erie Division, between the dates of April 30 and September 30, 1997, who had been represented by counsel.[146] Self-administered questionnaires were mailed to the 530 filers identified. A second mailing was sent out to those who had not yet responded two weeks later. A total of 89 surveys was returned, for a response rate of 17%.[147] In addition, relevant financial information concerning each respondent was obtained from publicly available records.

[144] Babbie indicates that there are three major methods for collecting survey data: in-person, telephone and mail. Each has corresponding tradeoffs in regard to sample size and research cost. Self-administered mail surveys typically reach the largest number of the population or sample frame at the lowest cost. Because of the size of the population and restrictions on both the researcher's time and budget, the researcher used a mail survey. *See generally* E.R. BABBIE, THE PRACTICE OF SOCIAL RESEARCH (1991).

[145] A Likert scale asks the respondent to assess his or her agreement or disagreement to a series of statements using, in the case of this study, a seven-point scale. This has obvious advantages over asking simple yes-or-no questions, because it allows the individual to indicate the extent of his or her assessment and allows the use of more advanced statistical techniques. *See* L.R. GAY & P L. DIEHL, RESEARCH METHODS FOR BUSINESS AND MANAGEMENT, 174 (1992).

[146] The sample selected was restricted to these time frames for several reasons. First, it was felt that return rates would be higher for recently discharged bankruptcies. Second, there was less chance of the data being "stale," because of the period of time between discharge and the survey being administered. Third, budgetary constraints restricted us to obtaining what was needed in order to ensure statistical validity. Fourth, the entire sample had to culled manually by the author from the bankruptcy clerk's office. Four days pulling names was more than enough to impress upon the author the need to restrict sample size.

[147] Gay & Diehl state that a minimum response is dictated by the type of research involved. For descriptive studies, a 10% response rate is needed. Correlational studies require at least 30 subjects to establish a relationship. *See* Gay & Diehl, *supra* note 146, at 140. Both requirements are met by the current study's sample. It should be noted that the subjects of this study, recently discharged bankruptcy filers, probably have a tendency to discard letters and requests from institutions, given their recent experience with creditors. Given the nature of this group, the author feels that a response rate approaching 17% is very good.

D. Analyses

The next step was to assess the underlying patterns in how the participants answered the items. The researcher wished to see whether the items used to measure the elements of the model (trustworthiness, voice and respect) in fact did so. For instance, one would expect the items measuring trustworthiness to correlate with each other more strongly than the items one thought should measure voice. We used a methodology called factor analysis[148] with varimax rotation.[149] This study met the general rule concerning the application of factor analysis, in that there should be four to five times as many observations as there are variables to be analyzed.[150] An examination of the items with their respective loadings revealed that several items loaded simultaneously on more than a single factor, while several others did not seem to belong to the group it was expected to load with.[151] These items were systematically removed; the final factor structure resulted in the three factors used in the model.[152] These factors explained 73.44% of the variance.[153] The items that made up each of the factors were next analyzed separately revealing that the factor structure was appropriate.[154]

From the analysis, three factors were derived that correspond to Tyler's model. An examination of the items constituting each of the three factors adds credence to this argument (see Appendix). The first five items, constituting the

[148] *Factor analysis* is a data reduction technique that removes the redundancy from a set of correlated variables, in essence to cut through the clutter of too many variables. Factor analysis removes duplicated information and produces a set of derived variables. The new variables derived from the technique can be thought of as "manifestations of an abstract underlying dimension - a factor." In this study, factor analysis was used to examine all the items in the questionnaire and find underlying "patterns" that allow us to simplify the analysis. Factor analysis can be used to identify underlying factors, screen variables, sample variables and cluster objects. *See* Kachigan, *supra* note 15, at 377-401.

[149] When one completes an initial factor analysis, the first derived factor accounts for the largest portion of the explained variance. *Rotating* the factor is a technique that allows one to take the existing factor matrix and redefine it, allowing the variance to be redistributed more evenly among all the factors. In essence, it allows one to "redefine the factors in order that the explained variance is redistributed among the newly defined factors", *i.e.*, to spread the variance more evenly among the factors thus increasing the explanatory value of the analysis. *Id.* at 248-52.

[150] JOSEPH HAIR JR., ROLPH ANDERSON & RONALD TATHAM, MULTIVARIATE DATA ANALYSIS (1987).

[151] A loading indicates how much each of the variables correlates with each of the factors. *See* Kachigan, *supra* note 15, at 243-44.

[152] A major function of factor analysis is to derive factors that have explanatory power. The goal is to have the least number of items explain the greatest amount of variance with factors that make sense conceptually. In this study, the researcher examined the item loadings; those items that loaded at a roughly equal level or more for each of the factors removed. The researcher then used factor analysis again and repeated the process. This resulted in the final set of three factors with only 10 items, down from five factors with 22 items that was obtained from the initial analysis. This reduction in the number of items "cost" us less than 3% of the explanatory value of the factors, from 76% to 73%.

[153] In this case, *variance* means how much is explained by the derived factors. *See* Kachigan, *supra* note 15, at 388-389.

[154] With no exception, only one factor emerged for each separate set with an eigenvalue exceeding 1. An eigenvalue corresponds to the "equivalent number of variables which the factor represents." *See* Kachigan, *supra* note 15, at 387.

factor Trustworthiness, focus on the symmetry that a lawyer can bring to a relationship when the parties possess unequal knowledge and skill sets. Because the client is incapable of reasonably assessing expectations and outcomes arising from the institution, trust in the lawyer serves to convey that the outcomes are indeed beneficial to the client. Trust in the lawyer serves as a proxy for trust in the institution.

The next derived factor, Voice, comprises two items that reflect upon attorney competence and one that directly addresses freedom to participate, therefore merging the concepts of limited neutrality and participation. The client depends upon the lawyer to provide solutions that are factually and legally sound, as well as providing a narrative in order to promote participation and equitable decision making. Perceived competence of the lawyer serves as a vital connection to full and efficient participation, thus enhancing the linkage between client and institution.

The final derived factor, Interpersonal Respect, is composed of two items that address the client's social status. The lawyer treating the client with dignity and respect serves to convey to the client that the institution accords the client with a full status relationship. This enhances identification with the institution, permitting the client to give greater credence to the institution's decision, whether favorable or unfavorable.

Table 1: Factor Analysis[155]

Did the work promised.	**.83**	.22	.31
Listened.	**.77**	.23	.30
Treated me the same.	**.77**	.27	.19
Ifelt that I was taken advantage of.	**.76**	.11	.07
More interested in fee than me.	**.57**	.05	.12
Knows a lot about bankruptcy law.	.17	**.90**	.10
Specializes in bankruptcy law.	.10	**.88**	.15
Freedom to choose.	.37	**.60**	.16
Friendly.	.20	.13	**.95**
Polite.	.34	.22	**.89**

The final preliminary analysis consisted of examining the constancy or reliability of the items.[156] Reliability analysis indicated that the internal consis

[155] For each item, the loadings on each factor are recorded. Each item loaded somewhat on every factor but loaded predominantly only on one. The researcher then grouped each set of items according to which factors they tended to load on the most.

[156] Reliability is the degree to which a test or series of items consistently measures a construct. It is essentially concerned with such traits as predictability and accuracy. For example, if one administers a test to two similar groups of students one would expect that the scores should be similar. The closer alpha gets to "1" the higher the reliability. *See* Gay & Diehl, *supra* note 146, at 165-170. In this case the researcher used a method called Cronbach alpha, which revealed that the items assessing each construct (trustworthiness, etc.) were adequate.

tency[157] of the constructs was reasonable and was as expected. [158] Validity, which addresses whether an instrument measures what it was intended to measure, was addressed, in part, by using multiple items to measure the construct.[159] The results in Table 2 provide support for criterion validity, because the correlation[160] between one scale and another is not as high as each scale's Cronbach alpha.[161]

Table 2: Correlation Analysis

Variables	1	2	3	4 Mean[162]	S.D.[163]
Trustworthiness (1)	1.00			6.03	1.21
Interpersonal Respect (2)	0.60*	1.00		6.41	1.04
Voice (3)	0.51*	0.47*	1.00	6.22	.937
Satisfaction (4)	0.55*	0.49*	0.62*	1.00 6.10	1.32

* p<0. .001

[157] *See id.* Internal consistency is one of the most commonly used indicators of reliability. Internal consistency addresses the question, "Do respondents respond similarly to items that are intended to assess the same thing?"

[158] The Cronbach alpha values of the items constituting the three factors exceeded Nunnally's recommended value of 0.70. The alphas were as follows: trustworthiness = 0.88; interpersonal respect = 0.89; and voice = 0.83. *See* J. C. NUNNALLY, PSYCHOMETRIC THEORY (1978/ *See infra* note 156.

[159] There are three basic types of validity: content, criterion and construct. Content validity is concerned primarily with the items of the questionnaire. Are the items selected appropriate for what is being measured? Do the items address all pertinent areas of the subject being studied? Criterion validity refers to the appropriateness of an independent variable for its corresponding criterion variable. Finally, construct validity refers to the relationships between the variables; that is, it addresses whether the selected measure "taps" the quality in which the researcher is interested. *See* Gay & Diehl, *supra* note 146, at 160-164.

[160] *Correlation analysis* assesses the association between two variables, that is, do above average values of one variable rise with the average values of another variable (positive correlation) or do above average values of one variable have an inverse relationship with the values of another variable (negative correlation). *See* Kachigan, *supra* note 15, at 195-237.

[161] John Gaski & John Nevin, *The Differential Effects of Exercised and Unexercised Power Sources in a Marketing Channel*, 22 J. MARKETING RETAILING 61 (1985). *See infra* note 156.

[162] The *mean* is simply the sum of a set of values, divided by the number of values involved. The mean should be differentiated from the mode and the median. The *mode* is that value, in a set of values, that occurs most frequently. The *median* is that value above and below which 50% of the observations fall. These measures are indicators of *central tendency*, that is, a value that is centrally located along the set. See Kachigan *supra* note 15,43-49.

[163] The *standard deviation* is the square root of the variance. *Variance* is a measure of dispersion of observed values. That is, variance is the extent to which observations differ among themselves in value. Variance is important, because using a measure of central tendency, such as a mean, by itself can give one an incomplete understanding of the nature of the population or sample being studied. For instance, two samples could have the same mean but different variances. Thus the standard deviation tells us how much the values are "spread." See Kachigan *supra* note 15, 54-60.

V. RESULTS

This study used multiple regression analysis, a technique that assesses the relationship between two or more variables, to test the three hypotheses.[164] With *client satisfaction with the bankruptcy system* as the dependent variable, the full model was significant[165] as indicated by the overall F-statistic[166] ($F = 25.98$, $p<0.0001$).[167] The model possessed an adjusted R^2 or explanatory value of 0.49.[168]

164.Regression analysis is a statistical technique that describes the relationship between the independent and dependent variables. In addition, the technique supplies measures that allow a researcher to assess the accuracy with which the independent variables can predict values on the dependent variable. Regression is an important statistical tool that allows one to use one value to predict another. *See generally* Hair, et al., *supra* note 151, at 17-71.

Multiple regression can be differentiated from simple regression, in that it allows us to predict a dependent variable, given several independent variables. In addition, it allows us to assess the relative impact of each of these predictor variables. *See* Kachigan, *supra* note 16, at 238-271. Multiple regression analysis has four stages: (1) determining the appropriateness of the model; (2) examining the statistical significance of the model; (3) predicting with the model; and (4) examining the strength of association between the variables.

Appropriateness of the model. In order to use regression, one must make sure that certain assumptions concerning the model's use are met. Among the more notable assumptions are that the underlying population possesses a normal distribution and, because the most common forms of regression are based upon the concept of a straight line, whether the phenomenon measured is really a linear one.

Statistical significance. One must next determine whether the model truly captures the relationships between the variables or is just picking up a chance relationship. *See infra* notes 163-165 and accompanying text.

Prediction. The linear regression model is based upon the straight line: $Y=bo + biXi + b_2X_2 + b_3X_3$. Y is the dependent variable, with Xi, X_2, and X_3 the independent variables. The characters b_0,bi,bi, and b_3 are referred to as *coefficients*, with $b_0$being the intercept of the line. The coefficients are the values represented in Table 3 and present the impact of each independent variable upon the dependent variable.

Strength of the associations. The researcher finally wishes to examine the relative impact of the independent variables (i.e., which has the strongest influence). The coefficients tell us that, but we do have a problem if the units of measurement for each variable are different (say dollars versus pounds). We can address this problem by creating a set of standardized coefficients, referred to as the beta coefficients.

165 Because the researcher is using a sample to make estimates about a population, one assumes that there should be a certain degree of error due to nothing more than chance. *Statistical significance* refers to whether the coefficient obtained reflects a true relationship between the dependent and independent variables and is not simply a relationship due to chance. To determine whether one has significance, one must consult a table to determine whether the value of the coefficient is high enough, given the size of the sample. (Statistical programs such as SPSS and SAS automatically supply the significance level.) *See* Gay & Diehl, *supra* note 146, at 322.

166 The F statistic is a ratio that is used to test the hypothesis that the amount of variation explained by the regression formula by using the average (mean) for prediction did not occur by chance. In other words, the F statistic, if significant, tells us that using the independent variable to predict the dependent variable offers predictions better than those afforded by the mean. The extent to which the F statistic exceeds a value of 1 is indicative of a real effect by the independent variable. However, remember that the F statistic could exceed 1 by chance alone, hence one must select a significance level (a) which corresponds to an "unlikely" outcome, given that the expected value of F equals 1. For the researcher s purposes, the F statistic tells us the significance of the overall model, not just the separate coefficients. *See* Kachigan, *supra* note 15, at 279; Hair, et al., *supra* note 151, at 36-38.

167. P refers to the significance of the F statistic. The closer this value gets to "1," the more likely that the underlying relationships are due purely to chance.

All three hypotheses were supported. The standardized betas[169] indicate that voice, or the level of client participation allowed by the lawyers, had the greatest impact on client satisfaction with the broader judicial system. Trustworthiness was the next significant variable influencing client satisfaction. Trustworthiness was followed by interpersonal respect in impact upon the dependent variable.

Table 3: Regression Analysis with *Client's Satisfaction with the Bankruptcy System* as the Dependent Variable

Independent Variables	**Unstandardized Coefficients**	**Beta**	**t-ratio**	**Sig.**
Constant				
Interpersonal Respect	0.44	0.33	4.02	<0.001
Trustworthiness	0.51	0.39	4.67	<0.001
Voice	0.66	0.49	5.98	<0.001

$R^{2} = 0.51$, Adjusted $R^{2} = 0.49$, F = 24.98, pO.OOOl

VI. DISCUSSION

In this study, the researcher proposed a model based upon a procedural justice framework for evaluating how clients assess the broader judicial environment—in this case, the bankruptcy court system. This study examined how three variables derived from Tyler's 1997 model—trustworthiness, interpersonal respect and voice—affect a client's evaluation of a legal system in which his or her primary, and most often only, contact is his or her lawyer.[170] The results supported the hypotheses that each of these elements was significantly related to the dependent variable, satisfaction with the bankruptcy system. Examination of the standardized betas shows that voice had the greatest impact, followed by trustworthiness and then interpersonal respect.

This order of the variables is somewhat contrary to other studies. For example, Tyler and Lind state that trustworthiness is the primary determinant of perceived fairness in a proceeding, followed by other elements.[171] Yet one could

[168] R^{2}, or the *coefficient of determination*, measures the proportion of variance of the dependent variable that is explained by the independent variables. R^{2}can be between 0 and 1; the higher the value, the more the independent variables are assumed to explain. In this case, one can argue that the three factors, trustworthiness, voice and interpersonal respect, explained 49% of the dependent variable, satisfaction with the bankruptcy system. *See* Kachigan, *supra* note 15, at 150.

[169] Standardized betas are standardized coefficients that address the problem of different variables having different measures. Standardized betas reflect the relative importance of the variables. When interpreting these betas one should keep in mind several cautions. First, they should only be used as a guide only when multicollinearity is not a problem. Second, the beta coefficients can only be interpreted in context of the other betas. They are not absolute values. *See* Hair, et. al., *supra* note 151, at 40.

[170] *See* Tyler, *supra* note 131, at 887.

[171] *See* Tyler & Lind, *supra* note 134.

argue that the relative importance of the variables could be context specific, tied to the underlying losses or weaknesses felt by the parties in a given case.[172] In a consumer bankruptcy scenario, in which the clients may have experienced a great degree of harassment, feelings of helplessness are not uncommon.[173] Being given a voice in their fate, even if only to a small degree, may prove to be a needed cathartic, resulting in that particular element having greater credence than the other two.

Interestingly enough, in an unpublished study using the same data set, the researcher found that each of the variables was significantly related to the dependent variable, *satisfaction with your lawyer*.[174] However, the order of the variables was exactly reversed from the current study. Interpersonal respect had the greatest impact, followed by trustworthiness and voice. This suggests that, although the elements involved in assessing satisfaction with either the lawyer or the bankruptcy system are similar, the evaluation processes are not identical. Furthermore, it suggests that, although the client, in evaluating both the system and the lawyer, uses the only cues available, namely those from the lawyer, the evaluation processes are not mirror images of each other. Despite their lawyer being their only contact in a bankruptcy case, clients are still capable of distinguishing the system from the individual lawyer.

In examining the results, it is important to do so in light of how much of the variance in the dependent variable is explained by the three independent variables. In this case, the three variables have an adjusted R^2 of 0.49; in other words, voice, trustworthiness and interpersonal respect together explain nearly half the variance in how clients evaluate the bankruptcy system. This suggests that the cues supplied by the lawyer have a significant influence upon the client's evaluation of the judicial system. Although it should be noted that nearly half of the variance is unexplained by these variables, this is in accordance with the procedural justice literature.[175] Outcomes and other nonprocedural factors are important in how the participant perceives fairness. However, they are not the only factors, as this study suggests. Future research should focus on how distributive justice variables relate to client evaluation of institutions in middle-class law scenarios.

VI. IMPLICATIONS FOR THE LEGAL PROFESSION

This study addresses the basic question of how institutions maintain legitimacy in an almost "invisible" sphere of the law, middle-class legal services. Unlike class action suits or product liability cases, this area of the law is quiet and unassum

[172] This is reflected in Tyler's comment, "In addition, situational factors shape the importance of those factors." *See* Tyler, *supra* note 132, at 887.

[173] *See generally* William Whitford, *The Ideal of Individualized Justice: Consumer Bankruptcy as Consumer Protection, and Consumer Protection in Consumer Bankruptcy,* 68 Am. Bank. L. J. 397 (1994).

[174] Todd Palmer, Syed Andaleeb & Brenda Joyner, *Aligning Professional and Marketing Attributes in Small Professional Businesses* (accepted for publication).

[175] *See generally* Tyler, *supra* note 131.

ing; it is doubtful that Court TV will ever produce a weekly show about it. Yet it is in this area, no-fault divorces, real estate transactions, estate planning and so forth, that most persons will have their only major contact with the legal system. It is middle-class law in which most Americans will be introduced to the concepts of justice and fairness in the institutional sphere.

Lawyers practicing in this area of the law must therefore realize the important roles they are playing as representatives of the judicial system. As this study suggests, how lawyers act affects their clients' satisfaction not only with them personally, but also with the broader legal environment. It is important to note that these are more than just "images" that one can dismiss out of hand; rather they serve as vital cues to the clients. Indeed, given the lack of contacts with other parties (judges, opposing counsel, etc.), these are the only signals that many of the clients will receive. It is interesting to note that these three elements—voice, trustworthiness and interpersonal respect—serve as some of the foundation values of the profession's canons and codes.

With the emergence of law as a business, in many cases, legal professionalism has taken a back seat to building revenue. Indeed, many professional values are seen as useless anachronisms, more akin to powdered wigs than to the real world. Yet, as this study suggests, these values, really nothing more than expressions of common civility and inclusiveness, serve important purposes of establishing and maintaining institutional legitimacy.

This study also possesses implications for the legal profession as it attempts to rehabilitate the image of the profession. Perhaps this study's most important finding is that, in a middle-class legal scenario, such as bankruptcy, the lawyer's actions accounted for only 49% of the variance in how clients view the system.

Consumer bankruptcy is an ideal test scenario for examining how people are influenced mostly by the system. First, the client's benefits-to-costs ratio is very high and fairly immediate. The average debtor was relieved of a mean unsecured, non-priority debt of $35,737, while his costs for a bankruptcy averaged around $588. The researcher found no statistical relationship between the amount of debt relief and satisfaction with the system. From a public relations perspective, bankruptcy should be an ideal area of the law, in which clients obtain an extremely positive view of lawyers and the system they represent. Second, clients had little knowledge and few preconceptions concerning bankruptcy. Respondents, using a five-point scale (1- low, 5-high), reported their knowledge of the bankruptcy system and law to be 2.05. Most people seek bankruptcy relief with only the vaguest notion concerning the specific relief they are seeking. Most are genuinely surprised at the amount of debt relief they will be granted. Finally, bankruptcy is very much a closed system. Typically, their sole contact was with their attorney, yet only half of the satisfaction or dissatisfaction with the system could be traced to their attorney's actions. What could account for the other 51%? Perhaps they were influenced by media coverage of bankruptcy, advertising, and input by persons who had previously filed for bankruptcy protection. Yet, arguably, this response is too facile. Compared to other areas of the legal profession, product liability litigation, for example, bankruptcy is

not often featured in local or national media. And although the number of bankruptcy filers has climbed dramatically in the last few years, the number still represents only a tiny fraction of the population.

What this suggests is that the actions of even excellent, client-centered lawyers may have only limited impact upon how their clients view the broader institution. Other factors outside the lawyer's and even the profession's control account for the residual variance. Reflecting the tenor of studies that have found people like their congressional representative even as they express disdain for Congress, clients apparently separate their evaluations of their lawyer and the system that he or she represents. How your lawyer acts will obviously influence your assessment, but, even in ideal testing scenarios, such as bankruptcy, the influence will only be partial.

We are almost left with a "half-full/half-empty" syndrome: is it a cause for optimism or despair? One way to examine this situation is to admit that the profession is "half way there" in its need to enhance the profession, at least in terms of clients' perceptions. Almost 50% of how clients view the bankruptcy system is clearly within the hands of the profession. Adhering to professional standards and a strong adherence to the concepts of trustworthiness and interpersonal respect are obvious starts. This study found voice to be extremely important in creating satisfaction with the broader system. The client-centered literature has, for some time, extolled the virtues of superior decision-making and lawyering, by encouraging the participation of the client.[176] Likewise, in terms of institutional legitimacy and maintenance, voice is clearly at the center of this operation. Because the average American sees a lawyer so few times in his lifetime, each contact point is extremely important. Lawyers practicing middle-class law have an extraordinary opportunity to seize the moment and project a caring and competent image, which in this case is also perceived as superior service, thereby reinforcing the profession's stature in the nation.

176 See generally Binder, Price & Bergman, *supra* note 144.

Appendix: Dimensions and Respective Items

Trustworthiness

- I felt I was being taken advantage of.*
- My lawyer did the work promised.
- My lawyer listened to me.
- My lawyer treated me the same as his or her other clients.
- My lawyer was more interested in his or her fee than in me.*

Interpersonal Respect

- My lawyer was friendly.
- My lawyer was polite.

Voice

- My lawyer knows a lot about bankruptcy law.
- My lawyer specializes in bankruptcy law.
- My lawyer allowed me the freedom to make my own decisions.

Customer Satisfaction

- Overall, how satisfied were you with your lawyer?**
- How willing would you be to use this lawyer in the future?***

Note: All items with the exception of "customer satisfaction" were assessed with a 7-point Likert scale, with 7 anchoring "Strongly Agree" and 1 anchoring "Strongly Disagree."

* Reversed scored.

** Assessed with a 7 point Likert scale, with 7 anchoring "Very Satisfied' and 1 anchoring "Very Dissatisfied."

*** Assessed with a 7 point Likert scale with, 7 anchoring "Very Willing" and 1 anchoring "Very Unwilling."