

# The San Francisco Sentencing Commission

## City & County of San Francisco

(Administrative Code 5.250 through 5.250-3)

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### AGENDA

September 12, 2018

10:00 a.m. – 12:00 p.m.

Hall of Justice

District Attorney Law Library

850 Bryant Street Room 322

San Francisco, CA 94103

*Note: Each member of the public will be allotted no more than 3 minutes to speak on each item.*

1. Call to Order; Roll call.
2. Public Comment on Any Item Listed Below (discussion only).
3. Review and Adoption of Meeting Minutes from June 6, 2018 (discussion & possible action).
4. Staff Report on Sentencing Commission Activities (discussion & possible action).
5. Presentation on Racial Equity Statement (discussion & possible action).
6. Presentation on Procedural Justice by San Francisco District Attorney's Office Chief of Programs and Initiatives, Katy Miller (discussion & possible action).
7. Presentation on Taking Action to Eliminate Racial Disparities by W. Haywood Burns Institute Site Manager, Christopher James (discussion & possible action).
8. Members' Comments, Questions, Requests for Future Agenda Items (discussion & possible action).
9. Public Comment on Any Item Listed Above, as well as Items not Listed on the Agenda.
10. Adjournment.

# The San Francisco Sentencing Commission

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### SUBMITTING WRITTEN PUBLIC COMMENT TO THE SAN FRANCISCO SENTENCING COMMISSION

Persons who are unable to attend the public meeting may submit to the San Francisco Sentencing Commission, by the time the proceedings begin, written comments regarding the subject of the meeting. These comments will be made a part of the official public record, and brought to the attention of the Sentencing Commission. Written comments should be submitted to: Tara Anderson Grants & Policy Manager, San Francisco District Attorney's Office, 850 Bryant Street, Room 322, San Francisco, CA 941023, or via email: [tara.anderson@sfgov.org](mailto:tara.anderson@sfgov.org)

### MEETING MATERIALS

Copies of agendas, minutes, and explanatory documents are available through the Sentencing Commission website at <http://www.sfdistrictattorney.org> or by calling Tara Anderson at (415) 553-1203 during normal business hours. The material can be FAXed or mailed to you upon request.

### ACCOMMODATIONS

To obtain a disability-related modification or accommodation, including auxiliary aids or services, to participate in the meeting, please contact Tara Anderson at [tara.anderson@sfgov.org](mailto:tara.anderson@sfgov.org) or (415) 553-1203 at least two business days before the meeting.

### TRANSLATION

Interpreters for languages other than English are available on request. Sign language interpreters are also available on request. For either accommodation, please contact Tara Anderson at [tara.anderson@sfgov.org](mailto:tara.anderson@sfgov.org) or (415) 553-1203 at least two business days before the meeting.

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Administrator  
Sunshine Ordinance Task Force  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place,  
San Francisco, CA 94102-4683.  
Telephone: (415) 554-7724  
E-Mail: [soft@sfgov.org](mailto:soft@sfgov.org)

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**The San Francisco Sentencing Commission**  
**City & County of San Francisco**  
 (Administrative Code 5.250 through 5.250-3)

**AGENDA**

June 6, 2018  
 10:00 a.m. – 12:00 p.m. Hall of Justice  
 District Attorney Law Library 850 Bryant Street Room 322  
 San Francisco, CA 94103

Members in Attendance: George Gascón, District Attorney; Greg McEachern, SFPD; Karen Fletcher, Chief Adult Probations Officer; Dr. Naveena Bobba, Department of Public Health; Hong Le, Family Violence Council; Theshia Naidoo, Board of Supervisors Appointee; Vicki Hennessy, San Francisco Sheriff; Allen Nance, Juvenile Probation Chief; Simin Shamji, Public Defender’s Office; Carlos Rojas, BART Police Department; Chief Karen Roye, Reentry Council Appointee; Eric Henderson, Reentry Council Appointee; Dr. Steven Raphael, Mayoral Appointee

**1. Call to Order; Roll call.**

District Attorney George Gascón welcomes everyone to the 24th Sentencing Commission meeting and calls to order at 10:08 AM.

**2. Public Comment on Any Item Listed Below (discussion only).**

No public comments received.

**3. Review and Adoption of Meeting Minutes from March 7, 2018 (discussion & possible action).**

District Attorney Gascón asked commission members to review minutes from the previous commission meeting. Greg McEachern motioned to approve the minutes, Simin Shamji seconded the motion. Minutes from March 7, 2018 approved.

**4. Staff Report on Sentencing Commission Activities (discussion & possible action).**

Tara Anderson provided a staff report:

The Sentencing Commission originally planned to have the June meeting focus on domestic violence. This topic was shifted to the September meeting on September 12 instead because of speaker availability. The December meeting will be on sentencing enhancements pending completion of related research. Ideas and suggestions for potential speakers are encouraged for both meetings.

Since the committee last convened, Mrs. Anderson attended a Safety and Justice Challenge with Ali Riker from the Sheriff’s Department. They also visited the Alleghany County Jail. They also saw a panel on the Marshall project, a vignette series. The project focuses on digital storytelling of people’s experiences with criminal justice system, training and working with community providers. They attended sessions on case processing and consulted with the Innovation Fund for advice on their upcoming application.

They also talked to keynote speaker Vanita Gupta about civil rights and the DOJ. She challenged SJC jurisdictions working to reduce their jail populations through substantial means rather than just thinking about quicker and easier to treat populations. She also advised to not be fooled by one system replacing the

other, such as simply replacing jails with other forms of surveillance. This means not just moving populations around, but really looking at patterns of the people under surveillance. This allows cities to reserve jail space for those who pose the greatest risk.

In addition, San Francisco has been formally invited to apply to the Safety Challenge, which would allow for a two-million-dollar investment over two years. The deadline is June 15. Mrs. Anderson said that Dr. Austin would later present on where the jail population sits today. There have been staffing challenges, as Mrs. Anderson was unable to convene a legislative workgroup, and the LEAD workgroup had passed onto active work under the Department of Public Health.

Mrs. Anderson then gave committee members the opportunity to speak.

Henderson first voiced his support for Senate Bill 1393 which would restore judicial enhancement for prior serious felonies. He added that he would like to support Assembly Bill 931 by Dr. Weber and assembly member McCarty, which would reduce police use of force.

Gascón then spoke further on AB931, which would change review of police use of force from personal standards of “reasonable” (consistent with current officer training) to the standard of using the minimum and necessary force. This would alter police training and supervision, policies around issues, the way cases are reviewed, and alter Californian and national views of police shootings. DA Gascón informed members that the US has the highest rates of both raw and per capita use of force by police in the world. And further elaborated that most people don’t understand that police officers aren’t regarded the same way as common civilians: police officers have right to use gun in line of duty. Thus, even though one may want to ask “Was that the only option you had?”, it is not a valid question with the current state of law. DA Gascón emphasized that as a city San Francisco wants to move that way. He closed by citing statistics on police departments that use less force and have fewer injuries. For example, after New York prohibited shooting at moving cars, police haven’t had a single injury from a moving car.

Theshia Naidoo then voiced her support for SB1025, which discussed the probation eligibility for offenses currently ineligible, in particular drug probations.

Mrs. Anderson then gave updates from the Family Violence and Reentry Councils. Highlights from the last FVC meeting include a report on city efforts for immigrant communities, especially elder abuse. They also talked about death review team protocol for domestic violence cases and potential training of the Family Violence Council.

The Reentry Council last reconvened in early May. During their last meeting, they discussed several pieces of legislation before the Mayor’s State legislative committee, covering topics such as the City Attorney’s Office injunctions of gang members. Data was requested at this previous meeting, but was not abundant enough to cover this original request. Some members abstained from the vote to compel City Attorney to use gang injunctions. The City Attorney removed some individuals from the gang injunction list.

Reentry Council Appointee Eric Henderson further clarified that there were 5 active injunctions, of which 3 were reviewed. Most but not all gang members were let off, upon which the ACLU gave 4000 documents on a CD to get the rest of the members off.

This led to the conclusion of the staff report and discussion on family violence and the reentry council.

**5. Presentation on MacArthur Foundation's Safety and Justice Challenge and Opportunities to Further Reduce the Jail Population by MacArthur Foundation consultant and President of JFA, James Austin (discussion & possible action).**

Jim Austin began his presentation with an overview of the Safety and Justice Challenge (SJC). The challenge's goals are to emphasize safety and justice, for local jurisdictions to work on their jail populations, and to encourage jurisdictions to lower jail populations by significant amounts. The challenge encourages jurisdictions to set targets from 20-25% reduction.

After submitting an application to the challenge, the Foundation will run analyses and do hands-on work with county to look at plans and adjust them as necessary. The Foundation wants to make an investment in the City and County of San Francisco (CCSF), but won't unless CCSF can demonstrate the value of such an investment. The Foundation also want to stress public safety, how society treats victims of crime, and how it compensate victims. The Foundation's interest grew after they looked at jail population of SF, analyzing who's in jail and who's being released and which type of people use jail beds the most. San Francisco will be one of 11 sites to compete for 5 multi-million dollar grants.

CCSF has basically eliminated mass incarceration. It is not unique in doing so, as NY has also done this. There has been a huge drop since the early 1990s. This partially results from reduction in felony sentences and filings. This is the same as in NY, which has decreased all forms of correctional control and the jail, parole, and probation populations. Felonies usually drive these populations. Austin also said that AB109 and Prop 47 also helped this trend. Austin then presented some US incarceration rates as comparison.

DA Gascón then mentioned that violent crime rates in San Francisco are lower than in the rest of the nation.

Austin said that CCSF is high-performing and has already done a lot to safely reduce the use of jail, but needs to propose how to lower incarceration rates some more.

Sheriff Vicki Hennessy asked whether Austin's statistics were based on the daytime count of CCSF or CCSF's regular/actual population. This included the question of whether Austin accounted for federal prisoners. Austin said that these statistics were snapshots compared to the actual population.

Austin said that for the SJC initiative CCSF would have to reduce incarceration rates by 15-35%, not including contract admits. CCSF would just have to account for its own people, not federal prisoners.

Austin pointed out the extraordinarily high rates of black incarceration: 1,439 for 100,000 (vs 80 for whites)

April 14, 2018 jail population breakdown by crime – unique to SF, very high percentage are felony (94.8%), very high percentage for violent felonies (66.5), 19.2% homicides, homicide people spend a lot of time (729.3 LOS to date)

Austin indicated that continuances drive jail populations more than anything else. He indicated that it would be wise for Sf to address this in their application.

Austin said that they would do the stress test if SF showed promise. The stress test would involve looking at people in jails and continuances, and thinking about whether they would do something different. If not, there would be no point in giving them the grant.

Shamji asked how Austin defined violent in his chart: for example, many would not define the possession of weapons to be violent.

Austin replied by saying that almost all people showed on the chart have multiple charges and that the displayed ones are just the primary charges. He then talked about diversion vs continuances, and how many of those people couldn't be diverted, because they had committed many crimes before. He also drew attention to the importance of the length of the sentence.

Eric Henderson emphasized the need to review possible up charging, which for instance happened often in Alameda and LA Counties post prop 47 could complicate the issue. He also mentioned that the chart doesn't show drug charges and how many cases are using pleas. He thus reasoned that people could be in jail beds longer to try to fight charges so they don't have to stay for such a long time. Austin acknowledged the point, but replied that ultimately, the answer is always to think about what they could do to change the system.

Austin then showed a slide of releases from April 13, 2017 to April 12, 2018 in SF. He pointed out that there were 17,046 total jail releases but only 10,849 people released, implying that many people came in and out often. He also pointed out that only 7,794 people had only one release, meaning that a significant number of people – 672, 328, and 341 to be exact – had 3,4, or 5 releases in that year.

He then pointed out that the average length of stay is 20 days, less than the national one of 23. Many people come in and out quickly. He then started looking at release buckets. The biggest bucket - 2500 people - spend 30 days and occupy 400 jail beds. Many also transfer to other jurisdictions. Another big bucket is time served, where people sit in jail until the deal is cut or they are sentenced. Focusing on these would not as significantly affect the number of beds used. One suggestion was to simply move up release dates a week – how much would the extra week impact the effect of the stay?

Mrs. Anderson then said that release indicators in JMS need to be unpacked more. She said that there is capacity to have an analyst in the Sheriff's office, who can look at which people are in for what reasons of stay and put that information in practical terms. Without broad analysis and specific application, the true scope of problem is sometimes murky. She also said that they should think about support services for victims of crime.

Austin agreed, and said that to make their application stand out, the city should especially think about victims in the context of safely reducing jail populations.

Austin then said that all applications require a full-time project manager who would focus exclusively on the SJC, or a jail connoisseur in the sheriff's office. One idea was to take weekly snapshots of the jail population and analyze why each person was still there. One city who does this is now below the target. In addition, he recommended considering hiring programmers, who get get data systems to talk to each other. If the city needed technological help, they could put that in the budget requests on the application.

Austin provided an overview of the common outcomes to current SJC site stress tests, during which they found that on average, each felony case has 8 continuances, each of which is 30 days. He encouraged CCSF to think about opportunities to reduce case processing delays. He said that jail should be reserved for those who are dangerous and likely to flee. In this vein, CCSF should look into which courts are using the most continuances.

Mrs. Anderson said that the office is working on the application with consultation from the Superior Courts, Sheriff and Public Health. They want to follow up with the Public Defendant's office and Probation as well, emphasizing high utilizers, repeatedly come back multiple times in a year. Mrs. Anderson added that the office wants to refine victim services and increase restitution. She said that working towards the goals set by the foundation would help in achieving previous goals of the city, as a 15% reduction in jail beds would allow them to close the county jails in Hall of Justice building.

Gascón said that the reality is that the city can bring the jail population down by changing business strategies without compromising safety or due process. He said that the City is a national model and can multiply that effect. He added that the Sentencing Commission is a diverse group able to move far ahead, as long as it is willing to look at each other's practices.

Raphael then added that mathematically, a one-person reduction in someone who stays 10 days has 10 times the effect of someone staying 1 day.

Mrs. Anderson then said that we need to calculate the effect on individual persons and bed days through long term data, and that research support needs to be identified in the application.

**6. Presentation on Justice Dashboard by Policy Fellow Alissa Skog (discussion & possible action).**

Skog talked about how the Innovation Fund was an award SF received from the MacArthur Foundation. It was an 18-month pilot grant to look at timely review of individual level incarceration, what a cohort looks like in SF, tracking people at points of rearrest reargainment, and reconviction.

The dashboard work was validated by an external expert, David Rodriguez, who validated on a sample of 50 cases in cohort.

The CCSF Innovation Fund project was selected as case study by the Urban Institute and a publication is expected in Fall 2018.

Staff received great feedback from the Commission when they met in March. Staff incorporated state-wide criminal history, updated the dashboard to include 2014 data, and how many charges someone is being arrested for and charged with.

Skog then warned about the necessary considerations when communicating to the public, and mentioned a user disclaimer consisting of three parts:

- 1) They want people to understand that this dashboard is to contribute to a dialogue, and not to provide absolute claims. The data is limited to two cohorts. The purpose is not to talk about causality. Rather, the dashboard just looks at snapshots.
- 2) Users need to recognize limitations in the data in order to interpret it correctly. The dashboard contains no info about criminal history, or subsequent contact that comes outside of California.
- 3) There may be multiple other offenses. Ideally, while other significant offenses may not show up as the most serious offense, they would still show up.

Members from all agencies will look at this and fine tune the language. It will be examined and discussed again in December.

Lastly, JUSTIS has been identified as the most logical place to host this dashboard, but they don't have the proper resources at the moment. Thus, the dashboard needed a temporary home. Current dealings suggest that this will likely be the California Policy Lab at UC Berkeley. They will continue to update the dashboard with both local and statewide data going forward

**7. Presentation on Government Alliance on Race and Equity (discussion & possible action).**

Mrs. Anderson and Mrs Morris provided an overview on GARE and the third cohort of the Human Rights Commission participating in GARE. As a part of this work Mrs. Anderson and Mrs. Morris recognized the need for a joint racial equity mission statement from San Francisco's criminal justice policy bodies. The Sentencing Commission, Reentry Council and Community Corrections Partnership are seeing a

disproportionate representation of People of Color, and wish to narrow the disparity gap. Speakers acknowledged that was accomplished in part by Prop 47. They hope to have a uniform vision for what it means to be accountable.

This commission is the first body to which this concept is being introduced. It will also be introduced to the Reentry Council in July, the CCP in August, and the Sentencing Commission again with an racial equity statement in September.

The GARE consists of multiple government stakeholders who are social, economic, and criminal justice policy drivers of racial equity. They propose solutions to integrate into the government system, especially to combat institutional racism. 16 stakeholders are in the third cohort.

For example, Napa wants to rewrite every job description in their county to improve the accurate representation of jobs and promotion opportunities, recognize institutions of criminal justice, and the over-representation of individuals from some communities.

Speakers acknowledged Arian Florez, who represents the cohort, and coordinates San Francisco local GARE efforts.

A Motion was made by Theshia Naidoo to approve staff from the Reentry Council and Sentencing Commission to work together to create a Criminal Justice Racial Equity statement. Chief Fletcher seconded. The motion unanimously passed.

**8. Members’ Comments, Questions, Requests for Future Agenda Items (discussion & possible action).**

There were no comments, questions, or requests for future agenda items.

**9. Public Comment on Any Item Listed Above, as well as Items not Listed on the Agenda.**

No Comment.

**10. Adjournment.**

Greg McEachern moved to adjourn the meeting. Karen Fletcher seconded this motion. The meeting was adjourned at 12:01 pm.





## **Government Alliance on Race and Equity (GARE)**

GARE is a national network of government agencies working to achieve racial equity and advance opportunities for all.

In 2016, San Francisco launched the Engineering for Equity program to ensure city services and resources are leveraged to achieve more equitable outcomes for all. The program has two objectives:

1. Advise City departments on how to eliminate disparities in public service.
2. Ensure community involvement in the full range of government decisions.

### Why Engineering for Equity?

Engineers design, construct and maintain structures, materials and systems while considering the limitations imposed by impracticality, regulation, safety and cost. Under the leadership of Human Rights Commission (HRC) Executive Director Sheryl Davis, the Engineering for Equity program invites city departments to create and uphold transformational systems and approach actual and perceived limitations with innovation. They believe that city government has the tools to create resilient communities and lay foundations that lift up all. Specifically, the HRC provides city departments with specific tools and strategies to utilize when making public policy decisions, strengthening public programs or expending city resources in service to San Francisco's communities. Moreover, the HRC helps departments create equity plans that value community expertise and partnership.

San Francisco is proud to be a strong participant in the Northern California GARE cohort. Representatives from a broad range of city departments including the San Francisco Municipal Transit Authority, Department of Public Health, Arts Commission, Department of Environment, Adult Probation, Planning, Public Utilities Commission, Recreation and Parks Department and the Office of Economic, Department of Homelessness and Supportive Housing and the Office of Economic and Workforce Development have participated in and are working collaboratively to make San Francisco more equitable for all.

Participating Departments in the 2018 GARE cohort will receive:

- A racial equity training curriculum, with cohort participants who are equipped to implement the training with other employees,
- A Racial Equity Tool to be used in policy, practice, program and budget decisions,
- A capacity building plan and organizational structure to institutionalize equity within their own jurisdiction,

- Example policies and practices that help advance racial equity, and
- Support on developing a Racial Equity Action Plan for their Department.

**Current GARE Criminal Justice Agencies:**

Adult Probation Department

District Attorney's Office

Department of Police Accountability

For additional information about San Francisco's involvement in Northern California GARE initiative contact San Francisco Cohort Director Ariana Flores.

Human Right Commission Contact:

Sheryl Davis

Executive Director

San Francisco Human Rights Commission

25 Van Ness Avenue, Suite 800

San Francisco, CA 94102

415.252.2516

**GARE in Criminal Justice Proposal:**

On June 6, 2018 the members of the San Francisco Sentencing Commission unanimously approved Sentencing Commission staff to work with the staff from the San Francisco Reentry Council and Community Correction Partnership to create a justice system race and equity statement. On August 16, 2018 the Community Corrections Partnership and Reentry Council further endorsed staff work on the equity statement. The draft statement will subsequently be placed on each policy advisory body's agenda over the next three months for discussion and possible action.

**Draft Criminal Justice Policy Racial Equity Statement**

The San Francisco Community Corrections Partnership, Reentry Council and Sentencing Commission prioritize racial equity so that all people may thrive. San Francisco's criminal justice policy bodies collectively acknowledge that communities of color have borne the burdens of inequitable social, environmental, economic and criminal justice policies, practices and investments. The legacy of these government actions has caused deep racial disparities throughout San Francisco's criminal justice system. We further recognize that racial equity is realized when race can no longer be used to predict life outcomes. We commit to the elimination of racial disparities in the criminal justice system.

**City and County of San Francisco**

**Community Corrections Partnership**

**San Francisco Reentry Council**

**San Francisco Sentencing Commission**

### **Criminal Justice Racial Equity Statement**

The San Francisco Community Corrections Partnership, Reentry Council and Sentencing Commission prioritize racial equity so that all people may thrive. San Francisco's criminal justice policy bodies collectively acknowledge that communities of color have borne the burdens of inequitable social, environmental, economic and criminal justice policies, practices and investments. The legacy of these government actions has caused deep racial disparities throughout San Francisco's criminal justice system. We further recognize that racial equity is realized when race can no longer be used to predict life outcomes. We commit to the elimination of racial disparities in the criminal justice system.

### **Agenda for Action**

San Francisco's Criminal Justice agencies and social service providers can take the following actions to narrow and ultimately eliminate the racial disparity gap.

1. Expressly commit to the elimination of racial disparities in the criminal justice system in legislation and/or resolution;
2. Require racial impact statements prior to the implementation of criminal justice policies and in reviewing the enforcement of existing policies. This includes but is not limited to Budgeting, Request for Proposals, Request for Qualifications, and all grant making mechanisms;
3. Mandate regular racial equity and implicit bias trainings for all criminal justice stakeholders;
4. Mandate regular procedural justice trainings for all criminal justice stakeholders.
5. Require disaggregated data collection, using agreed upon standard measures, on the race and ethnicity of individuals who come into contact with the criminal justice system; and
6. Incentivize the elimination of racial disparities in the criminal justice system by requiring annual budgets to include racial disparity impact statements;
7. Ensure parallel justice; meaning that any of the investments in the criminal justice system that focuses on the rights, punishment, and sometimes rehabilitation of the perpetrator include a comparable set of responses to victims.
8. Participate in San Francisco's Government Alliance on Race and Equity (GARE) Initiative.



# Procedural Justice 101

Katy Miller

Chief of Programs & Initiatives  
San Francisco District Attorney's Office

Sentencing Commission Presentation  
September 12, 2018



# Procedural Justice: Core Tenets

- Treating people fairly and with respect increases voluntary compliance with the law.
- Treating people fairly and with respect increases perceptions of legitimacy...and thus legitimacy itself.



# Procedural Justice: Core Tenets

OUTCOME + PROCESS = ASSESSMENT



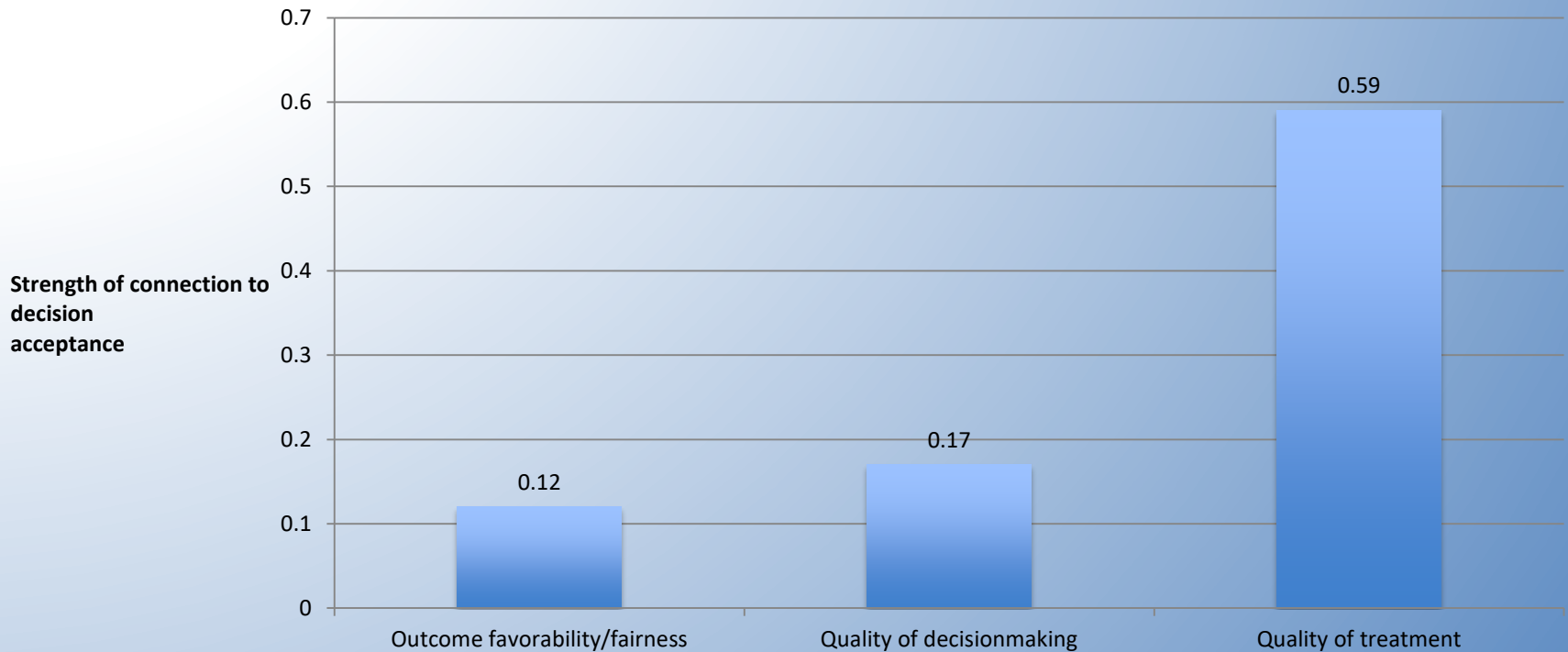
# Procedural Justice: Core Tenets

OUTCOME + PROCESS = ASSESSMENT



# Procedural Justice: Data

Quality of treatment factors strongly into participants' willingness to accept the decisions of legal authorities.



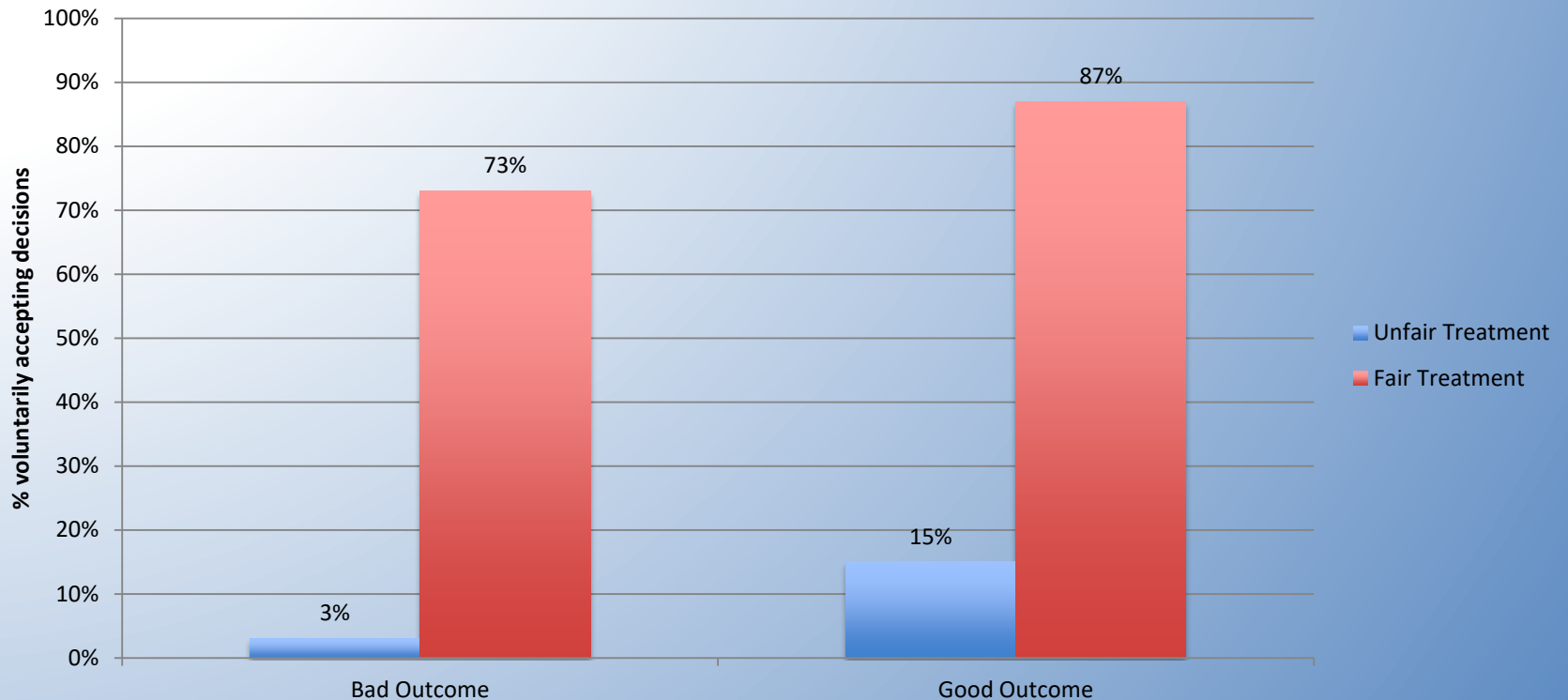
Source: Tom Tyler & Yuen Ho, California "Street Stops" Study (1998)





# Procedural Justice: Data

Participants were likely to voluntarily accept legal authorities' decisions if they felt they had been treated fairly even if the outcome was unfavorable.



Source: Tom Tyler & Yuen Ho, California "Street Stops" Study (1998)



# Procedural Justice: Core Principles

Voice

Neutrality

Respectful treatment

Trustworthiness



# Procedural Justice: Core Principles

## Voice

- *Opportunity to provide point of view & explanation*
- *Active listening*
  - *Awareness of nonverbal cues*

## Neutrality

- *Exhibit neutral feelings*
- *Unbiased decision making, applied equally to all*
- *Transparency – explain process and decision*

*Source: Principles Policing: A Discussion of Procedural Justice  
& Implicit Bias, POST CCN 12426, Revised 9/12/16*



# Procedural Justice: Core Principles

## Respectful treatment

- *Treat with dignity - show empathy*
- *Respect the individual and his/her rights*

## Trustworthiness

- *Community caring and positive intent/character*
- *Show sensitivity to needs and concerns*
- *Consistently try to do what's best for people*

*Source: Principles Policing: A Discussion of Procedural Justice  
& Implicit Bias, POST CCN 12426, Revised 9/12/16*



# Procedural Justice Implementation

## Yale Law School Justice Collaboratory

- Professors Tom Tyler & Tracey Meares
- National Initiative for Building Community Trust & Justice

## Principled Policing Training on Procedural Justice & Implicit Bias

- Based on Chicago PD's curricula, developed by CPD and Professors Tracy Meares (YLS) and Jennifer Eberhardt (Stanford)
- Adapted by Stockton and Oakland PD
- POST certified, 8 hour training

## Procedural Justice Bench Card

- Developed by American Judges Association, Center for Court Innovation, Nat'l Center for State Courts, Nat'l Judicial College



# Procedural Justice & Trauma

## Trauma Therapeutic Techniques:

- Establish rapport, create safe space
- Demonstrate kindness, empathy & hope
- Focus on the here and now
- Provide consistent structure and assert boundaries compassionately
- Give control to the patient
- Build self-esteem and give positive enforcement generously

*Source: Dr. Hetty B. Eisenberg, MD MPH; Former Director,  
Transitional Age Youth Program, SF SPH*



# Procedural Justice: Core Principles

Voice

Neutrality

Respectful treatment

Trustworthiness





# Procedural Justice: Core Principles

Voice

- *Give control to the individual, build self-esteem*

Neutrality

Respectful treatment

Trustworthiness





# Procedural Justice: Core Principles

## Voice

- *Give control to the individual, build self-esteem*

## Neutrality

- *Provide consistent structure and assert boundaries compassionately*

## Respectful treatment

## Trustworthiness



# Procedural Justice: Core Principles

## Voice

- *Give control to the individual, build self-esteem*

## Neutrality

- *Provide consistent structure and assert boundaries compassionately*

## Respectful treatment

- *Establish rapport and create a safe space*

## Trustworthiness



# Procedural Justice: Core Principles

## Voice

- *Give control to the individual, build self-esteem*

## Neutrality

- *Provide consistent structure and assert boundaries compassionately*

## Respectful treatment

- *Establish rapport and create a safe space*

## Trustworthiness

- *Show kindness, empathy & hope*

# PROCEDURAL FAIRNESS/PROCEDURAL JUSTICE

A BENCH CARD FOR TRIAL JUDGES

## WHAT IS PROCEDURAL FAIRNESS OR PROCEDURAL JUSTICE?

When we speak of **Procedural Fairness** or **Procedural Justice** (two terms for the same concept), we refer to the perceived fairness of court proceedings. Those who come in contact with the court form perceptions of fairness from the proceedings, from the surroundings, and from the treatment people get.

Research has shown that higher perceptions of procedural fairness lead to better acceptance of court decisions, a more positive view of individual courts and the justice system, and greater compliance with court orders.

Researchers sometimes identify the elements of procedural fairness differently, but these are the ones most commonly noted:

**VOICE:** the ability of litigants to participate in the case by expressing their own viewpoints.

**NEUTRALITY:** the consistent application of legal principles by unbiased decision makers who are transparent about how decisions are made.

**RESPECT:** that individuals were treated with courtesy and respect, which includes respect for people's rights.

**TRUST:** that decision makers are perceived as sincere and caring, trying to do the right thing.

**UNDERSTANDING:** that court participants are able to understand court procedures, court decisions, and how decisions are made.

**HELPFULNESS:** that litigants perceive court actors as interested in their personal situation to the extent that the law allows.

## MEASURING FAIRNESS

*"Measurements . . . define what we mean by performance."*

—Peter Drucker

There are tools to help you measure fairness in your court. You can then see if you can improve over time.

The Center for Court Innovation has *Measuring Perceptions of Fairness: An Evaluation Toolkit*, available at <http://goo.gl/TVu42A>.

The National Center for State Courts has its CourtTools, which includes an Access and Fairness survey in both English and Spanish, available at [www.courttools.org](http://www.courttools.org).

The Utah Judicial Performance Evaluation Commission has a Courtroom Observation Report, which can be used by courtroom observers to give qualitative feedback, available at <http://goo.gl/1bWAVk>.

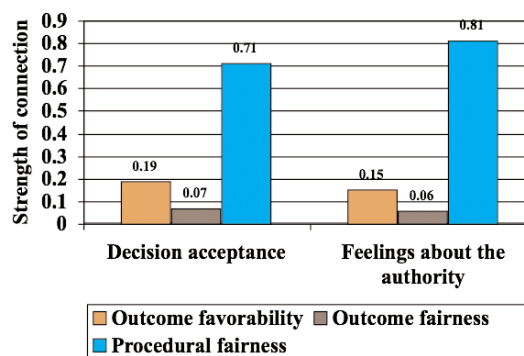
## KEEP IN MIND:

- This may be the most important contact with the court system the parties will ever have.
- Filling out forms on the bench may be important, but eye contact and engagement with the parties are critical.
- Trust is not a given. But it can be gained in each hearing through adherence to procedural-fairness principles.
- People make assumptions when they lack knowledge. Explain things.
- Listening is a key skill. Decision acceptance is greater if it's clear you listened—note their key points when ruling.
- Like others, judges can be affected by perceptions, assumptions, and stereotypes—in other words, implicit biases. Be aware.

## WHY IS IT IMPORTANT?

Several rigorous evaluations have shown that both acceptance of court decisions and overall approval of the court system are much more closely connected to perceptions of procedural fairness than to outcome favorability (Did I win?) or outcome fairness (Did the right party win?). Studies also show increased compliance with court orders when participants experience procedural fairness.

### WHY DO PEOPLE ACCEPT COURT DECISIONS?



Source: Survey of court users in Oakland and Los Angeles, California, reported generally in TOM R. TYLER & YUEN J. HUO, TRUST IN THE LAW (2002).

## FOR MORE INFORMATION

[ProceduralFairness.org](http://ProceduralFairness.org)

[ProceduralFairnessGuide.org](http://ProceduralFairnessGuide.org)

Center for Court Innovation ([www.courtinnovation.org](http://www.courtinnovation.org))

National Center for State Courts ([www.ncsc.org](http://www.ncsc.org))



THE NATIONAL  
JUDICIAL COLLEGE

# BENCH CARD ON PROCEDURAL FAIRNESS

## PRACTICAL TIPS FOR COURTROOM PROCEEDINGS

**INTRODUCE YOURSELF.** Introduce yourself at the beginning of proceedings, making eye contact with litigants and other audience members. Court staff can recite the basic rules and format of the court proceedings at the beginning of each court session. Written procedures can be posted in the courtroom to reinforce understanding.

**GREET ALL PARTIES NEUTRALLY.** Address litigants and attorneys by name and make eye contact. Show neutrality by treating all lawyers respectfully and without favoritism. This includes minimizing the use of jokes or other communication that could be misinterpreted by court users.

**ADDRESS ANY TIMING CONCERNS.** If you will be particularly busy, acknowledge this and outline strategies for making things run smoothly. This can help relax the audience and make the process seem more transparent and respectful.

*Example:* “I apologize if I seem rushed. Each case is important to me, and we will work together to get through today’s calendar as quickly as possible, while giving each case the time it needs.”

**EXPLAIN EXTRANEOUS FACTORS.** If there are factors that will affect your conduct or mood, consider adjusting your behavior accordingly. When appropriate, explain the issue to the audience. This can humanize the experience and avoid court users’ making an incorrect assumption.

*Example:* “I am getting over the flu. I’m not contagious, but please excuse me if I look sleepy or uncomfortable.”

**EXPLAIN THE COURT PROCESS AND HOW DECISIONS ARE MADE.** The purpose of each appearance should be explained in plain language. Tell the defendant if and when she will have an opportunity to speak and ask questions. Judges and attorneys should demonstrate neutrality by explaining in plain language what factors will be considered before a decision is made.

*Example:* “Ms. Smith: I’m going to ask the prosecutor some questions first, then I’ll ask your lawyer some questions. After that, you’ll have a chance to ask questions of me or your attorney before I make my decision.”

**USE PLAIN LANGUAGE.** Minimize legal jargon or acronyms so that defendants can follow the conversation. If necessary, explain legal jargon

in plain language. Ask litigants to describe in their own words what they understood so any necessary clarifications can be made.

**MAKE EYE CONTACT.** Eye contact from an authority figure is perceived as a sign of respect. Try to make eye contact when speaking and listening. Consider other body language that might demonstrate that you are listening and engaged. Be conscious of court users’ body language too, looking for signs of nervousness or frustration. Be aware that court users who avoid making eye contact with you may be from a culture where eye contact with authority figures is perceived to be disrespectful.

**ASK OPEN-ENDED QUESTIONS.** Find opportunities to invite the defendant to tell his/her side of the story, whether directly or via defense counsel. Use open-ended questions to invite more than a simple “yes” or “no” response. Warn litigants that you may need to interrupt them to keep the court proceeding moving forward.

*Example:* “Mr. Smith: I’ve explained what is expected of you, but it’s important to me that you understand. What questions do you have?”

**EXPLAIN SIDEBARS.** Sidebars are an example of a court procedure that can seem alienating to litigants. Before lawyers approach the bench, explain that sidebars are brief discussions that do not go on the record and encourage lawyers to summarize the conversation for their clients afterward.

**STAY ON TASK.** Avoid reading or completing paperwork while a case is being heard. If you do need to divert your attention briefly, pause and explain this to the audience. Take breaks as needed to stay focused.

*Example:* “I am going to take notes on my computer while you’re talking. I will be listening to you as I type.”

**PERSONALIZE SCRIPTED LANGUAGE.** Scripts can be helpful to outline key points and help convey required information efficiently. Wherever possible, scripts should be personalized—reading verbatim can minimize the intended importance of the message. Consider asking defendants to paraphrase what they understood the scripted language to mean to ensure the proper meaning was conveyed.

Adapted from EMILY GOLD LAGRATTA, PROCEDURAL JUSTICE: PRACTICAL TIPS FOR COURTS (2015).

## FOR ADDITIONAL READING

EMILY GOLD LAGRATTA, *PROCEDURAL JUSTICE: PRACTICAL TIPS FOR COURTS* (2015), available at <https://goo.gl/YbuC3K>.

Kevin Burke & Steve Leben, *Procedural Fairness: A Key Ingredient in Public Satisfaction*, 44 Ct. Rev. 4 (2007-2008) (an AJA White Paper), available at <http://goo.gl/afCYT>.

Pamela Casey, Kevin Burke & Steve Leben, *Minding the Court: Enhancing the Decision-Making Process*, 49 Ct. Rev. 76 (2013) (an AJA White Paper), available at <http://goo.gl/RrFw8Y>.

Brian MacKenzie, *The Judge Is the Key Component: The Importance of Procedural Fairness in Drug-Treatment Court*, 52 Ct. Rev. 8 (2016) (an AJA White Paper), available at <http://goo.gl/XA75N3>.

David B. Rottman, *Procedural Fairness as a Court Reform Agenda*, 44 Ct. Rev. 32 (2007-2008), available at <https://goo.gl/sXRTW7>.

Tom R. Tyler, *Procedural Justice and the Courts*, 44 Ct. Rev. 26 (2007-2008), available at <https://goo.gl/UHPkxY>.

## **Christopher James Bio**

### Site Manager

Christopher James is a Site Manager working to reduce racial and ethnic disparities in adult and youth justice systems nationwide. He comes to the Burns Institute with the hopes of directly engaging system stakeholders on behalf of communities of color, which are all too often not given a voice in response to a system in which they are overrepresented. He brings a background of direct legal representation of students recommended for suspension and expulsion throughout the Greater New Orleans area. While completing his education, Christopher interned with the Youth Law Center in San Francisco, CA and the Federal Public Defender's Office in Miami, FL. Directly prior to joining the BI, Christopher worked to help develop, manage, and install a community advocacy program for foster youth in an underserved rural area.

After graduating Tulane Law School with the desire to become a public defender, Christopher eventually came to realize he wanted to have more of a widespread impact as opposed to doing good for individual clients while communities continued to be overwhelmed by a broken justice system. It was in law school Christopher came to really see the connection between youth justice systems, school discipline, and the adult criminal justice system. With that perspective, he has continued to advocate for youth and believes improvements in youth justice serve as the best models for developing strategies which can be implemented in adult systems. His passion for modeling adult justice systems on the progress and innovation within youth justice drives his commitment to the Burns Institute.

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