

Pretrial Issues in Procedural Justice

I. WHAT IS PROCEDURAL JUSTICE?

The concept of procedural justice invokes the idea that treating people in a fair, humanizing and respectful manner is not only the right thing to do, but can improve the effectiveness and transparency of an organization. This case study defines procedural justice, asserts its importance as a component of fair, legitimate, and transparent pretrial justice systems, and identifies opportunities for pretrial system improvement. It includes a look at how the San Francisco Pretrial Diversion Project (SF Pretrial) introduced procedural justice concepts into its work.

Victoria Pratt, a judge and procedural justice proponent, describes procedural justice as what occurs when [“people enter our halls of justice and believe they will be treated with dignity and respect and know that justice will be served there.”](#)¹ All too often, though, pretrial practices fail to meet these fundamental expectations. In many jurisdictions, people are brought into first appearance hearings in large groups and their time in front of the judge is measured in seconds. They are discouraged or even scolded for speaking; their pleas to be released so that they can go back to work or their families are ignored. Judges, prosecutors and even their own attorneys (when they have

one) employ mystifying jargon and acronyms. When released, people struggle to understand what their obligations are to the court, and are offered little support in meeting those obligations.

Four key principles are generally recognized as essential components of procedural justice practices:²

Voice - People have the opportunity to tell ‘their side of the story’ before any decisions are made.

Respect - All system actors treat people well and demonstrate respect and concern for their rights and problems.

Trust - System actors, including judges and court personnel, are open and honest and of sound character. Their decisions are in the interests of all people involved.

Neutrality - Judges are neutral decision makers who apply legal rules consistently to all people and cases. Judges should be transparent about how rules are applied and decisions are made.

Procedural justice offers an opportunity to provide a more dignified and comprehensible process, with greater rates of compliance and increased trust in the court system.



Jessica Kay

“We’re seeing this insurgence of interest in procedural justice from pretrial agencies because people are reimagining what pretrial justice looks like. People are acknowledging that pretrial justice plays a huge role in the trajectory of the case, and optimistically grappling with the question of how do we do better?”

Jessica Kay, Senior Associate Director of Technical Assistance for Special Projects, CCI

II. CASE STUDY: PROCEDURAL JUSTICE AND PRETRIAL SERVICES IN SAN FRANCISCO

In March 2017, the San Francisco Pretrial Diversion Project (SF Pretrial) successfully bid to receive technical assistance from the Pretrial Justice Institute. The solicitation noted that when people perceive the court process to be fair and feel that they are treated with respect, “they are more likely to comply with the court’s orders and avoid criminal activity in the future, regardless of the outcome of their current case. The first appearance hearing provides a tremendous opportunity for the criminal justice system to instill in defendants a sense of procedural justice.”³

The ultimate goal of the *Procedural Justice at First Sight* project was to “make the pretrial justice system more navigable, transparent,

and humanizing for justice-involved populations.” The Center for Court Innovation (CCI) provided content expertise and technical assistance.

SF Pretrial was founded in 1976 to provide people with their first misdemeanor charge the opportunity to have their cases dismissed by completing a program of rehabilitation, education and community service as an alternative to jail. In the years following, SF Pretrial added more programs designed to address the various needs of the court, clients and community. Two programs were identified as well-positioned to implement elements of procedural justice:

- **Own Recognizance (OR)** - OR staff compile, interpret, and disseminate resources to inform pretrial release decisions. When judicial officers order pretrial release, OR staff communicate release conditions and future court obligations to the released individuals
- **Assertive Case Management (ACM)** - ACM managers engage in one-on-one meetings with active clients, set long- and short-term goals, and develop treatment plans for clients to allow them to receive the help they need while abiding by court obligations.

The ability of SF Pretrial to communicate its mission and work was critical for both principal system actors and clients. Due to changes in the nature of the work of SF Pretrial, some clients and system actors were confused about how the organization was structured and what services it provided. Moreover, some individuals were posting

money bail without the knowledge that SF Pretrial would have spoken with them about the possibility of nonfinancial release.

Making Materials Accessible to Clients

As a major component of its procedural justice work, CCI staff reviewed and provided feedback on written materials used by OR staff to make the materials more accessible. The average reading level for justice-involved individuals is 6th-7th grade, according to Jessica Kay of the Center for Court Innovation.

SF Pretrial designed materials to be left at the county jail regarding the role of the San Francisco's Sheriff's Department and the booking process. The goal of the materials, which are housed in a binder, is to answer commonly-asked questions in plain, accessible language, and create a sense of consistency in how people are treated.



San Francisco Pretrial Diversion Project
925 Harrison Street – San Francisco, CA 94107
Phone 415-626-4995

You have been released on your Own Recognizance through the OR – Minimum Supervision Program. This program requires you to report to our office 2 times per week by phone, appear at all scheduled court dates, and comply with any other conditions the Court directs.

You must call our office at 415-626-4995 and press 5 for the OR Program line between the hours of 8:30am – 5:00pm to make your semi-weekly check-ins.

If no one is available to take your call, please leave a message with the following information:

- Your full name
- Your case/court number (if you have it)
- Your next court date, department, and time
- Your phone number (even if you think we already have it). If you do not have a phone number, please state a number where we can reliably leave you messages.

Please speak slowly and clearly so that we may record your call. If your call is unclear, it may not be recorded.

If you have questions, please call us at the number listed above. If you are leaving a message, please make sure to include a call-back number and the best times to reach you.

As part of its goal to make the pretrial justice process more transparent, SF Pretrial also created handouts to raise client understanding of obligations and expectations. For example, people released on OR-MS (own recognizance-

minimal supervision) are required to check in twice per week, but many were confused about key details. It was unclear when a week began or ended, whether they could call in twice on the same day, or if they could leave a voicemail message. An out-of-custody information sheet was designed to clearly answer these questions.



Matt Miller

“As a compliance-driven organization, it behooves us that our clients are confident and informed in what they are doing. Procedural justice allows us to do that.”

Matt Miller, Training and Development Manager for SF Pretrial

Working with Staff on Procedural Justice Practices

Before individuals are considered for pre-arraignment supervision, OR staff meet with them to obtain their consent for judicial consideration of pretrial release. Once individuals are approved for pretrial supervision at the pre-arraignment stage, OR staff meet with them to discuss the judge's decision, including what specific conditions apply to their release. SF Pretrial designed procedural guides for staff to encourage consistent, respectful and clear communication during these critical contact points. These guides describe recommended nonverbal behaviors, and suggest language to explain the process. The guides also reinforce procedural justice values by including reminders at

the top, such as the following in the pre-arraignment release instructions:

Our objectives are to prepare clients for pre-arraignment release, explain their future court obligations, and establish a professional, credible presence for our organization. Pre-arraignment release instructions are instrumental to a client's understanding of system processes and what to expect with court conditions and court dates. With a patient, transparent, and informed interaction, we are demonstrating a commitment to a client's success on our caseload.



Alisha Alcantar

Alisha Alcantar, director of programs at SF Pretrial, stated, "Procedural justice adds another dimension of engagement with our clients. The way we employ procedural justice conveys to the client that we are here to support them, while also helping them become informed about their court obligations." SF Pretrial has also committed to providing procedural justice training to all staff, whether client-facing or not, as part of its onboarding process.

Encouraging Broader Systemwide Buy-In for Procedural Justice

As part of its technical assistance, CCI also facilitated a procedural justice discussion with major actors in the San Francisco justice system, including SF Pretrial, the sheriff's office, prosecutor's office, court administration,

private defense bar, and the probation department. These stakeholders discussed ways they had been intentionally reflecting the principles of procedural justice, and also identified barriers to incorporating procedural justice, such as time and efficiency concerns and lack of necessary training for staff. The discussion also identified opportunities for employing procedural justice principles, including creating more opportunities for face to face interactions with the populations each agency serves and allowing justice-involved individuals and victims to share their stories.

SF Pretrial's procedural justice work occurred during an enormous sea change in pretrial justice. During this time, SF Pretrial began implementing the Public Safety Assessment (PSA), and developed a data dashboard to enhance system transparency, which provides a local pretrial justice working group with quarterly reports on key outcomes like judicial concurrence rates, public safety rates, and appearance rates. The San Francisco Public Defender's Office also began vigorously challenging detention resulting from unaffordable money bonds, and the resulting litigation resulted in the establishment of what are known as Humphrey hearings, which reviews an individual's ability to afford bail and nonmonetary alternatives to bail. According to Alcantar, Humphrey shifted the volume and profile of SF Pretrial clients, with a dramatic increase in the number of people in the ACM program. The state also passed SB10, historic pretrial justice legislation that eliminated money bail; the bill will be considered under a voter referendum in 2020.

Amidst these changes, four key measures—judicial concurrence rates, release numbers, appearance rates, and public safety rates—showed improvements:

	3rd Quarter 2017	3rd Quarter 2018
Judicial Concurrence Rates	59%	66.5%
Releases	531	723
Appearance Rates	81%	84.6%
Safety Rates	85.1%	88%

The work is also being examined by UC-Berkeley professor Sandra Smith as part of a four-city study on front-end processing affects recidivism later on, including diversion, detention and perceptions of justice by court-involved people.

III. IMPLICATIONS FOR PROCEDURAL JUSTICE IN OTHER AREAS OF PRETRIAL JUSTICE

While procedural justice practices are showing beneficial results, some indicators suggest that, conversely, ignoring procedural justice could be potentially harmful. A [2018 poll](#) found that the criminal justice systems ranked third to last, just above Congress and television news, among institutions that Americans trust; only 2 in 10 Americans placed “a great deal” or “quite a lot” of trust in the criminal justice system. One in three Americans (36%) had very little or no trust at all in the system. Because trust is the currency that a court system operates upon, system actors and policymakers should consider the implications

of procedural justice in terms of both broad policies and specific practices.

Practices that affect the day-to-day operations, such as videoconferenced bail hearings, also raise questions in terms of procedural justice. One study revealed that bond amounts went up dramatically after the implementation of closed-circuit hearings in lieu of in-person hearings. Researchers theorized that it was possible that the process resulted in a “dehumanization that encourages a harsher response than would occur if the judge were faced with a live individual.”⁴ The impact of court fines and fees has also taken the national stage, raising issues of fairness and impartiality. The Conference of State Court Administrators (COSCA) has warned that courts taking on the role of fine and fee collector could be harmful to its legitimacy as a neutral arbitrator. “The proliferation of these fees and costs...has recast the role of the court as a collection agency for executive branch services.”⁵

While the field of procedural justice is still growing, research into pretrial-related issues such as improving court appearance rates, understanding court obligations and raising completion rates in treatment courts, is promising. People charged with misdemeanors who appeared in court “had more confidence in the courts and a greater sense of procedural justice” than people who did not appear.⁶ Treatment courts that employ procedural justice principles have improved rates of completion.⁷ While more research is needed to examine how procedural justice can improve pretrial justice outcomes, its potential

is significant for improving and elevating both internal client interactions and external systemwide cultures.

IV. CONCLUSION

“The beauty of procedural justice,” said Kay of CCI, “Is that there is no threshold checklist

for readiness. Implementation can start from any point.” Whether it is the promise of greater trust in the system, the potential for higher rates of compliance from people involved in the court, or the vision of a process infused with dignity, procedural justice has the potential to be a great force for shaping pretrial reform.

FOR MORE INFORMATION:

Additional resources for implementing procedural justice, including a [bench card](#) and a [menu of courtroom evaluation forms](#), are available from the Center for Court Innovation.

ENDNOTES

1. Victoria Pratt, [How judges can show respect](#), TEDNYC (October 2016).
2. Tom Tyler, <http://www.proceduralfairness.org/~media/Microsites/Files/procedural-fairness/Tyler.ashx>; see also, What Do Defendants Really Think? Procedural Justice and Legitimacy in the Criminal Justice System, 2018.
3. Bureau of Justice Assistance and Pretrial Justice Institute, [Smart Pretrial: Competitive Solicitation for Technical Assistance](#) (March 2017).
4. Shari Seidman Diamond, Locke E. Bowman, Manyee Wong and Matthew M. Patton, [Efficiency and Cost: The Impact of Videoconferenced Hearings on Bail Decisions](#), 100 J. Crim. L. & Criminology 869 (2010)
5. [Policy Paper: Courts are not Revenue Centers](#), Conference of State Court Administrators (2011-2012).
6. Brian H. Bornstein, Alan J. Tomkins and Elizabeth M. Neeley, [Reducing Courts’ Failure to Appear Rate: A Procedural Justice Approach](#) (May 2011).
7. Cassandra A. Atkin-Plunk & Gaylene S. Armstrong, [An examination of the impact of drug court clients’ perceptions of procedural justice on graduation rates and recidivism](#), Journal of Offender Rehabilitation (2016).¹