



# FAIR AND JUST PROSECUTION

Promoting justice through leadership and innovation

## ISSUES AT A GLANCE

### Building Community Trust *Procedural Justice: Enhancing the Legitimacy of the Justice System*

*Fair and Just Prosecution (FJP) brings together recently elected district attorneys<sup>1</sup> as part of a network of like-minded leaders committed to change and innovation. FJP hopes to enable a new generation of prosecutive leaders to learn from best practices, respected experts, and innovative approaches aimed at promoting a justice system grounded in fairness, equity, compassion, and fiscal responsibility. In furtherance of those efforts, FJP's "Issues at a Glance" provide district attorneys with information and insights about a variety of critical and timely topics. These papers give an overview of the issue, key background information, ideas on where and how this issue arises, and specific recommendations to consider. They are intended to be succinct and to provide district attorneys with enough information to evaluate whether they want to pursue further action within their office. For each topic, Fair and Just Prosecution has additional supporting materials, including model policies and guidelines, key academic papers, and other research. If your office wants to learn more about this topic, we encourage you to contact us.*

#### SUMMARY

**This is one of a series of FJP's "Issues at a Glance" briefing papers addressing building community trust.** The hope is that these briefs provide a jumping off point for district attorneys thinking about adopting new or alternative approaches to community engagement.

Trust between the community and the prosecutor's office is essential to maintain the office's legitimacy and credibility. This briefing paper discusses how to improve perceptions of fairness of the procedures that defendants and community members experience in the course of a criminal investigation or prosecution — whether in the courtroom, in the courthouse, or in the prosecutor's office. These concepts are an inherent part of what has become known as "procedural justice."<sup>2</sup>

<sup>1</sup> The term "district attorney" or "DA" is used generally to refer to any chief local prosecutor, including State's Attorneys, prosecuting attorneys, etc.

<sup>2</sup> Sometimes also referred to as "procedural fairness."

***"All of us share values — we want to live in safe neighborhoods, in safe communities and we also want to know that the justice system is fair...It's important to me that when people come to the courthouse — no matter the outcome — that they leave believing the system is fair."***

— 4TH JUDICIAL CIRCUIT (JACKSONVILLE, FL) STATE ATTORNEY MELISSA NELSON

Research shows that when defendants, litigants, and other court participants (including victims and witnesses) perceive the court process to be fair, they are more likely to believe the legal process is legitimate, comply with court orders, and follow the law in the future, regardless of whether they “win” or “lose” their case.<sup>3</sup> The goals of procedural justice track the goals of many forward-thinking prosecutor’s offices: to ensure prosecutors act as ministers of justice rather than simply as case processors, and to both consider and explain the impact each prosecutorial decision has upon the community.

Leading researchers, including Tom Tyler of Yale Law School, have identified several critical dimensions of procedural justice: (1) **voice** (litigants’ perception that their side of the story has been heard); (2) **respect** (litigants’ perception that the judge, attorneys, and court staff treat them with dignity and respect); (3) **neutrality** (litigants’ perception that the decision-making process is unbiased and trustworthy); and (4) **understanding** (litigants’ comprehension of their rights, the process, and how decisions are made).<sup>4</sup> Other research efforts have delineated a fifth element of **helpfulness** (whether litigants perceive court actors to be interested in their personal situation to the extent that the law allows).

These elements of procedural justice have been tested in a range of settings: police encounters, small claims, family court, and prisoner reentry, as well as criminal court. When the dimensions of procedural fairness are present, litigants consistently report higher perceptions of fairness and public trust in government and are subsequently more likely to be compliant.<sup>5</sup> For example, litigants in community courts and other problem-solving courts typically rate their perceptions of fairness higher than litigants in traditional courts and recidivate at lower rates.<sup>6</sup>

## BACKGROUND AND DISCUSSION

While research (for the past 20 years) and training (for the past eight to 10 years) has focused on procedural justice practices for police and judges, it is a relatively new topic for prosecutors. That does not detract from its importance for prosecutors: they do, after all, handle more cases than judges, and their potential influence upon public perceptions of the justice system are correspondingly higher. Every prosecutor contact with individuals involved with a case — whether that individual is a defendant, victim, or witness — is an opportunity to improve perceptions and build public trust in the criminal justice process.

Several offices practice procedural justice without necessarily using that terminology. For example, prosecutors in San Joaquin County (CA) door-knock in the community after a shooting, giving members of the public an opportunity to voice their concerns and answering questions about the

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<sup>3</sup> Tom R. Tyler, *Why People Obey the Law* (Princeton, NJ: Princeton University Press, 2006).

<sup>4</sup> *Ibid*; see also Tom R. Tyler and Y.J. Huo, *Trust in the Law: Encouraging Public Cooperation with the Police and Courts* (New York, NY: Russell-Sage Foundation, 2002).

<sup>5</sup> In addition to work by Tyler and his colleagues illustrating the link between procedural justice in court and resulting law abiding behavior, see D.C. Gottfredson, et al., “How Drug Treatment Courts Work: An Analysis of Mediators,” *Journal of Research in Crime and Delinquency* 4:3, 3-35 (2007); S.B. Rossman, et al., eds., *The MultiSite Adult Drug Court Evaluation* (Washington, D.C.: The Urban Institute, 2011); L. Mazerolle, et al., “Shaping Citizen Perceptions of Police Legitimacy: A randomized field trial of procedural justice,” *Criminology* 51, 3363 (2013).

<sup>6</sup> M.S. Frazer, *The Impact of the Community Court Model on Defendant Perceptions of Fairness* (New York, NY: Center for Court Innovation, 2006); M. Rempel, *Review of NIJ’s Multi-Site Adult Drug Court Evaluation* (New York, NY: Center for Court Innovation, 2012), available at: [www.courtinnovation.org/sites/default/files/documents/MADCE.pdf](http://www.courtinnovation.org/sites/default/files/documents/MADCE.pdf).

investigation process.<sup>7</sup> Within other offices, prosecutors on particular teams (for example, those assigned to a community court) have been integrated into the fabric of their community and trained in practices consistent with procedural justice.<sup>8</sup> We are not, however, aware of examples of many prosecutors' offices that have implemented large-scale training in procedural justice as of this writing.

When done correctly, procedural justice training has been shown to have significant effects on individuals involved in the criminal justice system. After Milwaukee judges took a one-day procedural justice training program, a courtroom observation evaluation found that 14 of 18 key procedural justice practices had improved.<sup>9</sup> In 2013, the Chicago Police Department Academy designed (with Tracey Meares and Tom Tyler) and implemented one of the first law enforcement procedural justice trainings. An evaluation of the training found that it strongly improved officers' support for procedural justice (that is, officers were more likely to endorse the importance of giving citizens a voice, granting them dignity and respect, and demonstrating neutrality). Over time, the training's effect persisted: officers remained more committed to those procedural justice principles. Notably, the training had more impact on officer opinions when officers found the training was practically related to their work and a realistic reflection of life on the street.<sup>10</sup>

Although the Chicago Police Academy has since defunded its procedural justice training program (and the Department has been criticized for failing to incorporate procedural justice more fully into its practices),<sup>11</sup> the training program has been replicated in a number of law enforcement settings and provides an instructive process to follow when considering how to design and implement a similar program for a prosecutor's office.<sup>12</sup> Recently, the Los Angeles Police Commission has

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<sup>7</sup> Phone Interview with Tori Verber Salazar, San Joaquin County District Attorney, 9/20/16.

<sup>8</sup> The prosecutors for the Hartford Community Court and the Brooklyn Young Adult Part, for example, have been trained in procedural justice by the Center for Court Innovation.

<sup>9</sup> Erin Farley, Elise Jensen and Michael Rempel, *Improving Courtroom Communication: A Procedural Justice Experiment in Milwaukee* (New York, NY: Center for Court Innovation, 2014), available at: [www.courtinnovation.org/sites/default/files/documents/Improving%20Courtroom%20Communication.pdf](http://www.courtinnovation.org/sites/default/files/documents/Improving%20Courtroom%20Communication.pdf).

<sup>10</sup> Wesley G. Skogan, Maarten Van Craen, and Cari Hennessy, *Training Police for Procedural Justice*, *Journal of Experimental Criminology* 11, 319–34 (2015).

<sup>11</sup> See, for example, Simone Weischelbaum, *The 'Chicago Model' of Policing Hasn't Saved Chicago*, *The Marshall Project*, April 19, 2016, [www.themarshallproject.org/2016/04/19/the-chicago-model-of-policing-hasn-t-saved-chicago](http://www.themarshallproject.org/2016/04/19/the-chicago-model-of-policing-hasn-t-saved-chicago).

<sup>12</sup> A description of the CPD training program, written by the California Partnership for Safe Communities, is available upon request from FJP.

***“There is an experience that can’t be eliminated, I can’t unlearn, I can’t unexperience, I can’t un-know. This is who I am.... There is a sensitivity that diversity brings to this community that a black person with a black experience brings. I am proud of what I bring to the table. And whether other people are in the same groups as I am or not, they should be proud because it broadens our knowledge.”***

recommended that officers and management in the Los Angeles Police Department receive procedural justice training and make the principles of procedural justice “a guiding value for the development of all policies and practices.”<sup>13</sup> Other police departments have benefitted from training from organizations such as Strategies for Youth, which help police officers have productive interactions with young people.<sup>14</sup> Structured training can help prosecutors learn practical tips for interacting with defendants, victims, witnesses, and families, as well as help them identify challenges in the court process that might erode public trust and confidence in the justice system.

Although prosecutors are not always best situated to provide procedural justice to defendants (especially when defendants are represented by counsel), the prosecutor is one of the most visible actors in the courtroom. By ensuring that the decision-making process is transparent and clear, and that their actions are perceived as fair and neutral, the prosecutor can greatly impact the perceptions and experiences of the defendant and other individuals involved with a case.

## RECOMENDATIONS

- 1. Change how line prosecutors approach cases in court.** Case processing needs to be efficient, but prosecutors must demonstrate that they understand the importance of the case for each individual defendant. Prosecutors should:
  - Show respect for defendants in court, for example by acknowledging the defendant’s presence and using his or her name — as opposed to labels — in court.
  - Ensure that defendants and other court participants understand what will happen during the court proceeding.
  - Use plain language rather than legal jargon whenever possible and explain jargon or ‘legalese’ if its use is necessary.
  - Always explain the basis of a bail or sentence recommendation, so that the defendant can understand the reasons for it. Explain the details and consequences of a plea to the defendant (with the defense attorney’s presence and agreement).
  - Give defendants consistent and clear warnings about the consequences of their actions (with the defense attorney present).
  - Ensure that security measures are explained clearly to the defendant by either the prosecutor or law enforcement personnel involved and, whenever possible, discourage unnecessary handcuffing and other forms of disrespectful treatment.
- 2. Similarly, procedural justice should inform every interaction a prosecutor has with victims, witnesses, or family members.** Prosecutors should, for example:
  - Ensure every stage of the criminal process is communicated to victims in terms they understand, taking the time to do so without legal jargon.
  - Provide opportunities for victims and witnesses to voice how the offense has affected them, whether formally through an impact statement at sentencing or restorative justice conference, or informally to a victim advocate.

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<sup>13</sup> Alexander A. Bustamante, *Review of National Best Practices*, Los Angeles Police Commission (May 2017) at 5, available at [http://www.lapdpolicecom.lacity.org/050217/BPC\\_17-0169.pdf](http://www.lapdpolicecom.lacity.org/050217/BPC_17-0169.pdf).

<sup>14</sup> See <http://strategiesforyouth.org/about/>.

- Treat all victims and witnesses with the same respect, regardless of their background or previous involvement with the criminal justice system.
- 3. **Work with court staff to change the orientation and environment of the courtroom** to a welcoming, well-signposted setting that communicates to defendants, victims, witnesses, and others where they should be and what to do. Work with court staff to implement the tenets of procedural justice in their interactions (particularly those of courthouse security staff, who are the public's first point of contact within the building).
- 4. **Because of its emphasis on fairness in individual cases, procedural justice is closely related to counteracting implicit bias.**<sup>15</sup> Examples of how implicit bias training can be incorporated into procedural justice training are available from FJP upon request. Prosecutors' offices should explore providing implicit bias training for their employees.<sup>16</sup>
- 5. **To truly take root as a cultural change, procedural justice must apply equally to the relationship between line prosecutors and management within the office.** Particularly at times of transition and change, staff should feel respected, that they have a voice in the decision making of the office, that the decision-making process is neutral, and that management takes the time to ensure staff understand what is happening.
- 6. **Ensure that the metrics and data used for promotions and accountability** are fair, designed to promote justice, and clearly articulated within the office.
- 7. **Arrange for training in procedural justice for prosecutors.** Some of the organizations that conduct trainings on procedural justice include:
  - Center for Court Innovation (Emily LaGratta);
  - John Jay College of Criminal Justice (David Kennedy); and
  - Yale University Law School (Tracey Meares).
- 8. **Consider seeking resources with a research partner to conduct a pilot that tests the impact of procedural justice training** on prosecutor behavior and attitudes among defendants, victims, and witnesses.
- 9. **Undertake stakeholder surveys** to determine how the court users (particularly victims and witnesses) and criminal justice system actors view the work of the prosecutor's office. Make stakeholder satisfaction a metric of office success and performance metrics.
- 10. **Promote office practices that help further procedural justice principles**, including: plea bargaining in a principled and transparent manner, enforcing open data and disclosure policies, and ensuring attorney caseloads remain manageable (so that there is time to pay individual attention to each case).

<sup>15</sup> For an example of a short, online, implicit bias training, see Dr. Bryant T. Marks, *Acknowledging and Managing Implicit Bias*, Center for Court Innovation (March 2017), available at <https://www.youtube.com/watch?v=toQCvWpyJXI&index=3&list=PLcy1yiaenY9xPAR171ha13ieFWCVA7zkl>.

<sup>16</sup> In 2016, the Department of Justice announced an effort to train all federal law enforcement personnel on implicit bias, including the attorneys working in U.S. Attorney's Offices across the country. See *Department of Justice Announces New Department-Wide Implicit Bias Training for Personnel*, U.S. Department of Justice (June 2016), available at <https://www.justice.gov/opa/pr/department-justice-announces-new-department-wide-implicit-bias-training-personnel>.

## RESOURCES

- Emily LaGratta (Ed.), *To Be Fair: Conversations About Procedural Justice* (New York, NY: Center for Court Innovation, 2017), available at: [http://www.courtinnovation.org/sites/default/files/documents/To\\_Be\\_Fair.pdf](http://www.courtinnovation.org/sites/default/files/documents/To_Be_Fair.pdf).
- Emily LaGratta, *Procedural Justice: Practical Tips for Courts* (New York, NY: Center for Court Innovation, 2015), available at: [http://www.courtinnovation.org/sites/default/files/documents/P\\_J\\_Practical\\_Tips.pdf](http://www.courtinnovation.org/sites/default/files/documents/P_J_Practical_Tips.pdf).
- Erin Farley, Elise Jensen and Michael Rempel, *Improving Courtroom Communication: A Procedural Justice Experiment in Milwaukee* (New York, NY: Center for Court Innovation, 2014), available at: [www.courtinnovation.org/sites/default/files/documents/Improving%20Courtroom%20Communication.pdf](http://www.courtinnovation.org/sites/default/files/documents/Improving%20Courtroom%20Communication.pdf).
- Wayne McKenzie, Don Stemen, Derek Coursen, and Elizabeth Farid, "Prosecution and Racial Justice Using Data to Advance Fairness in Criminal Prosecution," Vera Institute of Justice, March 2009, available at: [www.pretrial.org/download/research/Prosecution%20and%20Racial%20Justice%20-%20Vera%202009.pdf](http://www.pretrial.org/download/research/Prosecution%20and%20Racial%20Justice%20-%20Vera%202009.pdf).

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