

Procedural Justice for Prosecutors

A Curriculum to Help Prosecutors Improve Public Trust and Confidence



Foreword

Over the past decade, there has been a national call to action spurring criminal justice reform in almost every corner of the justice system. While the bulk of national focus has been placed on law enforcement policies and practices, many of the reforms prosecutors have instituted are in the form of alternatives for low level crimes (i.e., diversion programs, alternatives to incarceration, etc.). These strategies have had little effect on low public confidence in prosecutors. The well-studied concept of “procedural justice” or “procedural fairness” holds that how people perceive they are treated by system actors (fair *treatment*) has a greater influence on perceptions and compliance than whether they win or lose their case (fair or favorable *outcomes*).

Researchers like Tom Tyler and Tracey Meares at Yale Law School have engaged in significant research and implementation efforts to test this concept in various criminal justice contexts, including training police departments. The Center for Court Innovation has also conducted original research, as well as lead training and technical assistance with dozens of courts, including several jurisdiction-wide, multi-agency trainings and implementation projects in places like New York City, NY; Milwaukee, WI; and Toledo, OH.

Despite these robust efforts over the past several years, prosecutors have been a relatively absent or secondary audience to these initiatives – but not for lack of interest. Many chief prosecutors around the country have recognized the importance of trust-building at a community level and being more responsive to the individual needs of the witnesses, victims, persons accused of crimes, and other justice system participants they interact with.

Missing from the conversation has been applying procedural justice through a lens of equity and fairness. The Institute for Innovation in Prosecution, in partnership with the Center for Court Innovation, have developed a Procedural Justice for Prosecutors training with the goal of shifting office culture, as opposed to instituting strategies to change the public’s perception of fairness. This training will allow prosecutors to reimagine the way office culture affects interactions with victims, witnesses, people accused of crimes, and the community as a whole. By grounding the conversation in the disproportionate harm the criminal legal system has caused vulnerable communities and the ways in which that legacy must be addressed to maintain legitimacy as ministers of justice, the goal of this training is to provide prosecutors with the tools needed to impact actual change in office culture that will hopefully lead to changes in public perception.

The “Procedural Justice for Prosecutors” curriculum is a first step for prosecutors seeking to acknowledge their role in the harms caused by the criminal legal system. The hope is that this framework will be used as a platform on which prosecutors can start a conversation about fairness while acknowledging that it will take more than procedural justice to make true system change a reality. We invite interested prosecutor’s offices to explore and experiment with the content – and keep us updated on your progress. There has never been a better time to have open discussions about equity and fairness.

In partnership,

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Acknowledgements

Procedural Justice for Prosecutors was developed through a partnership between the Center for Court Innovation (the Center) and the Institute for Innovative Prosecution (IIP) at John Jay College in New York City. This curriculum is designed to provide an introduction to procedural justice for prosecutors as well as strategies that can be used to create culture change through procedural justice. The Center has been a leading organization in bringing procedural justice practices into courthouses and courtrooms around the country.

To develop these materials, project staff from the Center and IIP consulted with senior prosecutors, victim’s advocates, and others in the field. The Center and IIP wish to thank these advisors who are quoted anonymously in the presentation. This curriculum was developed and edited by Chloe Aquart and Brett Taylor at the Center for Court Innovation and Lucy Lang, Michael Khan, Jonathan Terry, and Alissa Marque at the Institute for Innovation in Prosecution.

About the Institute for Innovation in Prosecution

The Institute for Innovation in Prosecution at John Jay College of Criminal Justice (IIP) provides a collaborative national platform that brings together prosecutors, policy experts, and the communities they serve to promote data-driven strategies, cutting-edge scholarship, and innovative thinking. The IIP is dedicated to criminal justice that promotes community-centered standards of safety, fairness, and dignity. Learn more at www.prosecution.org.



About the Center for Court Innovation

The Center for Court Innovation works to create a fair, effective, and humane justice system. The recipient of the Innovations in American Government Award from Harvard University and the Ford Foundation and the Peter F. Drucker Award for Nonprofit Innovation, the Center for Court Innovation is the only one of its kind in the country: an independent non-profit that works to reform the justice system by operating dozens of demonstration projects, serving as a national technical assistance provider, and housing its own research team of social scientists. Learn more at www.courtinnovation.org.

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Part One: Training Preparation

Overview

The Procedural Justice for Prosecutors is divided into three modules that move the training attendees through the current state of the criminal justice system and an exploration of the role of the prosecutor, followed by Procedural Justice theory and its applicability to victims and witnesses, the accused, and the community at large, and ends with an understanding of trauma from a prosecutor lens and an overview of how to apply Procedural Justice to the prosecution of juveniles/young adults and individuals with substance use disorders (SUDs). The third module includes a 15-minute breakout session where attendees are provided a scenario to workshop within their group, followed by a group debrief. The goal of the training is to provide prosecutors with a rich understanding of Procedural Justice, how its incorporation into the office culture can be used to build trust and legitimacy, and the tools to make change instantly.

Training Logistics

The training designed as a half-day (4 hours) workshop for up to 40 ppl. This will ensure that breakout groups are kept small (3-4 per group) and that adequate time is given for open discussions. Due to the length of the training, it is recommended to have beverages and light meals (i.e. breakfast or lunch) when conducting the training in-person.

Preparation

To prepare for the training, facilitators are encouraged to review the *Procedural Justice for Prosecutors* slides, facilitation notes, and references listed at the end of this guide. Prior to conducting the training, facilitators will need to update the first slide with their organization logo (where indicated), the second slide with their information (where indicated), and the ground rules on the third slide (see facilitator note for instructions). Facilitators are encouraged to review the breakout scenarios and make adjustments to customize them for accuracy. When facilitating the presentation to junior prosecutors, adjustments may be necessary to account for their experience level.

Materials and Equipment

Before the workshops, you will need to prepare the following visuals and handouts:

Computer

- Access to Microsoft PowerPoint
- Clicker (optional)

Poster Paper

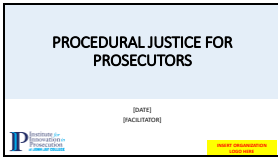
- Have two sheets of white poster paper available
- Sharpee markers
- Create a “parking lot,” where questions beyond the scope of the training can be posted to be revisited later, so as not to disrupt the flow of the training. If you plan to use a parking lot, introduce it at the beginning of the training.

Handouts

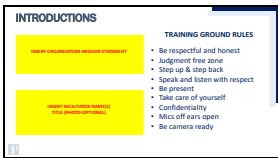
- Copies of the slides printed three slides per page with a section for notes by each

- Breakout Scenarios
- Commitment Form
- Evaluation Form

Part Two: Facilitation Notes - Presentation



Orient the attendees to the session with an explanation of the purpose of the training. Let everyone know whether CLE credits will be provided and, if available, ensure that CLE evaluation forms were distributed.

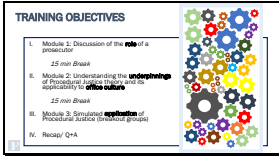


Introduce yourself and co-facilitators to the attendees and read your office mission aloud to attendees. The office mission is used to ground the conversation by reminding attendees that their duty to the office is fulfilled through incorporating the office mission in their daily practice.

Emphasize that the throughout the training, you are creating a safe space for learning, dialogue, and critique. As such, attendees will be held to several ground rules to ensure the next four hours are carried out with intention:

- Be respectful and honest
- Judgment free zone
- Step up & step back (Values: participation & self-awareness)
- Speak and listen with respect
- Be present
- Take care of yourself
 - Some of the topics we will discuss may make you uncomfortable or be triggering. Please feel free to excuse yourself in these moments.
- Confidentiality
- Mics off ears open*
- Be camera ready; center the camera on your face *
- Ask attendees whether there are any additional ground rules they need to be present for the training.

* Ground rules applicable to virtual training only.



Provide a high-level overview of the modules. Outline the length of the training (4 hours) and whether your office will be providing any refreshments and/or lunch during the training.

Module 1: Discussion of the role of the prosecutor

- Watch two videos and define role of a prosecutor
- Discuss how prosecutor’s role relates to legitimacy, fairness, and satisfaction

Module 2: Understanding the underpinnings of Procedural Justice theory and its applicability to office culture

- Define Procedural Justice and its core principles
- Discussion of the principles as they relate to three touchpoints:
 - The victim/witness
 - The accused
 - The community

Module 3: Simulated application of Procedural Justice (breakout groups)

- Watch video about trauma
- Discuss how the day’s discussions impact two populations:
 - Juveniles/Young Adults
 - Individuals with Substance Use Disorders
- Majority of the time will be spent on breakout sessions to apply lessons learn to factual scenarios

Each module will conclude with time for reflection and identification of takeaways.



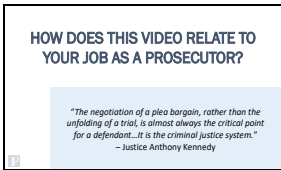
Before getting to the key principles of procedural justice and how prosecutors can incorporate them into their practice, two short videos will be shown. The first video draws a distinct line from slavery to the era of mass incarceration and the second video shows how the now 50-year war on drugs disproportionality impacts communities of color. These videos may be disturbing to some and may make others uncomfortable. The trainers of this curriculum believe one cannot begin to understand the concepts of procedural justice and how its practice can make the justice system open and fair to all until one understands how our justice system evolved from its founding to where it is today.



Video length is 00:05:50.

The video is being shown to ground the conversation. There needs to be an acknowledgement of how the criminal justice system has caused disproportional harm to minority communities because it was created as a tool by oppressors.

Slavery to Mass Incarceration by Equal Justice Initiative, July 7, 2015.
Video Link: https://youtu.be/r4e_djVSag4.



Discussion prompts:

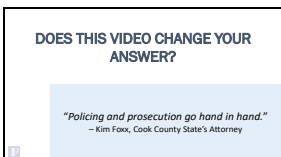
- How is mass incarceration fueled by:
 - The decision to prosecute a case?
 - Plea bargaining at arraignment?
 - Raising offers post-arraignment?



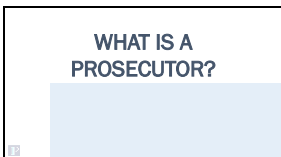
Video length is 00:03:49.

This video is shown to highlight the ways laws, arrest, prosecution, and incarceration are disproportionately created and used as a tool of disenfranchisement and oppression.

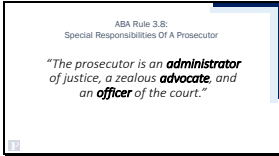
The War on Drugs: From Prohibition to Gold Rush by the Drug Policy Alliance and Jay-Z September 15, 2016. Video Link: <https://youtu.be/HSozqaVcOU8>.



Discussion prompt: Does this video change any of the answers you provided earlier regarding the role prosecutors play in mass incarceration?



Facilitate a discussion around the various words associated with the term “prosecutor.” Responses should be written on the white poster paper.

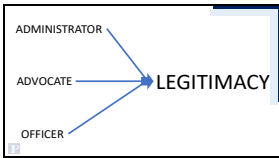


This is how the American Bar Association defines the role of a prosecutor.

Discussion prompts:

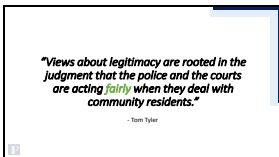
- Were any of the bolded words raised when the attendees defined what a prosecutor was? If so, acknowledge the overlap.
- Were any of the bolded terms missing in the definition? If so, ask the attendees why.

Facilitate a discussion around the relationship between the bolded words-administrator, advocate, and officer.



The common thread is legitimacy. To be an affective administrator, advocate, and officer you must be seen as legitimate when exercising your authority. **Discussion prompts:**

- How does legitimacy or the lack thereof affect how you perform your role?
- How does it affect how the public views your office?
- The court (ie. the judge), jurors, defense bar, accused, and the public/court room audience, must all see you as legitimate for you to be affective in your role.



Tom Tyler is a professor at Yale University and is known as the god-father of procedural justice. With three decades of research into procedural justice theory and its application in law enforcement and court settings, Tyler has found that fairness is at the root of community perceptions regarding legitimacy. This perception inextricably ties being seen as legitimate with how fair you are perceived to be.

Discussion prompts:

- What is fairness?
- What is supposed to be fair?
- To whom?
- How is fairness shown and/or perceived?



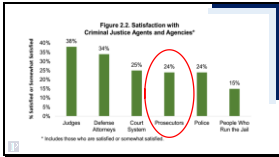
This graph highlights that individuals across all political and racial spectrums agree that blacks are treated unfairly in the criminal justice system.



Anecdotal slide intended to connect legitimacy and satisfaction.

What do most people do when they need to go to the DMV? Clear their schedule for the day because the DMV is notorious for being a full-day adventure. When you leave the DMV after a long day spent waiting in queues for a 5-minute meeting, how do you feel? How do fairness and legitimacy affect your perception of the interaction at the DMV?

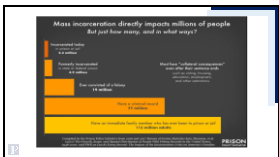
Takeaway: Feeling like you’ve received unequal or unfair treatment by someone whose legitimacy you question based on the treatment you received, results in dissatisfaction.



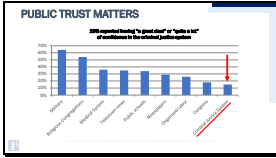
Think of this chart as a yelp review. The Center for Court Innovation conducted a two-site study- Cleveland, OH and Newark, NJ- of high utilizers of the criminal justice system. These are individuals who have had numerous contacts at the local and state level. As this chart provides a lot of information, it is recommended that these key findings be highlighted:

- Satisfaction with criminal justice actors is built independently, therefore your actions can shift whether your “yelp rating” goes up or down.
- Satisfaction with prosecutors is equal to that of the police. Which brings us back to the quote from Kim Foxx regarding the “hand in hand” relationship of police and prosecutors. However, since justice system actors are rated independently, prosecutors can affect whether their individual rating goes up or down. It’s a matter of changing the “hand-in-hand” perspective held by the public. We will explore techniques on how to address this in the next module.

Takeaway: system users do not lump the system actors into a single “criminal justice” category but “rate” each actor independently.



The effect of a prosecutor’s satisfaction rating has resounding affects as demonstrated by this graph depicting the direct impact of mass incarceration. A poor review can reach millions.

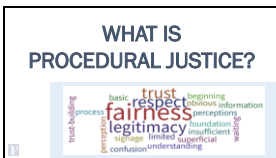


Discussion prompt: How does your satisfaction rating affect public trust?

TAKEAWAY
 1. What is one thing that moved or struck you?
 2. What is one thing you're going to pass down to your staff?

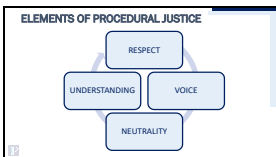
Ask the attendees the questions and note their responses on the white poster paper.

PROCEDURAL JUSTICE FOR PROSECUTORS
 15 MIN BREAK



Procedural Justice is the perceived fairness of procedures and interpersonal treatment. Procedural Justice is used to build trust between system actors and those they encounter.

In Tom Tyler’s studies, over 20 common elements were present during interactions that were perceived to be “fair.” Of these, the top 4 elements present in the overwhelming majority of Tyler’s research were: respect; voice; neutrality; and understanding. These elements are known as the principles of procedural justice. Procedural justice theory has come under a lot of scrutiny as most attempt to oversimplify it as “what your grandmother taught you.” However, the key to its effectiveness is to have every element present during each interaction you have. While that may seem like a simple task, for prosecutors it is much more complicated due to the confines of their jobs.



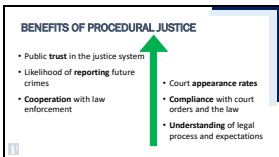
Procedural Justice theory states that people are more likely to accept decisions when they:

- See actors demonstrate **respect** by treating individuals with dignity and openly protecting their rights without sacrificing accountability
 - *Example: individuals perceive that the judge, attorneys, and court staff treat individuals with dignity and **respect**;*
- **Voice** is defined as the ability of witnesses/victims to participate in the case by expressing their own viewpoints
 - *Example: perceive that the individual’s side of the story has been heard [**voice**];*
- **Neutrality** is demonstrated when legal principles are consistently applied by unbiased decision makers who are transparent about how decisions are made

- *Example: perceive that the decision-making process is unbiased and trustworthy [neutrality];*
- Ensuring **understanding** of legal rights and the court process
 - *Example: when an individual comprehends their rights, the process, and how decisions are made [understanding].*

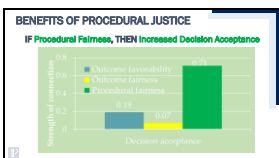


The importance of procedural justice is that its application affects every single person you come in contact with, whether you are on the clock, walking to or from court, washing your hands in the courthouse restroom, picking up your coffee in the morning, or enjoying a happy hour drink at the local pub. Use of these principles isn't relegated to your victims and witnesses, but also to the accused, defense attorney, judge, court officers, court admin staff, and the community at large.



Benefits of procedural justice:

- Increase public trust in the system
 - Think of your jury and increasing their trust in your office before they enter the box
 - With more trust the public is more likely to report future criminal activity
- Promotes general compliance with law enforcement
 - Victims/witnesses are more likely to appear for meetings and court dates
- Provides a better understanding of the process, including plea negotiations and sentencing
- Results in higher appearance rates
- Promotes compliance with court orders
 - Results in fewer violations, revocations, and involuntary returns



In a 2007 study of California courts, Tom Tyler's study found that procedural justice is most strongly correlated with litigant's willingness to accept and comply with court decisions.

- **Outcome favorability** measures whether the individual wins or loses. As children we are taught that winning is good and losing is bad. Most people like to win even when they know that they cannot always win. We are also taught, at an early age, to accept losing IF the process was fair.
- **Outcome fairness** measuring whether the individual believed they deserved the ultimate outcome- winning or losing
- **Procedural fairness** states that regardless of whether a person wins or loses, they are more likely to accept a decision if they perceived the process to have been fair.

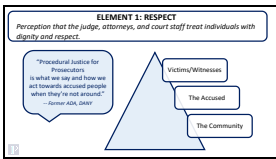


What do we mean by “culture eats strategy”? The next few slides will take us through an application of the four principles- respect, voice, neutrality, and understanding- to the three major touchpoints a prosecutor must navigate: victims/witnesses; the accused; and the community. Since culture eats strategy, we will focus on how to make changes in office culture that promote procedural justice because, regardless of the strategies you choose to undertake- even those suggested in this module- if you don’t have the proper culture, the strategies won’t work.

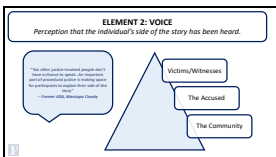
Facilitator note: Because of the nuance that comes with being a prosecutor, we are positing that it is more important for offices to create culture change than to implement traditional procedural justice strategies.

Discussion prompts:

- How do you demonstrate respect to:
 - Victims/witnesses
 - The accused
 - The community
- Are there times when you demonstrate respect, but it goes unseen or unnoticed?
- Are there any barriers to demonstrating respect?

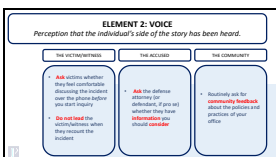


This slide provides additional methods of showing respect. Acknowledge where there is overlap from those stated previously. Discuss any methods that were not raised previously. Explore where there are any barriers to any of the methods.

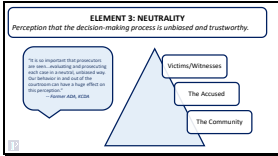


Discussion prompts:

- How do you give voice to:
 - Victims/witnesses
 - The accused
 - The community
- Are there times when you give voice, but it goes unseen or unnoticed?
- Are there any barriers to giving voice?

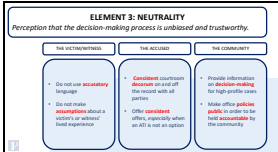


This slide provides additional methods of giving voice. Acknowledge where there is overlap from those stated previously. Discuss any methods that were not raised previously. Explore where there are any barriers to any of the methods.

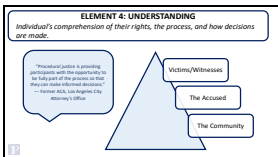


Discussion prompts:

- How do you show neutral decision-making to:
 - Victims/witnesses
 - The accused
 - The community
- Are there times when your decision-making goes unseen or unnoticed?
- Are there any barriers to demonstrating neutrality?

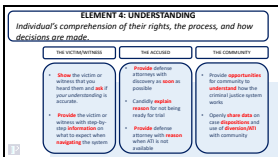


This slide provides additional methods of neutral decision-making. Acknowledge where there is overlap from those stated previously. Discuss any methods that were not raised previously. Explore where there are any barriers to any of the methods.



Discussion prompts:

- How do you ensure understanding of the criminal court processes:
 - Victims/witnesses
 - The accused
 - The community
- Are there times when your explanations go unseen or unnoticed?
- Are there any barriers to demonstrating neutrality?



This slide provides additional methods of ensuring comprehension of processes. Acknowledge where there is overlap from those stated previously. Discuss any methods that were not raised previously. Explore where there are any barriers to any of the methods.

TAKEAWAY
Take 5 minutes and write down your commitment to practice each of the elements: respect, voice, neutrality, and understanding.

Give attendees five minutes to make a commitment to procedural justice in each of the principles discussed. Ask whether anyone is willing to share one or all of their commitments.

PROCEDURAL JUSTICE FOR PROSECUTORS

15 MIN BREAK



It is important to highlight the intersection between procedural justice and trauma. There are four different ways the body reacts to danger, stress and trauma. These responses are controlled by our brain’s autonomic nervous system and are essentially survival mechanisms to help us “cope” with actual threat or perceived threat.

–Ananda Healing Project

- *Example: a shooting victim carrying a gun to feel safe.*

By operating under a universal expectation of trauma meaning anyone in any system or program, no matter their position, whether they are people who use services or staff, can be a trauma survivor, we encourage you to:

- Identify how your own values, biases, and triggers affect your behavior and communication
- Rely on the tools at your disposal and your relationships with court parties

Discussion prompts:

- How does your understanding of trauma affect whether you can apply procedural justice in your roles as prosecutors?
- Can you still deliver fairness in the process?
- How do you give true voice to someone who is in survival mode?
 - Survival mode is acting out of: fight, flight, freeze, or fawn
- How can impartial decision making happen while viewing trauma from a broader lens?

Combining Procedural Justice with trauma-informed practices

- Operate under a **universal expectation of trauma** anyone in any system or program, no matter their position, whether they are people who use services or staff, can be a trauma survivor
- Identify how your own values, biases, and “hot spots” affect your behavior and communication
- Rely on the tools at your disposal and your relationships with court parties

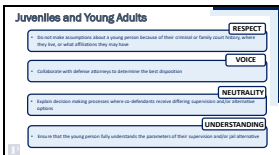
https://www.nasmhpd.org/sites/default/files/TraumaTIACurriculumTrainersManual_8_18_2015.pdf



If pre-frontal cortex is not fully developed until 25, then we need to think about how that impacts who is walking through the doors of our courts.

Discussion prompt:

- How does this understanding impact how we view procedural justice?
- What does fairness look like when factoring in stunted brain development, overexposure to trauma and systemic inequities?



This slide provides methods of applying all four principles of procedural justice to juveniles and young adults. Explore where there are any barriers to any of the methods.

Part Three: Facilitation Notes - Breakout Session

Real world scenarios have been provided to allow participants the opportunity to test the concepts discussed throughout Module 2. As mentioned, participants should be split in groups of 3-4 and allotted *15-minutes* to complete the scenarios. Depending on the size and energy of your participants, you may want to consider having each group complete 2 scenarios. In that case, please be sure to provide scenarios from differing interactions (e.g., courtroom and law enforcement).

The goal of the breakout session is for prosecutors to apply the tools discussed during the previous module begin to analyze how their responses could influence other's opinions towards prosecutors and their office. None of the suggestions the facilitators provide will work in every situation. Nuance and understanding the moment in time will play as much a role in any of the interactions as any training can provide.

Courtroom Scenario 1

You are working a busy arraignment shift. A person is being charged with aggravated assault of an intimate partner. When addressing the court:

1. Do you call the accused "Mr./Ms. _____" or "Defendant"?
2. Does your answer change if you know the person's family is in the courtroom?
3. Does your answer change if the accused has multiple prior convictions for similar acts against the same person?

Facilitator Notes:

- Who is present at arraignment?
 - Community
 - Family
 - Attorneys
 - Judge
 - Court Admin
- What does use of the accused's name during arraignment show the audience?
 - Fosters the perception of civility
 - Fosters the perception that the prosecutor is fair and unbiased
- Unconscious bias is present in all of us. You may not notice a subtle change in how you read the alleged facts or argue for bail to be set, based on the criminal history of the accused. It is important to note when these biases creep in, because the audience is paying extremely close attention.
 - What are some potential verbal cues of your unconscious bias influencing your behavior?
 - Harsh tone
 - Over emphasis on damaging details
 - Over dramatization when reading quotes
 - What are some potential non-verbal cues of your unconscious bias influencing your behavior?
 - Posture

- Gesticulating
- Facial expressions

Courtroom Scenario 2

You are picking a jury and want to make sure the jury knows how ‘dangerous’ the accused is, in your opinion.

1. Do you call the accused “Mr./Ms. _____” or “the Defendant”?
2. Does your answer change if you know the person’s family is in the courtroom?
3. What is the effect of calling the accused “the defendant”?
4. What do you lose in calling the accused by their name?

Facilitator Notes:

- Some practitioners will advocate that this is your time to let the jury know about your view of the case and what you want them to think about the person who is on trial.
 - What do you want the jury to glean from your calling the accused “the Defendant”?
- Being overly aggressive, especially early in the trial process, could backfire on a prosecutor.
- If a jury believes a prosecutor is being unfair and biased, it could ultimately negatively influence the jury.
- Showing civility and respect will ensure you do not lose the case based on misinterpreted behavior by the jury.

Courthouse Scenario 1

You are working arraignments and step out of the courtroom for a moment. As soon as you enter the hallway, a woman who is visibly distraught approaches you and tells you her son was just arraigned (you were the prosecutor of record) and bail was set. She says this is her first time ever being in a courtroom and has no idea where her son is going or when his next court date is and asks if you can give her any information.

1. What information, if any, would you share with her?
2. How would you handle this situation if the woman was angry and aggressive when speaking with you?

Facilitator Notes:

- Courthouses can be difficult to navigate when signage is not always clear.
 - Why do people go to courthouses?
 - Paperwork
 - Current Case
 - Support friends/family
 - Questions
 - Social Services
 - What does a person go through to enter a courthouse?
 - Waiting in line
 - Magnetometers

- Possible undressing to remove jewelry, coats, belts, shoes, etc.
 - Metal detector wand
 - ID check
- What feelings may come up when going through all the security measures to get into a courthouse?
 - Emotional stress
 - PTSD
 - Fear
 - Confusion
 - Disorientation
- Why would a member of the community ask a prosecutor for information?
 - [reference slides 11/12: Role of a Prosecutor] Prosecutors are seen as an authority figure.
- Explain that you are not allowed to discuss specifics of the case, prior to:
 - Introducing the mom to her son's defense attorney
 - Directing the mom to the clerk's office, if the defense attorney is no longer present

This will require prosecutors to be **present during arraignment: remember the individuals you arraigned by name, who their defense attorneys were, and whether bail was set or they were released. It also requires that prosecutors understand the entirety of the process: if released or bail is set, prosecutors should know what happens next.*

Courthouse Scenario 2

You are about to enter a courtroom where only misdemeanor cases are heard, and a young man stops you. He has a warrant, is afraid to go into the courtroom, and doesn't know what to do.

1. What do you tell the young man?
2. Would your response differ if the courtroom you were about to enter only handled felony cases?

Facilitator Notes:

- Courthouses can be difficult to navigate when signage is not always clear.
 - Why do people go to courthouses?
 - Paperwork
 - Current Case
 - Support friends/family
 - Questions
 - Social Services
 - What does a person go through to enter a courthouse?
 - Waiting in line
 - Magnetometers
 - Possible undressing to remove jewelry, coats, belts, shoes, etc.
 - Metal detector wand
 - ID check

- What feelings may come up when going through all the security measures to get into a courthouse?
 - Emotional stress
 - PTSD
 - Fear
 - Confusion
 - Disorientation
- Why would a member of the community as a prosecutor for information?
 - [reference slides 10/11: Role of a Prosecutor] Prosecutors are seen as an authority figure.
- Explain that you are not allowed to discuss specifics of the case and that you are not permitted to provide legal advice, prior to:
 - Showing the young man where he can find his attorney or a representative from the attorney's office to help answer any questions the young man may have
 - Provide the number to the attorney's office if a representative is not available and show the young man where a phone is located, if he doesn't have one

Note: Using careful language is important in this scenario, as you do not want to seem as though you are making any promises (i.e., it will be ok, don't worry, etc.) but that doesn't excuse showing empathy and compassion.

Office Scenario 1

You are walking back to your office after spending the morning waiting for a trial to start. Your colleague makes a racially disparaging comment about one of the accused men in your case.

1. What do you say to your colleague?
2. Does your response depend on your colleague's racial background? Why or why not?

Facilitator Notes:

- What possible reactions might you have in this scenario?
 - Ignore the comment and don't react
 - Make light of the inappropriateness of the comment
 - Reprimand the prosecutor for his comment
 - This response requires you to then educate the prosecutor on why the comment was inappropriate and how making disparaging comments of that nature affect his/her ability to act with integrity in their role and therefore the public's perception of your office
- What recourse is there in your office if you are made to feel uncomfortable by a colleague?
 - Notify a supervisor
 - Report the comment to HR
 - Report the comment to the city commission or state commission on human rights and the EEOC

- The race of the speaker should have no influence on how the prosecutor responds to the disparaging comment. Neither does the race of the person hearing the comment.

Note: Retaliation for making complaints is against the law and your organization should also have an anti-retaliation policy. Refer all participants to their Human Resource Department for more information.

Office Scenario 2:

A junior prosecutor in your bureau won their first trial and the conviction carries a mandatory prison sentence. They stop by your office and excitedly tell you they are going to celebrate the big win at the local bar and would like you to join.

1. How do you respond?
2. Should a mandatory prison sentence be celebrated? Why or why not?

Facilitator Notes:

- What is the junior prosecutor celebrating?
 - Having completed their first trial?
 - The hard work it took to bring in their witnesses and prep?
 - The long hours they stayed up nightly to ensure they were ready?
 - *A difficult cross-examination on the accused?*
 - *The mandatory loss of liberty of the accused?*
 - *The loss of income and support for the accused's family?*
- Questions to pose that do not require immediate answers from the audience:
 - In cases involving a victim, what does the victim win when a conviction is received?
 - What does the defendant lose when convicted?
- Remind everyone that there are no right or wrong answers to these questions and that they're being posed to ground the conversation and reinforce the holistic view of the actions prosecutor's take before, during, and after trial.

Note: Prosecutor's may find it difficult to believe the three italicized bullets are their concern, however as actors in the criminal justice system, prosecutors should keep all the consequences of their involvement in mind. Some questions to pose at the end of a trial:

- Did I provide opportunities for alternative programs?
- Should I have charged differently?
- Should I have conferred with the defense attorney regarding any underlying mental health, substance use, or other issues possibly needing treatment/social services?

Law Enforcement Scenario 1

A junior prosecutor is prepping their first felony trial, the result of a longstanding feud between the defendant and victim. A supervisor has assigned to second seat the trial is present during prep with the arresting officer. During prep the officer says he is looking forward to "putting this animal away."

1. What should you do as the junior prosecutor in this situation?
2. Does the possibility of offending a key witness impact your decision on how to respond to the officer?
3. Does the action or inaction of the senior prosecutor influence your decision? If so, how?
4. As the senior prosecutor, what should you do?
5. How do you use this as a moment to model the office's mission to both the junior prosecutor and the officer?

Facilitator Notes:

- [reference Kim Foxx quote on slide 8 and chart on slide 15] Public perception is that police and prosecutors work together against the accused and defense attorney.
 - How does this interaction further that perception?
 - How does your reaction to the comment affect your relationship with the officer?
- [Same as Office Scenario 1] What possible reactions might you have in this scenario?
 - Ignore the comment and don't react
 - Make light of the inappropriateness of the comment
 - Reprimand the officer for his comment
 - This response requires you to then educate the officer on why the comment was inappropriate and how making disparaging comments of that nature affect his/her ability to act with integrity in their role and therefore the public's perception of law enforcement *and* prosecutors (do to public's perception of their relationship)
- What recourse is there in your office if you are made to feel uncomfortable by a colleague?
 - Notify a supervisor at the prosecutor's office
 - Notify the officer's supervisor at their precinct
- Again, the race of the speaker should have no influence on how the prosecutor responds to the disparaging comment. Neither does the race of the person hearing the comment.

Law Enforcement Scenario 2

You are the senior attorney in night arraignments on Saturday night and are about to arraign your twentieth case. As paperwork is being passed to the judge the bridge officer says "just a heads up, the next character has a lot of family in the court so be careful about what you say. You know how those people are and we don't want to have to deal with them acting crazy in the hallways." The bridge officer's comments were loud enough to be heard by the rookie prosecutor shadowing you, the defense attorney, court reporter, and the judge.

1. How do you respond to the bridge officer?
2. Assume you chose not to respond, and the rookie prosecutor asks why you didn't say anything. What do you tell him/her?
3. How does the bridge officer's comment affect how you proceed with the arraignment?

Facilitator Notes:

- How much time do you have to respond to the bridge officer?
- Should you say something at all, even if it is along the lines of, “That’s inappropriate.”
- Would doing something visual like putting your head down and shaking your head to indicate you do not agree with what the bridge officer just said be sufficient?
- Should you talk privately with the bridge officer and tell them that, putting aside the fact that the comment was just plain wrong to say, their comments put you in a compromising situation when they say things like that towards you in an open courtroom?
- Do you educate the young attorney on the importance of having a good relationship with the court officers/court security to maintain order and to help run the courtroom?
 - What is this benefit?
 - What is the effect of alienating court officers/court security?

Note: Regardless of how one may personally feel towards the families and supporters of the accused, the audience at arraignments are members of the community you swore to serve, and you may need them to be a witness or member of a jury. The audience is always watching what you say and do, on and off the record.

Complaint Room Scenario 1

During one of your first shifts in the complaint room, you write up a misdemeanor assault resulting from a fight between two 19-year-old men. There is an 18-yo co-accused charged with acting in concert, who was not a direct participant in the fight. You are not clear what the reason was for this arrest and begin to question the arresting officer to determine whether there was probable cause for the 18-year old’s arrest. The officer gets annoyed by your questions and blurts out, “What’s the big deal here? Just write it up as I told you and let the courts sort it all out.”

1. Should you respond to the officer?
 - a. If so, what would you say?
2. Would you consult with a supervisor before responding to the officer?

Facilitator Notes:

- What possible reactions might you have in this scenario?
 - Ignore the comment and don’t react
 - Explain to the officer that it’s your job to determine whether probable cause exists to draft the complaint
- If you do not respond to the officer, what does that signal to him/her the next time they are in a similar situation?

Complaint Room Scenario 2

During your first night shift in the complaint room, you are writing up a petit larceny where a woman was stealing baby formula from a local drug store. When you take the complaint to your supervisor for approval, he tells you to add a robbery charge since the accused used force when pushing past the security officer. You were hoping to convince your supervisor to decline to prosecute because you do not believe that the facts of this case warrant a felony charge.

1. How do you respond to your supervisor?
2. What do you do if your supervisor tells you to continue drafting the complaint as instructed?

Facilitator Notes:

- What factors are you using to advocate your position?
 - Crime of poverty
 - Perhaps a crime of desperation
 - The age of the accused
- If your supervisor insists on charging the accused, do you continue to argue to keep the case a misdemeanor?

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