

PROCEDURAL JUSTICE for PROSECUTORS

A TWO-PART CURRICULUM TO HELP PROSECUTORS
IMPROVE PUBLIC TRUST AND CONFIDENCE



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Foreward

During a time of historic public safety in America, and despite numerous court reforms in recent years—including reduced reliance on incarceration—public confidence in justice continues to hover at unacceptably low levels. This issue is worth improving on its own merits, but is all the more urgent when considered alongside research showing that perceptions of the process are significant drivers of compliance, participation, and adherence to the law. Indeed, this well-studied concept—called “procedural justice” or “procedural fairness”—holds that whether people perceive that they have been shown fair *treatment* has a greater influence on their perceptions and compliance than whether they obtain a favorable *outcome*. Procedural justice has particular relevance to questions of equity and fairness: surveys consistently document that racial and ethnic minority populations have more negative perceptions than their white counterparts.

Researchers including 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, and has led trainings and technical assistance with dozens of courts, including several jurisdiction-wide, multi-agency trainings and implementation projects in places like New York City; Milwaukee, WI; and Toledo, OH. Although prosecutors around the country have increasingly recognized the importance of community trust-building and enhanced responsiveness to the individual needs of witnesses, victims, defendants, and other justice system participants, few prosecutors have implemented formal procedural justice trainings.

This “Procedural Justice for Prosecutors” curriculum is an initial response to this absence. It is designed to assist prosecutors begin a conversation about fairness and procedural justice. Recognizing that tailoring the message to the audience is key, the hope is that this framework can be individualized based on each office’s priorities, concerns, and local challenges, maximizing the resonance with prosecutors and the public alike. 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 more pressing time to integrate these principles into the vital work of local law enforcement.

In partnership,

Lucy Lang

Executive Director

Institute for Innovation in Prosecution

Emily LaGratta

Director of Procedural Justice Initiatives

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 seeks to help create a more effective and humane justice system. A large driver of this work is advancing fairness and the idea of procedural justice. 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.

Procedural Justice for Prosecutors

Curriculum Overview

Procedural Justice for Prosecutors was developed through a partnership between the Center for Court Innovation (the Center) and the Institute for Innovative Prosecution (the 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 incorporate procedural justice into existing practice. 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.

- **Shakya Diaz**, Managing Director, Crime Survivors for Safety and Justice, *Alliance for Safety and Justice*
- **Judge Jeffery Kremers** (ret.), *Milwaukee County Circuit Court, Wisconsin*
- **Jean Peters Baker**, Prosecutor, *Jackson County, Kansas City, Missouri*
- **Ronald Simpson-Bey**, Director of Outreach and Alumni Engagement, *JustLeadershipUSA*
- **Tori Verber Salazar**, District Attorney, *San Joaquin County, Stockton, California*
- **Jenny Woodson**, Director, *Home Free*

This curriculum was developed and edited by Emily LaGratta and Linda Baird at the Center for Court Innovation and Lucy Lang, Meg Reiss, Allison Goldberg, Shanakay Salmon, and Johnathan Terry at the Institute for Innovation in Prosecution.

Procedural Justice for Prosecutors

Facilitation Tips

Facilitators for the training should review this section for information about how to provide the best experience for participants.

Schedule

The *Procedural Justice for Prosecutors* training is designed to be given over two workshops, with the first day devoted to 1) introducing procedural justice and 2) brainstorming strategies and plans to incorporate procedural justice into prosecutor's regular work. Between the first and second workshops, participants should have the opportunity to test some of these strategies with victims and/or defendants. The second workshop should allow for reflection on this pilot period and encourage participants to solidify plans to make procedural justice a routine part of their work. The second workshop will also explore the overlap between procedural justice and substantive fairness. Ideally, the workshops should be held two to six weeks apart to allow for ample time for experimentation in between.

Preparation

To prepare for the training, facilitators should review the *Procedural Justice For Prosecutors* slides and facilitation notes. Facilitators should also plan to update the agenda slides for each workshop, including break and lunch times. A few slides offer the option to customize the content. Facilitators can discuss in advance with the prosecutor's office's leadership whether there are local priorities, challenges, or resources that should be incorporated into those sections.

Facilitators should also review the *HANDOUT: Additional Resources* and consider whether any of those materials may be helpful to distribute as pre-reading.

Finally, during the workshops, attendees will be asked to consider the affect of *implicit bias* on their work. Facilitators should be prepared to discuss implicit bias in more detail if participants have questions. Harvard University has some good resources at <https://implicit.harvard.edu/implicit/takeatest.html> that can be consulted in advance and offered to interested attendees.

Materials

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

Visuals

- Write the core elements of procedural justice—*respect, understanding, voice and neutrality*—on large-format flip chart paper and have them posted conspicuously during the training.
- If you wish to, you can 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, e.g., printed three slides per page with a section for notes by each.
 - *HANDOUT: Practitioner Strategies & Tips*
 - *HANDOUT: Individualized Action Plan*
 - *HANDOUT: Additional Resources*
 - Copies of the evaluations, to be handed out at the end of each workshop.
- * Note that participants should be instructed to name the facilitators in the evaluations and provide individualized feedback if there is more than one facilitator. If CLEs or other continuing education credits will be offered, check local rules to ensure that evaluations comply with all requirements.*

Procedural Justice for Prosecutors

HANDOUT: Additional Resources

The following resources provide additional information about procedural justice in a criminal justice context.

What is Procedural Justice?

(a three-minute animated video)



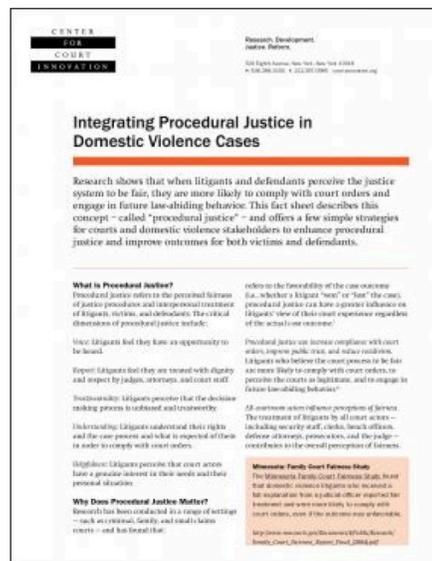
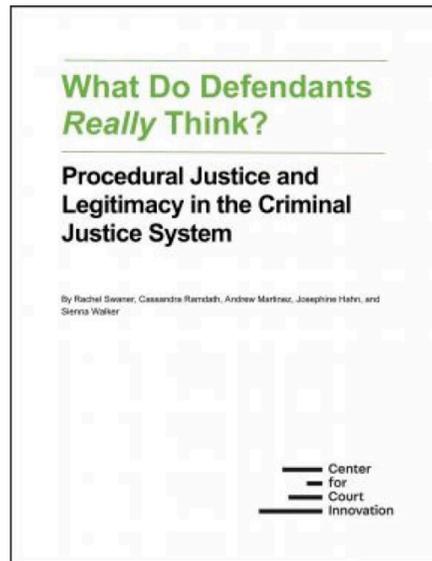
Acknowledging and Managing Implicit Bias

(a 75-minute online training by Dr. Bryant Marks)



What Do Defendants Really Think?

(a research study of defendant perceptions of the criminal justice process)



Procedural Justice in Action: Criminal Court Practice Guide

(a general best practice guide)

SIDE B

PROCEDURAL JUSTICE IN ACTION: CRIMINAL COURT PRACTICE GUIDE



I can:

- Introduce myself by name and role and address court users by name
- Make eye contact and use appropriate non-verbal cues with all parties, especially at key moments in the appearance
- Personalize interactions with court users; make case file notes to help recall details later
- Clearly state the most important and/or frequently violated court rules
- Use open ended questions instead of yes/no questions
- Ask users to repeat back their understanding of key decisions (e.g. responsibilities for conditions of release)
- Explain how I make decisions
- Avoid the appearance of inappropriate favoritism to certain parties or court players
- Acknowledge unfairness when I see it
- Educate myself about implicit bias

Environmental design can:

- Create a welcoming and respectful atmosphere in the lobby and security area
- Show respect through a clean and well-maintained facility, including restrooms
- Situate the judge's bench at eye level to enable meaningful eye contact with all parties
- Provide an estimate of wait times; provide information or resources that would be valuable while court users are waiting
- Use clear and respectful signs to communicate court rules and security procedures; include signage and other resources for individuals with Limited English Proficiency
- Use microphones and amplification in the courtroom to ensure that family members and other court users can hear the proceedings
- Offer a help desk or resource center manned by knowledgeable staff or volunteers
- Display artwork and other décor that reflects the values and demographics of the community
- Have accessible comment card boxes

Agency policies can:

- Include procedural justice practices in job postings and interview/practice conditions who value and demonstrate key elements
- Consider how agency objectives and the mission statement align with procedural justice
- Establish a facility review committee that regularly assesses building conditions
- Use videotaping, peer review, and structured self observation to provide feedback to court professionals
- Train staff in advanced communication techniques
- Create scripts that model best practices
- Schedule/heavier court appearance times to reduce security lines and waiting times
- Consider trainings on related practices, such as motivational interviewing
- Encourage regular discussions with community members, including shared brainstorming about how to build public trust
- Implement ways to solicit user feedback about their experiences via comment cards, surveys, or other formats
- Appoint an ambassador to address court user comments and questions

Key: Understanding (blue), Respect (red), Voice (yellow), Neutrality (green), All (purple)

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www.courtinnovation.org/information

Procedural Fairness/Procedural Justice: A Bench Card for Trial Judges

(a primer for judges)

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. These also come in contact with the most basic perceptions of fairness: from the proceedings, from the surroundings, and from the courtroom people.

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.
- RESPECT:** the consistent application of legal principles by relevant decision makers who are transparent about how decisions are made.
- TRUST:** that individuals were treated with courtesy and respect, which includes respect for people's rights.
- NEUTRALITY:** that decisions making are perceived as accurate and coming, trying to do the right thing.
- HELPFULNESS:** that court participants are able to understand court procedures, court decisions, and how decisions are made.
- WELFARE:** that litigants perceive court actors as interested in their personal situation in the extent that the law allows.

MEASURING FAIRNESS

"Measurement... differs what we measure by performance."
—Peter Shuster

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

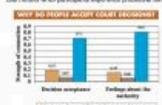
The Center for Court Innovation has **Measuring Perceptions of Fairness: An Evaluation Toolkit**, available at <http://go.courtinnovation.org>.

The National Center for State Courts has its **Court Tools**, which includes an Access and Fairness Survey in both English and Spanish, available at www.ncsc.org.

The Utah Judicial Performance Evaluation Committee has a **Courtroom Observation Report**, which can be used by courtroom observers to give qualitative feedback, available at <http://jpep.utah.gov>.

WHY IS IT IMPORTANT?

Several rigorous analyses 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 outcomes favorability (did I win) or outcome fairness (did the right person win). Studies also show increased compliance with court orders when participants experience procedural fairness.



KEEP IN MIND:

- This may be the most important contact with the court system the parties will ever have.
- Fairness and fairness 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 through listening 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 litigants are listened to—note that key points when ruling.
- Like others, judges can be affected by perceptions, assumptions, and stereotypes—or other mental, implicit biases. Be aware.

FOR MORE INFORMATION:

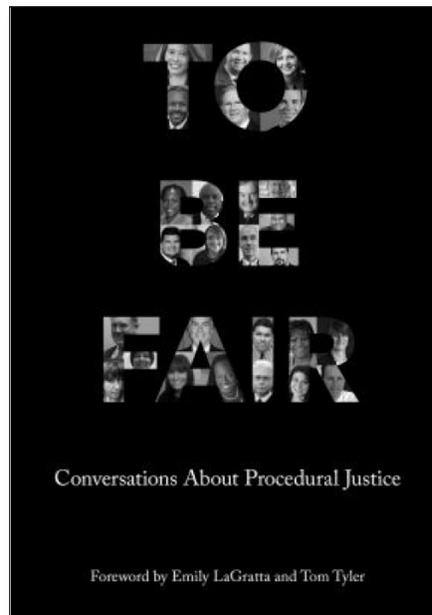
ProceduralFairness.org
www.courtinnovation.org
www.ncsc.org
www.ncsc.org

NCSC THE NATIONAL CENTER FOR STATE COURTS

The Bench Card is made possible by the generous support of the National Center for State Courts, the National Center for Judicial Excellence, and the National Center for Public Safety.

To Be Fair: Conversations About Procedural Justice

(a compilation of practitioner interviews)



TO BE FAIR

Conversations About Procedural Justice

Foreword by Emily LaGratta and Tom Tyler

For more information about procedural justice or with questions about this curriculum, contact: iip_johnjay@prosecution.org or info@courtinnovation.org.

Procedural Justice for Prosecutors

HANDOUT: Practitioner Strategies & Tips

Below are a collection of strategies and tips that can enhance perceptions of fairness among witnesses/victims, defendants, family members, and the range of other people prosecutors communicate with in the course of their jobs. Strategies are first categorized by each of the key elements of procedural justice, then by the audience (witnesses/victims and defendants).

Strategies for each element of procedural justice

Voice

- At the beginning of the conversation, tell individuals when they will have an opportunity to speak.
- Assume the people you are talking with have questions. Ask open-ended questions whenever possible, such as “what questions do you have?” as opposed to “do you have any questions?”
- If you need to interrupt, be respectful and affirm that the speaker has been heard.
- Practice active listening by making eye contact and repeating back your understanding of what was said.
- **Consider inviting victims to write a letter that they can read at sentencing.**

Respect

- Introduce yourself by name. Ask individuals how they would like to be addressed (including preferred pronouns) and how to pronounce their name.
- Make regular eye contact. Do not perceive lack of eye contact from the individuals you’re speaking with as disrespect.
- Prioritize respectful and non-intimidating body language, including open hand gestures and posture.
- Offer food and water whenever possible.
- Acknowledge disrespectful conditions, including wait time.
- Personalize interactions and make case file notes as appropriate to help recall details later.
- Offer a clean, safe waiting area for all.
- Stagger dismissal of parties from the courtroom so that witnesses/victims do not have to intersect with defendants and their friends and family members.

Understanding

- Use plain language and minimize or explain legal jargon.
- Create handouts about next steps and available resources written in plain-language. Provide in multiple languages whenever possible. Written resources should be written at or below a 6th grade reading level.
- Emphasize your interest in individuals’ understanding. Ask witnesses/victims and defendants to repeat back their understanding of key procedures and decisions.
- Plan for how to address individuals who you are unable to assist (for ethical reasons or otherwise). Consider making referrals to other resources/contacts when appropriate.

- Partner with victims' services providers to understand available resources and make appropriate referrals.

Understanding

- Use plain language and minimize or explain legal jargon.
- Create handouts about next steps and available resources written in plain-language. Provide in multiple languages whenever possible. Written resources should be written at or below a 6th grade reading level.
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- Partner with victims' services providers to understand available resources and make appropriate referrals.

Neutrality

- Explain how decisions are made, including relevant statutory or case law requirements.
- Address all parties respectfully and neutrally, including other stakeholders in the courtroom.
- Avoid conversations that could be perceived as biased.
- Acknowledge unfairness when you see it.
- Educate yourself about implicit bias.

Strategies for interacting with witnesses/victims

Prepare for Interactions

- Allow time to review prior case notes taken by you or other stakeholders to minimize asking questions that witnesses/victims have already answered.
- Consider the meeting environment and how you can enhance individuals' dignity.
- Plan to take notes, but be mindful of Rosario concerns when doing so. Consider whether another staff person can be responsible for note-taking so you can maintain proper eye contact and focus during the conversation.
- Collect any resources you may want to share during or after the meeting.

Demonstrate Respect

- Address the victim by Mr., Ms., or their preferred pronoun, asking how they prefer to be addressed and how to pronounce their name.
- Introduce yourself and any other staff members in the room, including the plain-language description of their role.
- Offer food and water when possible.
- Ensure that the meeting area is clean, comfortable, and has neutral decor.
- Be prepared to repeat yourself and have multiple conversations if needed.

Invite Questions

- Invite the witness/victim to ask questions as early as possible in the process.
- Explain at the onset when they'll be able to ask questions if they are not able to do so right away.

Set Expectations

- Define your role and the legal, ethical, or other parameters of that role.
- Give witnesses/victims a rough sense of timeframe for the case and what variables might influence timing.
- Help witnesses/victims prepare by inviting them to visit the court in advance. Explain the process and what to expect when going through security.

Explain the Process and Their Rights

- Review case specifics and how you intend to prove this case.
- Review key decision points of the case:
 - Charging
 - Complaint/Indictment
 - Discovery
 - Hearings
 - Plea/Trial
 - Sentencing
 - Future contact with Complaining Witness
 - Next court date (of case)
 - Future appearances in office/court
 - Preparation for court appearances
 - Bail status of the defendant
 - Engagement with defendant
 - Discussion of plea offer
 - Discussion of ultimate disposition
- Do not share the defendant's criminal record, but explain that if the witness/victim has a criminal record it can play a role. Take care to be respectful with any discussion of witness credibility issues.
- Explain their right not to talk to the defense attorney and investigators.
- Address common myths and misconceptions: (for example spoken words *are* evidence; prosecutors are *not* police).
- Explain that witnesses/victims are free to take their own notes but cannot get copies from the case file to avoid appearance that they are being coached.

Discuss Possible Outcomes

- Explain the possible consequences of a plea, including how a plea might benefit a witness/victim (e.g., no need to testify; avoid having credibility questioned by defense; faster resolution; possible resolution that addresses defendant's risks/needs).
- Explain whether victim consent is required for plea deal, and if so how that consent will be obtained.

Offer Assistance

- Refer victims to appropriate services, making sure to use only trusted, quality providers.
- Invite witnesses/victims to share additional information about themselves, their story, and their needs.
- Respectfully acknowledge any needs with which you are unable to help.

Resources

To facilitate a positive interaction, consider having some or all of the following available during the initial interaction with victims and witnesses:

- Your contact information
- A list of reputable health, mental health, and social services
- An overview of the case process (see below), written in plain-language and in the victim's preferred language, including an outline of possible case outcomes and definitions of key terms
- A copy of the Victim's Bill of Rights

Interactions with Defendants

Prepare for Interactions

- Remember that before a case is disposed, a core constitutional defendant right is the presumption of innocence.
- Allow time to review prior case notes taken by you or other stakeholders to minimize asking questions that defendants have already answered.
- Consider the meeting environment and how you can enhance individuals' dignity.
- Consider whether another staff person can be responsible for note-taking so you can maintain proper eye contact and focus during the conversation.
- Prepare by collecting any resources you may want to share during or after the meeting.

Demonstrate Respect

- Address the victim by Mr., Ms., or their preferred pronoun, asking how they prefer to be addressed and how to pronounce their name.
- Offer food and water when possible.
- Ensure that the meeting area is clean, comfortable, and has neutral decor.
- Demonstrate respect for defendants' rights by acknowledging that they are legally not-guilty during all pretrial stages.

Invite Questions

- Invite the defendant to ask questions as early as possible in the process.
- Explain at the onset when they'll be able to ask questions, likely through their attorney.
- Offer to excuse yourself from the room if the defendant wishes to confer with their attorney in private.

Set Expectations

- Define your role and the legal, ethical, or other parameters of that role.
- Give defendants a rough sense of timeframe for the case and what variables might influence timing.

Explain the Process and Their Rights

- Review case specifics and how you intend to prove this case.
- Be clear about your responsibility—not just the technical responsibility of “representing the people of the State”— by providing specific details about practices and procedures.
- Address common myths and misconceptions (for example, spoken words are evidence; prosecutors are not police).
- Communicate clearly with defense counsel to enable consistent messaging to defendant.

Discuss Possible Outcomes

- If applicable, explain the consequences of a plea bargain. Explain that pleas may not be appropriate for violent offenses such as rape and murder.

Offer Assistance

- When possible, offer referrals to appropriate services, making sure to use only trusted, quality providers. (Note that this may not be appropriate for incarceratory settings.)
- With consent of defense counsel, invite defendants to share additional information about themselves, their story, and their needs.
- Respectfully acknowledge any needs with which you are unable to help.

HANDOUT: Individualized Action Plan

This worksheet is provided as a place to document practices that individual practitioners will commit to implementing.

| Touchpoint | Individualized practices |
|--|--------------------------|
| Meeting preparation | |
| Physical environment | |
| First impressions/initial interactions: <i>with witnesses/victims</i> <i>with defendants</i> | |
| Promoting voice: <i>with witnesses/victims</i> <i>with defendants</i> | |

| | |
|---|--|
| <p>Promoting respect: <i>with witnesses/victims</i></p> <p><i>with defendants</i></p> | |
| <p>Promoting understanding: <i>with witnesses/victims</i></p> <p><i>with defendants</i></p> | |
| <p>Promoting neutrality: <i>with witnesses/victims</i></p> <p><i>with defendants</i></p> | |

Partners for Implementing New Practices:

Strategies for Sustaining New Practices:

Procedural Justice for Prosecutors

Workshop #1 Evaluation

Your views about this workshop are important and will help improve future trainings. Please answer the following questions, and feel free to make any additional comments. All responses are confidential. Thank you!

Training location: _____ **Training date:** _____

Facilitator(s) Names: _____

| | Low | | | High | |
|------------------------|-----|---|---|------|---|
| • Subject / Usefulness | 1 | 2 | 3 | 4 | 5 |
| • Materials | 1 | 2 | 3 | 4 | 5 |
| • Speaker: _____ | 1 | 2 | 3 | 4 | 5 |

| | Low | | | High | |
|---|-----|---|---|------|---|
| Please rate the overall value of the workshop | 1 | 2 | 3 | 4 | 5 |
| Convenience of Training Location | 1 | 2 | 3 | 4 | 5 |
| Quality of Training Facility | 1 | 2 | 3 | 4 | 5 |
| Quality of Audio-Visual Aids | 1 | 2 | 3 | 4 | 5 |
| Length of Training Workshop | 1 | 2 | 3 | 4 | 5 |

What was the most valuable aspect of the training/presentation?

What was the least valuable aspect of the training/presentation?

What lingering questions or concerns do you have about this topic?

Do you have other comments you would like the facilitator(s) or office leadership to know in advance of Workshop #2?

Procedural Justice for Prosecutors

Final Evaluation (Workshops 1 & 2)

Your views about this workshop are important and will help improve future trainings. Please answer the following questions, and feel free to make any additional comments. All responses are confidential. Thank you!

Training location: _____ **Training date:** _____

Facilitator(s) Names: _____

Please rate the following: *Low* *High*

Overall value of workshop 1 2 3 4 5

Quality of facilitation 1 2 3 4 5

Facilitator's knowledge on the subject matter 1 2 3 4 5

Organization and structure of the presentation 1 2 3 4 5

Quality of materials/handouts/slides 1 2 3 4 5

Value of training activities (e.g. small group discussion) 1 2 3 4 5

Disagree *Agree*

I learned something new that I am likely to use in my job 1 2 3 4 5

This workshop will make me a more competent professional 1 2 3 4 5

I am likely to recommend this workshop to a coworker 1 2 3 4 5

Low *High*

My *knowledge* about this topic *before* workshop 1 2 3 4 5

My *knowledge* of this topic *after* workshop 1 2 3 4 5

My *skills* about this topic *before* workshop 1 2 3 4 5

My *skills* about this topic *after* workshop 1 2 3 4 5

What worked best for your learning? (Circle any that were used and helpful to you.)

Slides Small group work Large group discussion Activity

See next page for additional questions.

What was the most valuable aspect of the training/presentation?

What was the least valuable aspect of the training/presentation?

How might this course/workshop be improved in the future?

Additional comments/suggestions for future workshops or trainings on this topic or trainings in general:

Thank you for completing this evaluation!



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