

Talking About Fairness

A Planning Guide for Communities

and Justice System Leaders

Center for Court Innovation

520 Eighth Avenue, 18th Floor
New York, NY 10018
p. 646.386.3100
f. 212.397.0985
courtinnovation.org

Author

Jessica Kay
Emily LaGratta

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About This Guide

Few justice system professionals would dispute that the criminal justice process should be fair. In fact, system leaders spend significant time ensuring that processes and outcomes are leveraging the latest research and promising practices to improve both participant success and system goals. But what if those efforts and improvements are not perceptible to participants and the public at large? What if the system is perceived to be unhelpful and unresponsive to individuals' needs—or, worse, is viewed as disrespectful and lacking in basic human dignity? If the people who go through the system do not view the system as fair, is it really fair?

These questions connect to a powerful idea that has emerged from psychology research: studies have shown that when system users perceive the process to be fair, they are more likely to comply with court orders and to follow the law in the future, regardless of whether they “win” or “lose” their case.¹ For example, litigants in community courts and other problem-solving courts typically rate their perceptions of fairness higher than litigants in traditional courts² and recidivate at lower rates.³ Leading researchers on this idea, called procedural justice, have identified several critical dimensions: (1) *voice* (litigants' ability to tell their side of the story); (2) *respect* (treating litigants with dignity and respect), (3) *neutrality* (a decision-making process that is unbiased and trustworthy); and (4) *understanding* (whether litigants comprehend the language used in court and the decisions that are made).⁴ These elements provide a useful framework for considering how perceptions of fairness might be enhanced systematically.

The Center for Court Innovation has worked with the Bureau of Justice Assistance on the topics of

procedural justice and improving public trust and confidence since 2010. This work has included convening a national working group, leading dozens of trainings around the United States, conducting a quasi-experimental pilot evaluation, creating online learning materials on procedural justice, compiling and pilot-testing an evaluation toolkit, and developing a menu of promising communication practices and a practice guide.

One of the Center's latest collaboration with the U.S. Department of Justice's Bureau of Justice Assistance on this topic involved a two-site research study in Cleveland, Ohio and Newark, New Jersey about perceptions of fairness among individuals who had experienced various stages of the criminal justice process. The study utilized surveys and interviews to capture the perspectives of over 900 justice-involved people to gauge their experiences and overall feelings of fairness related to multiple criminal justice actors and agencies. This was a novel effort to solicit both qualitative and quantitative feedback about what informed these individuals' perceptions of fairness and legitimacy from arrest through corrections.

The full research report is available at courtinnovation.org/proceduraljustice.

The study revealed powerful and poignant experiences, both positive and negative, about individuals' dealings with the justice system. In an effort to begin to unpack these rich perspectives, Staff convened a local roundtable in Newark, New Jersey in June 2018 to explore how the results of the study might be understood and digested by system players and community members alike. Much to the credit of the roundtable participants,

the discussion was a meaningful opportunity to talk about how the system—and local communities—can enhance fairness.

Conversations about fairness (and unfairness) within the criminal justice system are difficult to have. Well-meaning, hard-working officials can feel attacked; community members can feel that their perspectives aren't heard. What's more, such conversations rarely are able to leverage specific data or examples. Viewpoints may be treated instead as mere conjecture or isolated anecdotes that aren't representative of the larger picture.

This guide was designed to help highlight the valuable insights collected in the two-city study, in Newark and Cleveland, arming interested parties with concrete, research-supported experiences around which to have candid and productive conversations about fairness and procedural justice.

The guide is founded upon three main ideas or assumptions:

- 1.** The findings from the two-site study are relevant to many communities across the U.S. The voices from these two cities are presumed to be representative of a significant number of justice-involved individuals around the country.
- 2.** All system stakeholders and community members play a role in advancing fairness. Actors should work to ensure that an inclusive definition of “community” is utilized to ensure that diverse voices are heard.
- 3.** Conversations about fairness and perceptions of fairness are sensitive but can lead to real change. This guide hopes to help leaders achieve this change.

In terms of structure, the guide will support leaders by offering suggestions about how to plan a discussion about fairness (e.g. goal-setting, logistics, discussion questions). The guide could also be used as a workbook by individuals on their own. The quotations provided are intended to be a representative sampling from the dozens of viewpoints included in the full research report. As a disclaimer, all of the quotations reflect negative experiences with the justice system. This does not suggest that individuals in the study didn't share positive experiences—in fact, they did. But we have selected quotations to provide the most engaging and provocative topics for discussion about how perceptions of fairness can be improved.

For more information, visit courttinnovation.org.

Planning the Discussion

Careful planning helps to ensure that discussions are productive and supportive of all participants. Below are some suggestions about why you might convene such a discussion, who to include, where to convene the discussion, and how to help ensure that it goes smoothly.

WHY

- Creating a forum by which diverse perspectives can be shared among and between system stakeholders and communities
- Demonstrating a process by which justice agencies and communities can reflect on public perceptions, including available data on the subject
- Generating ideas for needed improvements to the local justice system
- Sharing lessons for how public trust has been built and fairness has been enhanced in the past, locally or elsewhere.

WHO

When convening conversations about fairness, it is important to think carefully about the guest list. It is essential that the list be diverse and representative of both the broad community that the system serves and the range of stakeholders who work within the system. You should enlist well-respected leaders to help build your invitation list.

Potential participants include:

System Stakeholders. Representatives from the judiciary, prosecutors, defense attorneys, clerks and court administrators, other court personnel, members of local government, police departments, and representatives from corrections and community supervision

Community Members. Leaders from local community-based organizations, businesses, and faith-based institutions; individuals who have direct experience with the criminal justice system, including those who have been arrested and family members. Keep an open mind when thinking of “community,” as it’s easy to define too narrowly and thus limit the value of the conversation.

Some additional planning questions to consider:

- What are the benefits and possible consequences if community members and criminal justice practitioners were to be engaged in conversation together? Will the conversation be more productive if these groups were separated? How should this be messaged?
- Are there any individuals or entities that are not allowed to be—or won’t be inclined to be—in the same room with one another (e.g. the local ACLU chapter and local police)?
- Will you need to restrict the conversation in any ways to accommodate participants who may have ethical or professional limitations on what they can discuss in a public setting? (e.g., judges may not be allowed to share personal opinions in a public setting, so the discussion prompts should be limited to objective processes)

It is also important to think about who should be selected as the facilitator or moderator of the discussion. The selected person should be a trusted leader and perceived as neutral. This person should also have experience facilitating difficult discussions. Avoid law enforcement or prosecution representatives and leaders of advocacy or defender groups because they might be perceived to slant the conversation one way or another.

Similarly, consider whether the facilitator or neutral entity can extend the invitations for the event, as this will lend credibility to the discussion and may increase participation.

WHERE

Discussions should take place in neutral spaces. This will mean something different in each jurisdiction. Potential examples include local academic institutions, libraries, or other places of civic importance. Avoid convening in criminal justice spaces like police precincts or courthouses. Arrange the seating so that there is no hierarchy among participants. Circles are better than stadium seating for example.

HOW

Last but not least, there are some final planning and facilitation steps that will help ensure the convening's success.

1. Scheduling

- Consider the schedules of participants before scheduling the event. Are prosecutors only available during lunch? During what hours? How much notice do judges require to clear their calendars and attend a meeting off site? Would scheduling the meeting after normal business hours be more inclusive or less inclusive?
- Schedule the discussion for at least two or three hours, depending on what your participants' schedules will allow. Any shorter period of time will be insufficient to give voice to all participants in the room and explore potential next steps.

2. Planning

- Define the role of the facilitator.
- What strategies will the facilitator use to ensure that all participants are engaged equitably in the discussion?
- Try to anticipate what topics or examples from the community's history may be flagged. Is additional preparation required for those topics?
- Consider what materials, in addition to an agenda,⁵ might be distributed to participants in advance (e.g., discussion questions, relevant articles).

3. At the Beginning of the Discussion

- Allow all participants to introduce themselves. Consider whether an ice breaker activity is necessary to get participants comfortable with one another.
- Outline ground rules at the beginning (e.g., being considerate of who is speaking and limiting use of cell phones.)
- State the goals of the roundtable—what it hopes to achieve and what it doesn't.
- Identify areas of common ground or shared goals and perspectives

4. During the Discussion

- Keep track of everyone who speaks to monitor those who are over- or under-contributing.
- Encourage open discussion
- Use open-ended questions and prompts to encourage discussion (e.g., "who else has a perspective or personal experience with this?" "How might the public perceive this type of activity?")
- Paraphrase or summarize key points, especially when moving from one topic to another
- Suggest options when time runs out or what next steps might include
- Provide food if possible—this can lead to greater participation and help set a possible tone for the conversation.

Anecdotes and Discussion Questions

In the pages that follow are nine anecdotes taken from the research report, “What Do Defendants Really Think?” with accompanying questions to help guide the conversation. The purpose of these pairings are to spark conversation. Facilitators should anticipate and accommodate when the conversation goes off script as participants bring up related experiences.

Last weekend we were cooking outside. The cop came out the car and kicked my grill over ... knocked all of my food over and said, “You all have to eat that.” I’m not about to feed my kids nothing off the ground ... **Treat me like I’m a human being.**

— Black man, 26

QUESTIONS

How can police officers demonstrate respect to community members?

What does disrespect look like?

Are there opportunities for the public and police to engage outside of general police work? What are some of those opportunities? What gets in the way of those not happening?

[The police] left my buddy's body on the floor ... everybody can see his body laying there. They put a white towel over his body, but he had his head blown off. **Why was his body still laying there on the street?** There's at least 100 people out there looking at it ... that's a scene for everybody. People out there crying and stuff. His friends and family probably out here. Let's get his body out of here instead of leaving it out here soaking in blood.

— Black man, 27

QUESTIONS

Does this example reflect any challenges in our community?

How do criminal justice stakeholders assess whether the police are doing a good job?

How do community members assess whether the police are doing a good job?

Are there police policies or procedures that would be helpful for the public to understand?

I was 15 ... [the police officer] **rammed my stomach into the corner of his car**, flipped me down on my face, smashed his knee into my back, and twisted my arm ... He went underneath my clothes, smacked the bottom of my pants, and my privates flopped out. He told me he would have no problem putting a bullet in my head, going home to his wife and kids, and going to sleep at night.

— Latino man, 33

QUESTIONS

How can police officers help community members understand what is happening during stops or arrests?

Why do police make stops? What rules govern these actions?

How might police make their policies and procedures more transparent?

You call [the public defenders], they do not accept collect calls. **You have to write them letters until you're blue in the face.** The only time you're going to see your public defender is when you go to court for the first time. They do not come back there [to the holding cell] to talk to you, they come back there to tell you, "This is what the prosecutor is offering you." **You do not get a chance.**

— Black man, 47

QUESTIONS

How might court users perceive the court process to be biased? How might stakeholders reduce that perception and its root causes?

How do court users have voice during the court process? How could these opportunities be increased?

The most recent time that I went [to court], **I really felt dehumanized.** [The judge] didn't give me any opportunity to say anything, he was just like, "You," and he like, reads my rap sheet off and was like, "**You're [messed] up.** Why would you keep on doing this, it really shows us that you don't have any respect for the court." I'm like "Dude, you have no idea what that rap sheet even means." He completely misinterpreted it, the way that he explained it, and didn't give me any opportunity to defend myself.

— White man, 26

QUESTIONS

How do we know whether courts are fair?

How do criminal justice stakeholders assess whether courts are doing a good job?

How can court actors (judges, prosecutors, defenders, court officers) demonstrate respect to court users?

What does disrespect look like in courts?

How do community members assess whether courts are doing a good job?

You can sit there and tell [the court], “Look man, I’m having a hard time, I’m trying to find employment; I can’t pay my fine because I don’t have a job, and right now I’m living in a shelter. Things are hard for me right now.” They say, “Well, make a payment plan.” **“You’re not listening here, dude.** You want a payment plan and I can’t even eat here.” “Well then, we’ll give you some community service.” Now you’re going to make me work for nothing when I should be out here looking for a job. This is taking care of the little fine that I have, fine, but what about my stomach? What about me eating?

— Black man, 47

QUESTIONS

How can court actors provide more opportunities for court users to tell their side of the story?

What are some ways courts can address the individual needs of court users?

What offers of assistance might be meaningful to individuals in crisis?

How can justice practitioners demonstrate to defendants, victims, and other court users that they understand the context in which criminal behavior takes place?

Oh, we don't have your motion yet, your motion to discovery yet. **We're waiting on the DA.** There's a time limit they got to be there. The tape is waiting, we've been waiting for the tape, it's not here yet." Why is that? You haven't got that tape yet? And you're the judge, you can subpoena that tape to be here tomorrow. So now I have to sit **an extra six months** [in jail] until you find the evidence of the tape, or you find this or you need to push for this.

— Black man, 32

QUESTIONS

What are the key aspects of the process that users need to understand? What do participants want system actors to understand about them?

What could court actors say or do to help reduce confusion about the process?

How can court actors work together to create more transparency around the legal process?

When I was in [jail], **I did not receive my cancer medicine.** ... They're not going to give to you because the county has to pay for it. ... I had spots on my liver ... **I did not get it tested the whole time I was in there** ... I told them every single day, "Look, I need to see a doctor. I need to see a doctor." Never seen the doctor. Ever. ... **It's like you have no voice in there.**

— White woman, 34

QUESTIONS

How do community members assess whether jails and prisons are doing a good job?

How can correctional officers and officials demonstrate respect to individuals who are in custody? What does disrespect look like?

Conclusion

This guide is intended to support those who are interested in building public trust in justice. To support the legitimacy of the justice system we need to improve both fairness and the perception of fairness. Talking about these issues can be uncomfortable for all involved. This guide is intended to help leaders take the first step in having these difficult discussions.

For more information about the topic of procedural justice and efforts to improve public trust and confidence in courts, please visit courtinnovation.org/proceduraljustice and <http://bit.ly/ProJust> or contact us at info@courtinnovation.org.

Endotes

1. Tyler, Tom R. *Why People Obey the Law*. Princeton University Press. 2006
2. Frazer, M.S. 2006. "The Impact of the Community Court Model on Defendant Perceptions of Fairness." Center for Court Innovation. Available at https://www.courtinnovation.org/sites/default/files/Procedural_Fairness.pdf.
3. Rempel, M. 2012. "Review of NIJ's Multi-Site Adult Drug Court Evaluation." Center for Court Innovation. Available at <http://www.courtinnovation.org/sites/default/files/documents/MADCE.pdf>.
4. Ibid. See also Frazer, M.S. 2006. "The Impact of the Community Court Model on Defendant Perceptions of Fairness: A Case Study at the Red Hook Community Justice Center." Center for Court Innovation.
5. See Appendix A for a sample agenda.

Appendix

SAMPLE AGENDA

Roundtable Discussion: Community Perceptions of Fairness

Morning Session: Community Members (10:00am-12:30pm)

1. Introduction [20 minutes]
 - Welcome and introductions; who's in the room and why [Facilitator 1]
 - Outline roundtable goals [Facilitator 1]
 - To spur discussion about community perceptions of fairness
 - To share results from a community study
 - To generate ideas for ways to improve community interactions with the justice system
 - Framing/disclaimers [Facilitator 2]
2. Recap/Define Procedural Justice video [Facilitator 2, 5 minutes]
 - “Procedural justice” is the concept that describes perceptions of fairness.
 - Recap of the literature and why it matters
3. Ice Breaker Exercise [Facilitator 1, 15 minutes]
4. Facilitated Group Discussion [Facilitator 2, 60 minutes]
 - Overview of discussion
 - Overview of research study
 - Reading of anecdotes and discussion
5. Coffee/restroom break [10 minutes]
6. Recap & Next Steps [Facilitator 1, 45 minutes]
 - Summarize key themes and take-aways
 - What does this mean for community members?
 - How is their perception/definition of fairness changed, if at all, based on this conversation?
 - How can they play a role in moving this forward?
 - What recommendations do they have for how to continue this discussion?

Afternoon Session: Criminal Justice Practitioners (2:00-4:30pm)

1. Introduction [20 minutes]
 - Welcome and introductions; who's in the room and why [Facilitator 1]
 - Outline roundtable goals [Facilitator 2]
 - To spur discussion about community perceptions of fairness
 - To share results from a community study
 - To generate ideas for ways to improve community interactions with the justice system
 - Framing/disclaimers [Facilitator 2]
2. Recap/Define Procedural Justice video [Facilitator 2, 5 minutes]
 - “Procedural justice” is the concept that describes perceptions of fairness.
 - Recap of the literature and why it matters
3. Ice Breaker Exercise [Facilitator 1, 15 minutes]
4. Facilitated Group Discussion [Facilitator 1 + 2]
 - Overview of discussion
 - Overview of research study
 - Report-out from morning session, reading of anecdotes and discussion
5. Coffee/restroom break [10 minutes]
6. Recap & Next Steps [Facilitator 2, 45 minutes]
 - Summarize key themes and take-aways from afternoon discussion
 - What does this mean for each agency in the room? How can they play a role in moving this forward?
 - What recommendations do they have for how to continue this discussion?

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