

The Multnomah County Judicial Listening Sessions: A Case Study

August 17, 2018

JUSTICE SYSTEM PARTNERS



This report was created with support from the John D. and Catherine T. MacArthur Foundation as part of the Safety and Justice Challenge, which seeks to reduce over-incarceration by changing the way America thinks about and uses jails.

Justice System Partners thanks the Multnomah County Circuit Court judges and court staff who participated in interviews for this case study. Judges who participated in the interviews are quoted throughout the case study.

For more information on the judicial listening sessions in Multnomah County, contact Rachel McCarthy at Mul.Public.Information@ojd.state.or.us.

This report was authored by Annie Balck anniebalck@yahoo.com and Lore Joplin lore@justicesystempartners.org of Justice System Partners.



Introduction

“It is easy for judges to assume that because they are well intentioned and good at making decisions, that that is enough. ... We need people to see that judges are part of the community and are willing to listen.”

—Multnomah County Circuit Court Judge

Since 2015, Multnomah County, Oregon (home to Portland) has been participating in the John D. and Catherine T. MacArthur Foundation Safety and Justice Challenge. The Safety and Justice Challenge provides support to sites across the country to reduce the overuse of jails and racial and ethnic disparities in the criminal justice system. As part of Multnomah County’s broader reform efforts, in 2016 and 2017 the Multnomah County Circuit Court held three judicial listening sessions—community engagement events designed to give members of the public the chance to voice their experiences and concerns with the county’s justice system.

The “Perceptions of Justice” listening sessions, held in August 2016, November 2016, and February 2017 at different locations in the county, allowed community members to speak directly to judges about their perceptions of the justice system. By design, judges were prohibited from speaking or responding to community members during the sessions. Eighty-five to 200 community members and justice system stakeholders attended each event. Approximately one year after the final listening session, the court held a follow-up community conversation, during which members of the judiciary and other justice system stakeholders presented information to the community about the justice system and answered questions from the audience.

Multnomah County’s judicial listening sessions are considered a promising example of judicial engagement with the community. As part of the Safety and Justice Challenge, Justice System Partners (JSP) offered to write a case study of the sessions for judiciaries in other Safety and Justice Challenge jurisdictions that might be interested in engaging in similar activities. This case study aims to provide a road map for sites and help them overcome potential challenges.

In order to complete the case study, JSP interviewed seven Multnomah County Circuit Court judges, all of whom participated in at least one listening session, as well as two court staff who were involved with the planning, execution and follow-up for the listening sessions. JSP also reviewed Multnomah County materials around community engagement efforts and a next steps document produced by the judiciary after the listening sessions.



Overview of Listening Session Format

Each listening session followed the same set of ground rules and was facilitated by a moderator who was an experienced judge with the Multnomah County Circuit Court. The listening session ground rules, which were reviewed with attendees and prominently displayed at each event, clarified that judges were there to listen only, and would not respond to questions. All audience members were given the opportunity to speak and were limited to three minutes each if they chose to speak. Community members were encouraged to voice their concerns honestly and openly and comments were not limited to reflections about the judiciary. Discussion of specific cases was discouraged. At each event, the moderator explained the role of the judges present; reviewed and gently enforced the ground rules; and ensured community members adhered to time limits set for speaking, while also setting a tone of respect and open-mindedness.

Sample Ground Rules

For community members:

1. *Everyone is encouraged to speak.*
2. *Please approach a microphone. Each speaker will have three minutes. Please be respectful of the time limit in order to give everyone who wants to speak an opportunity to do so.*
3. *Different perspectives are welcome and valued.*
4. *Challenge ideas and systems, not people.*
5. *Please do not interrupt. Listen carefully and respectfully to others.*
6. *Please do not discuss specific cases; we are unable to respond.*

For judges:

1. *We are here to listen only, and will not respond to questions or comments.*
2. *We will listen respectfully without interruption or judgment, with open hearts and open minds.*
3. *We honor and respect your perspective and the reality of your experience.*
4. *We will listen for what we can agree with, not for what we want to rebut.*



A National and Local Environment of Distrust

Judges and staff at the Multnomah County Circuit Court knew from data that, despite reform efforts, people of color remained overrepresented in the county’s justice system. As part of its work as Multnomah County’s site coordinator with the Safety and Justice Challenge, Justice System Partners had conducted data analysis and produced a report in 2016 for Multnomah County that reviewed significant racial and ethnic disparities throughout the county’s criminal justice system. The data in the report made it clear that the county’s small minority community continued to bear the brunt of the justice system due to the history of systemic racism in Oregon and the U.S. more broadly, as well as the effects of implicit bias.

"We have a community that expects public officials to be responsive to them."
—**Multnomah County Circuit Court Judge**

Members of the judiciary also believed that in order for Multnomah County Circuit Court’s procedural justice work to be effective, judges and court staff needed to better understand issues of bias and trauma in the justice system, and consequently instituted court-wide trainings on implicit bias, structural racism, and trauma-informed care for all judges and court staff in 2016 and 2017.

What Is Procedural Justice?

Procedural justice centers around the idea that people’s perception of the fairness of justice system processes is related to their trust in the system and its outcomes. The theory is that the more processes are perceived to be fair, the greater trust people will have in the system, and the more likely they will be to comply with system outcomes.

The concept of procedural justice revolves around four key principles:

1. **Voice** – people want the opportunity to tell their side of the story before decisions are made;
2. **Neutrality** – judges should be objective and transparent in their application of the rules and in decision-making;
3. **Respect** – people need to feel like the justice system is taking them seriously and views them as valuable and important; and
4. **Trust** – people expect decision-makers to be sincere, caring, honest, and open.¹

Research has demonstrated the impact of procedural justice in both civil and criminal justice contexts.² Studies show that procedural justice is important to people of a variety of social and economic backgrounds, and it is of particular concern to African-Americans and Hispanics.³ Research also ties procedural justice to broader public confidence in state courts, with some researchers arguing that policies promoting procedural justice are the best means of increasing public confidence in courts.⁴

¹ Tyler, T.R. Procedural Justice and the Courts. *Court Review* 44 (2007): 26-32.

² For a review of studies on procedural justice in a variety of contexts, visit www.proceduralfairness.org.

³ Tyler, T.R. & Huo, Y.J. Trust in the Law: Encouraging Public Cooperation with the Police and Courts. *Russell Sage Foundation* (2002).

⁴ Rottman, D.B. Trust and Confidence in the California Courts: A Survey of the Public and Attorneys. *National Center for State Courts* (2005).

Multnomah County’s Collaborative Culture

In Multnomah County, justice system stakeholders—including individuals representing the judiciary, district attorney’s office, public defenders, police department, sheriff, probation, behavioral health department, and social service agencies—regularly collaborate in an effort to solve problems together. These stakeholders have a history in the county of focusing on responsibilities related to their specific roles while also being open to understanding challenges within different agencies and the system as a whole.

Members of Multnomah County’s judiciary also regularly engage individually with a number of community groups, such as the Juvenile Justice Council, Local Public Safety Coordinating Council, and Child Welfare Council. Notably, however, in 2016 there was limited judicial outreach at an institutional level, and community voices had not typically been a part of the county’s justice system stakeholder meetings, despite being the individuals most affected by the justice system.



An Environment Ripe for Community Engagement

Multnomah County's Circuit Court was naturally poised for taking new steps toward community engagement in 2016 because of its efforts to acknowledge and understand justice system inequities and its broad work around fairness, transparency, bias, and trauma-informed care. Additionally, the judiciary's history of working collaboratively with other justice system stakeholders laid critical groundwork for successful judicial community engagement, thanks to an environment of trust and openness among stakeholder groups, versus one of suspicion and defensiveness. Likewise, judges' individual participation in community groups had led to the creation of strong relationships built on trust and transparency. The sum total of these efforts helped ensure that the court's next step toward community engagement—the judicial listening sessions—would be met with support from community groups and justice system stakeholders.

Multnomah County Circuit Court Pledge of Fairness (Adopted In 2016)

The judges and staff of the Multnomah County Circuit Court make the following pledge to each litigant, defendant, victim, witness, juror and person involved in a court proceeding:

- *We will listen to you.*
- *We will respond to your questions about court procedure.*
- *We will treat you with respect.*



Why Multnomah County Judges Prioritize Community Engagement

"Visibility is always an element of any elected official. ... Being seen by the electorate and being seen listening to their problems is precisely what judges should be doing."

—Multnomah County Circuit Court Judge

Multnomah County Circuit Court's procedural justice work makes building the credibility of the judiciary and establishing trust with the community primary goals, and judges believe that listening to community concerns will help achieve these goals. Members of Multnomah County's judiciary view community engagement not only as an acceptable undertaking for judges, but as an essential part of their responsibilities as elected officials.

Although the public generally interacts more with court staff than judges, Multnomah County's judiciary acknowledges that judges are usually seen as "the court." Therefore, the judges believe they need to be the ones out in the community, listening to individuals' concerns off the bench and out of their judicial robes.

When judges go out into the community to engage with members of the public, it allows the power structure and established roles of the courtroom to shift, creating new space for trust and learning. Judges and court staff can learn about the public's perception of the judiciary and their understanding of judges' roles and responsibilities. This knowledge in turn helps judges to do their jobs better: to present information thoroughly and clearly, increase transparency, and educate the public about the role of the judiciary and how it differs from other parts of the justice system.

"The worst thing to do is to do nothing. If you don't try new things, you're never going to find something that works."

—Multnomah County Circuit Court Judge



Guiding Principles of the Judicial Listening Sessions

Initially, judges in Multnomah County considered setting up public events to explain the court's work around procedural justice. However, the foundational procedural justice principle of giving people an opportunity to be heard steered the judiciary away from these types of events. Judges acknowledged that explanatory sessions would inevitably incorporate assumptions about community members' concerns. Agreeing that it would be impossible to know the real concerns of community members without asking, judges turned to a listening format, with certain key beliefs guiding the planning and execution of the events.

1. Judges are conveners.

"Judges should be leaders...conveners of meetings. ... We have a role to play in educating the public, being transparent, listening to people, working toward change."

—Multnomah County Circuit Court Judge

Multnomah County Circuit Court judges value their role as conveners. While judges naturally have constrictions on their roles in the policy sphere, their convening role allows them to bring together community groups in order to learn from the public. For example, prior to the listening sessions, Multnomah County judges had convened focus groups to get different perspectives on the planning of the county's new courthouse, slated to open in 2020. The judiciary's diversity committee hosts "lunch and learn" sessions to increase the court's understanding of how different cultures approach and experience the justice system.

The judiciary decided to exercise this convening role for the listening sessions, and act as host for a forum through which a range of agencies and organizations would be able to hear directly from community members about their concerns. Judges additionally leveraged their existing relationships with system stakeholders and community organizations to encourage attendance by a variety of agency and organizational representatives, as well as individual citizens.

2. Listening—only—is important.

"I was ... emotionally moved. ... Listening to people's pain and anger really speaks to one's empathy in a way that is much more open than in a courtroom. ... I felt a shared sense of community I hadn't expected to feel."

—Multnomah County Circuit Court Judge

The listening-only format was established to create a safe space for the public to talk and to assure community members that they would be heard. Listening without responding prevented judges from getting into a defensive position, debating with the audience, or explaining why they may have felt the public was wrong about certain issues, which in turn may have



discouraged people from speaking freely and honestly. Judges also believed that allowing only community members to speak could serve as a way to release some of the pressure and tension that had been building in the community. Listening in person established a mutual connection that would have been lost if the judiciary had simply solicited written comments.

Listening created space for judges to focus on understanding the problems being addressed, and ensured an opportunity for a considered, thoughtful response, rather than a more impulsive one. As judges listened, they could engage in self-reflection, thinking about the perceptions people have and how to counter those in the courtroom. Judges had to engage in forethought about how to listen without responding, and be mindful of the powerful potential in just listening. The court's adoption of procedural justice principles had served to prime the judges to listen to critical comments.

The listening-only format benefited not just the judiciary. The other justice system stakeholders who were present at the events heard concerns about issues under their control; comments were not limited to issues under the control of the judiciary. For all judges, system stakeholders, and community organization representatives in attendance, the listening sessions elevated the role of community members as people who have important information and valuable ideas as to how government can serve their needs.

3. The public doesn't departmentalize justice.

"They were stories we needed to hear. Even if there was nothing we could do about it, hearing those stories makes us better judges."

—Multnomah County Circuit Court Judge

The judges in Multnomah County were aware that the public generally views the various justice system players collectively, and doesn't necessarily distinguish between the branches of government or particular agencies and departments. Because of this, judges knew that it was unrealistic to expect that the questions and comments at a listening session held by the judiciary would only be about courts. However, judges believed in the importance of listening, even if issues raised weren't within their control, because it would increase their understanding of public perceptions of and concerns with the justice system. Not having constraints on audience members' comments ensured that people would not feel pushed away and shut down if certain concerns were dismissed as outside the judiciary's control. Hence, while the moderator gently explained the limitations of the judiciary at the beginning of each event, judges were prepared to hear a broad range of comments.

Despite the fact that judges are unable to change policies or laws that the community may be unhappy with, members of Multnomah County's judiciary felt that listening to concerns about particular policies or laws would enable the court to better target its public education efforts, especially with regard to the limits of the judiciary's power. And, again, because the judiciary



exercised its convening role and drew on its collaborative history, a variety of system stakeholders and community partners were invited to hear the broad range of concerns from the community.

"The moderator needs to be someone who can acknowledge humanity in everyone getting up."

—Multnomah County Circuit Court Judge

4. *The moderator sets the tone.*

At each Multnomah County judicial listening session, the moderator spent time at the beginning of the event to set a tone of mutual respect, conveying that the judges were committed to being there, to listen to both the good and the bad. The moderator clarified that judges wouldn't respond because they were there just to listen; a lack of a response should not be interpreted as judges trying to dodge a difficult issue. She explained to the audience that other justice system stakeholders and community partners had been invited to the listening sessions, and that they were there to listen, too.

The moderator of the listening sessions had to understand the importance of setting ground rules in a friendly, non-threatening way; she was welcoming and made clear that she understood the emotion and anger felt by community members, while also helping to keep the energy in the room at a manageable level. The moderator explained that judges could not comment on individual cases, and that they were looking to identify patterns in concerns raised. She gently steered people away from questions and towards comments.

It was important to the Multnomah County judiciary that the moderator of the listening sessions reflect the community members most affected by justice system policies and practices. The court recognized that most judiciaries do not reflect the diversity—in race or ethnicity, cultural background, income level, or education level—of community members they serve. The moderator for all three listening sessions was an experienced judge with established connections in the communities where the listening sessions were held. This helped create trust and encourage attendance by the public.

5. Logistics matter.

The committee responsible for planning the listening sessions carefully considered the location, timing, and general environment of each session. The judiciary held each listening session in a different area of the county in order to target different communities—especially those with predominantly African-American and/or Hispanic populations—and make sessions convenient for a broad swath of the public. Each session was held in the evening at a neutral, accessible location with ample seating space and parking, e.g., a school.



The events were advertised on the court's website as well as through flyers circulated throughout the community. Event flyers were translated into five languages commonly

Fear as a Barrier to Engagement

Multnomah County's judiciary intentionally declined to have a security presence at the listening sessions, understanding that this could create an environment of suspicion and fear that would discourage participation. Community outreach efforts for the third listening session, which was scheduled for early 2017 in a primarily Latinx neighborhood, were expected to yield a robust crowd. However, as the event drew nearer, the federal government increased its negative rhetoric around immigration and enforcement efforts were on the rise. Agents from Immigration and Customs Enforcement (ICE) had staked out courthouses in Multnomah County and elsewhere and had detained individuals without documentation. Naturally, this created an environment of fear within immigrant communities, including the Latinx community in which the listening session was held.

The rising fear in the community had a significant chilling effect on attendance at the third listening session. Attendance at the event was less than half that of each of the first two events, which was widely attributed to fear that the event would be staked out by ICE. Despite judges' efforts to engage with this sector of the community, an environment of fear created significant obstructions.

interpreted at the court; flyers provided contact information for community members to request interpretation at the events. Spanish language interpreters were present at each event.

The judiciary purposely avoided having security at the events in order to ensure that people felt comfortable and relaxed. While police were invited to attend to listen, the judiciary made it clear they did not want an overwhelming police presence and did not want people to feel intimidated to attend or voice their concerns.

Judges used their established community connections with local organizations such as churches and nonprofits to conduct outreach before the events and to encourage attendance. Attendees at each event could submit comment cards and were provided with an email address to submit additional comments and questions. Email inquiries and comments were monitored by court staff; each follow-up question received a response with information and/or a referral, as allowable and appropriate.



After the Judicial Listening Sessions: What's Next for Multnomah County

At the listening sessions, the moderator told community members that the court would follow up on their concerns and questions about the justice system through responses to individual email inquiries as well as additional outreach. Judges felt it was critical that they didn't just listen and take no further action. It was important to say to the community, "We've heard you."

"If we as the judiciary can't take the time to hear from the people who are affected by our decisions, everyone is a little worse off."

—Multnomah County Circuit Judge

From Listening to Community Conversations

The judiciary decided to follow the listening sessions with a series of community conversations, the first of which was held in March 2018, about a year after the third listening session. The subject focus of the community conversation was the juvenile justice system, chosen because of a clear theme of concerns across the listening sessions. For the community conversation, the court convened an array of system stakeholders to explain their different roles in the juvenile justice system. Panelists included representatives from the judiciary, police department, district attorney's office, public defenders, juvenile probation and detention, and the Oregon Youth Authority (the state juvenile justice agency). Also on the panel was a community member who was incarcerated as a youth and representatives of two local nonprofits.

The format of the community conversation varied from the listening sessions in that it provided information to the audience first, through short panelist presentations, and allowed attendees to ask questions of and get answers from the panelists. The judiciary aimed to create a balance at the event between educating the public through presentations and creating space for community members to get answers to their questions.

The judiciary carefully selected panelists in order to ensure that the full spectrum of agencies involved in juvenile justice issues was represented. Panelists reflected community members as much as possible. The judiciary made sure to choose panelists who could listen to questions and respond thoughtfully without being defensive.

The 2018 community conversation was the first in a series; a second community conversation on juvenile justice is scheduled for September 12, 2018. Judges have chosen to follow the same general format as the previous conversation, but—once again exercising their convening role—they will additionally invite legislators who are part of a juvenile justice working group to attend the event. The judiciary plans to hold more community conversations in the future on other themes that arose during the listening sessions.



Oregon's Measure 11: A Reminder of the Need for Ongoing Public Education

The Multnomah County Circuit Court engages in a variety of public education efforts, often through campaigns around particular changes to the law or court practice. The judicial listening sessions highlighted the need for ongoing public education on issues that significantly affect the community, rather than relying on moment-in-time campaigns. Comments at the listening sessions about Oregon's Measure 11 provided a prime example.

Measure 11 is a ballot measure approved by Oregon voters in 1994 that sets mandatory minimum prison sentences for certain felony offenses, and requires that youth aged 15 and older be charged as adults for those same felony offenses.⁵ Immediately after Measure 11 was approved, Multnomah County Circuit Court and its justice partners actively engaged in an intense public education campaign to spread the word about the new law. After the campaign was completed, efforts by the justice system partners to educate the public about Measure 11 generally ceased.

Measure 11 was a prominent theme at the judicial listening sessions: community members shared many stories about the ways the law had harmed them or family members and expressed frustration about not knowing that such a law existed. They also demanded change.

These concerns demonstrated to the judiciary the necessity of ongoing public education on Measure 11, that their one- to two-year public education campaign after the ballot measure was approved was insufficient. Members of the judiciary also realized that the public did not understand the way in which judges are bound by Measure 11 and that judges are not able to change the law.

The knowledge gained at the listening sessions about the public's understanding of Measure 11 has led Multnomah County Circuit Court and its partners to consider new ways to educate community members about the law. The judiciary now has a working group focused specifically on educating the public about how Measure 11 applies to youth, and is more aware of the need for continual education efforts on issues that impact communities.

For more information on Measure 11, visit <https://multco.us/dcj-juvenile/common-laws/measure-11>.

Listening Sessions Influence Action

After the listening sessions the judiciary drafted a summary document that identifies themes in what the judges heard at the sessions and offers potential next steps, including suggested action areas for stakeholders outside the judiciary (see Appendix A). This document was emailed to all individuals and groups who provided their contact information at the listening sessions. Even if the listening sessions do not spur new action, the judiciary believes they have the potential to influence efforts already underway across the range of system stakeholders in attendance.

The concerns raised at the listening sessions have also influenced ongoing efforts at Multnomah County Circuit Court to provide the public with improved, easier access to data, as well as the development of a plan for public outreach and education. The sessions reinforced the need for channels of communication with the public that are straightforward and accessible.

While the court is engaging in a variety of activities to provide feedback on what's being done to address the community's concerns, the judiciary is cautious not to come across as self-congratulatory. It also recognizes the importance of establishing ongoing community engagement events, including additional listening sessions and community conversations, in order to set consistent expectations for the community and create reliable communication networks.



Recommendations for Other Jurisdictions

The interviews JSP conducted for this case study demonstrated that Multnomah County’s judiciary gained valuable knowledge from the listening sessions, both in terms of public perception of the justice system as well as how best to engage with the community in a listening session format. The judiciary recommends the following to other jurisdictions considering similar events:

1. **Listen with an open mind.** While a response session similar to Multnomah County’s community conversation is good idea later in the process, judges need to listen first.
2. **Don’t be fearful.** Trust that the community will take the effort at engagement in the spirit with which it is offered—honest and non-judgmental learning.
3. **Don’t underestimate the value in hearing directly from the public.** Listening in person allows judges to see first-hand people’s emotional response to how the justice system affects them, their families, and their communities.
4. **Consider the public climate.** Be mindful of the public’s attitude toward the justice system, understand that many people have a distrust or fear of government, and consider fears within certain communities that might prevent people from attending sessions.
5. **Ensure broad judicial buy-in.** While it is important to have one or two judges who act as primary champions for listening sessions, support from the entire bench is crucial to demonstrating commitment to the community.
6. **Involve the community early.** Community members add valuable perspective and feedback throughout the planning process.
7. **Tone matters.** Ensure an environment of respect.
8. **Don’t make the community come to you.** It is critical to go out into the community and hold listening sessions at locations where the public will be comfortable, rather than have the sessions at the court.
9. **Get the word out.** Partner with strong community organizers who can spread the word and get people interested, such as churches and community organizations.

Conclusion

Judiciaries have a responsibility to engage with the community, to understand people’s perceptions of and experiences with the justice system. Judicial listening sessions such as those held in Multnomah County are a way for judges to begin or continue community engagement efforts and a means of learning and inspiring action within the judiciary and the larger justice system.

