

The author(s) shown below used Federal funds provided by the U.S. Department of Justice and prepared the following final report:

Document Title: Reducing Courts' Failure to Appear Rate: A Procedural Justice Approach, Executive Summary

Author: Brian H. Bornstein, Alan J. Tomkins, Elizabeth M. Neeley

Document No.: 234371

Date Received: May 2011

Award Number: 2008-IJ-CX-0022

This report has not been published by the U.S. Department of Justice. To provide better customer service, NCJRS has made this Federally-funded grant final report available electronically in addition to traditional paper copies.

Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Reducing Courts' Failure to Appear Rate: A Procedural Justice Approach

Brian H. Bornstein, Alan J. Tomkins, & Elizabeth M. Neeley

Executive Summary

This study examined the effectiveness of using different kinds of written reminders to reduce misdemeanants' failure-to-appear (FTA), which is a significant problem in the nation's courts. Misdemeanants were randomly assigned to one of four conditions prior to their court date: no reminder (control), reminder-only, reminder with information on the negative consequences of FTA, or reminder with information on sanctions as well as the procedural justice benefits of appearing. A subset of defendants was also surveyed after their scheduled court date to assess their perceptions of procedural fairness and their level of trust/confidence in the courts. Reminders significantly reduced FTA overall, and more substantive reminders were significantly more effective than a simple reminder. Survey results indicated that misdemeanants' trust/confidence assessments, as well as their perceptions of procedural justice, were related to their appearance in court. The implications for public policy and pretrial services are discussed.

Research Problem

Non-custodial criminal defendants often fail to appear for court. This occurs for all kinds of mandated appearances: arraignment, pretrial (post-arraignment) hearings, trial, and post-trial. Initial (i.e., arraignment) failure-to-appear (FTA) rates for non-waiverable offenses (e.g., felonies and most misdemeanors) are particularly problematic, as they involve the greatest volume of defendants. Post-arraignment, defendants might have posted bail, giving them a greater incentive

to appear for their scheduled hearing or trial. Initial FTA rates vary depending on jurisdiction and offense type but can be as high as 25-30%. Minorities are more likely to fail to appear than Whites, though it is unclear whether this difference is due to race/ethnicity, per se, or to factors that might be correlated with race/ethnicity, such as offense type. Regardless of their cause, failures to appear are costly for both the court system and defendants. For courts, they are an inefficient use of time and personnel; for defendants, they lead to additional court dates and enhanced penalties. Thus, it is important to devise techniques that will reduce FTA rates.

Following the example set by the medical profession, several courts have successfully reduced FTA rates by court reminder programs. There is some evidence that reminder programs benefit minorities disproportionately—that is, they decrease FTA for minorities more than for Whites. However, these programs are not very systematic, nor are they grounded in social psychological theory. Consequently, courts cannot know *why* reminders reduce FTA, or whether some types of reminders would have a greater impact than others. The present study relied on principles of procedural justice to address these issues.

Considerable research on procedural justice has shown that individuals are more likely to comply with authorities and accept adverse decisions when the processes by which those decisions were made were fair. Yet many individuals, especially minorities, do not expect to be treated fairly by the courts; that is, they have low trust and confidence in the courts and related governmental institutions. It is therefore reasonable to assume that individuals low in trust and confidence would be less likely to appear for court than individuals high in trust and confidence. Moreover, the effectiveness of reminders should be greatest for individuals low in trust and confidence, as those high in trust and confidence are likely to appear for their hearing anyway.

The present study examined the problem of FTA via a two-stage experiment. In Phase 1, defendants were randomly assigned to one of four reminder conditions: 1) a no-reminder (*control*) condition; 2) a *reminder-only* condition; 3) a condition in which the reminder also makes them aware of possible sanctions should they fail to appear (*reminder-sanctions*); and 4) a condition in which the reminder mentions sanctions but also highlights aspects of procedural justice, such as voice, neutrality, respect, and public interest (*reminder-combined*). The primary dependent variable was whether defendants appeared for their scheduled court date.

In Phase 2, we assessed trust and confidence in the courts and perceptions of procedural justice using a survey mailed after their scheduled appearance date. This allowed for an examination of the possible interaction between the reminder manipulation and participants' degree of trust and confidence.

For Phase 1, we predicted a linear effect of the reminder manipulation, such that individuals in the reminder-combined condition would be most likely to appear, followed by individuals in the reminder-sanctions condition, followed by participants in the reminder-only condition, who would be more likely to appear than those who received no reminder. We expected that the more positive, reminder-combined condition would be more effective than the reminder-sanctions condition, because some research shows that sanctions alone are not a very powerful means to get people to obey the law.

We made two hypotheses related to race/ethnicity: first, a higher FTA rate for minorities than for Whites; and second, an interaction between the reminder manipulation and defendants' race/ethnicity, such that the reminders would have a greater impact for minority defendants than for White defendants.

For Phase 2, we hypothesized that trust/confidence in the judicial system and defendants' procedural justice assessments would be greater for defendants who appeared in court than for defendants who failed to appear. We also predicted lower trust/confidence for minorities than for Whites. Finally, we predicted an interaction between the reminder treatment and individuals' trust/confidence. Specifically, individuals with high levels of trust/confidence would have a high probability of complying with court orders, regardless of the treatment level administered. The reminder manipulation would exert a stronger effect in individuals with relatively low trust and confidence in the courts.

Research Design

In Phase 1, 7865 misdemeanor defendants from 14 Nebraska counties were randomly assigned to one of four reminder conditions: 1) a no-reminder (*control*) condition; 2) a *reminder-only* condition; 3) a condition in which the reminder also makes them aware of possible sanctions should they fail to appear (*reminder-sanctions*); or 4) a condition in which the reminder mentions sanctions but also highlights aspects of procedural justice, such as voice, neutrality, respect, and public interest (*reminder-combined*). The sample was racially diverse, with Blacks and Hispanics each comprising approximately 10% of the sample.

A subset of the Phase 1 misdemeanants ($n = 2360$) comprised the Phase 2 sample. These defendants were sent a mail survey shortly after their scheduled court date. The survey assessed their perceptions of procedural justice and trust/confidence. Surveys were returned by 335 defendants who appeared in court (21.6% response rate), and 117 (14.5% response rate) who failed to appear (total of 452; overall response rate of 19.2%).

Major Findings

- Overall, postcard reminders reduced FTA. FTA was significantly lower among defendants who received any reminder than among defendants who received no reminder, $\chi^2(1) = 14.29, p < .001$. It was also significantly lower among defendants who received a substantive reminder (reminder-sanctions or reminder-combined) than among defendants who received a simple reminder (reminder-only), $\chi^2(1) = 4.63, p < .05$.

Table 1. Failure to Appear Rate by Experimental Condition

| Reminder Postcard Treatment | Appeared For Court | | |
|-----------------------------|--------------------|-------|-------|
| | No | Yes | Total |
| Control | 12.6% | 87.4% | 2095 |
| Reminder Only | 10.9% | 89.1% | 1889 |
| Reminder Sanctions | 8.3% | 91.7% | 1901 |
| Reminder Combined | 9.8% | 90.2% | 1980 |
| Total | 10.4% | 89.6% | 7865 |

- FTA rate was higher for Blacks (18.7%) than for Whites (11.7%) and Hispanics (10.5%), though this difference was not statistically significant when controlling for other factors.
- The FTA rate was significantly higher for defendants with multiple charges, $B = -1.28, p < .001$; and for those charged with more serious misdemeanors, $B = -.18, p < .001$.

Table 2. Failure to Appear Rate by Number of Offenses

| Offense Type | Baseline Appearance Rate | | | Overall Appearance Rate | | |
|--------------------|--------------------------|-------|------|-------------------------|-------|------|
| | Appeared For Court | | n | Appeared For Court | | n |
| | Yes | No | | Yes | No | |
| 1 Offense | 6.7% | 93.3% | 1012 | 5.4% | 94.6% | 3868 |
| 2 or more Offenses | 18.2% | 81.8% | 1067 | 15.4% | 84.6% | 3962 |
| Total | 12.6% | 87.4% | 2088 | 10.4% | 89.6% | 7830 |

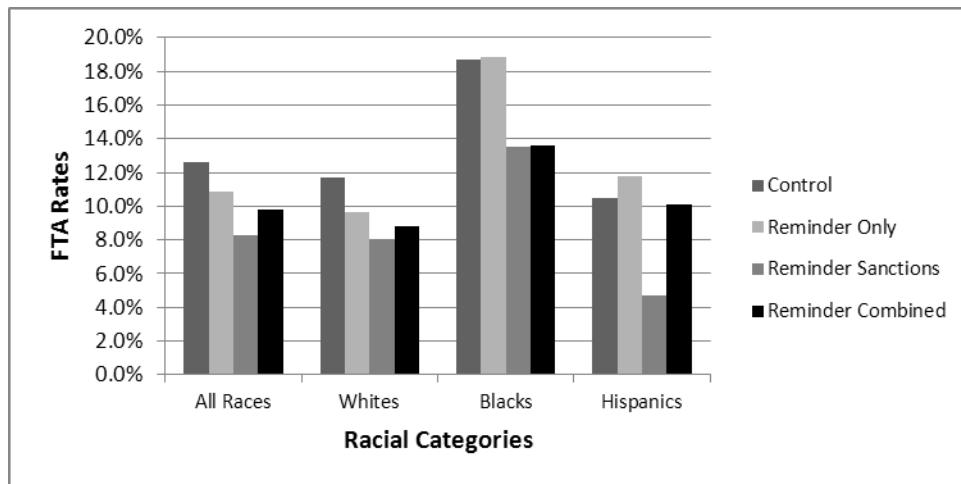
- The FTA rate was significantly higher for defendants in urban counties than for defendants in rural counties, $B = .40, p < .001$.

Table 3. Failure to Appear Rate by County and Urban/Rural Areas

| County | Baseline Appearance Rate | | | Overall Appearance Rate | | |
|-----------------------------------|--------------------------|--------|------|-------------------------|-------|------|
| | Appeared For Court | | | Appeared For Court | | |
| | No | Yes | n | No | Yes | n |
| Adams | 33.3% | 66.7% | 3 | 33.3% | 66.7% | 6 |
| Buffalo | 3.4% | 96.6% | 59 | 1.8% | 98.2% | 225 |
| Colfax | 50.0% | 50.0% | 4 | 19.0% | 81.0% | 21 |
| Dakota | 8.8% | 91.2% | 57 | 10.0% | 90.0% | 211 |
| Dawson | 9.5% | 90.5% | 84 | 6.1% | 93.9% | 314 |
| Dodge | 2.7% | 97.3% | 37 | 5.4% | 94.6% | 149 |
| Douglas | 10.6% | 89.4% | 264 | 8.2% | 91.8% | 1027 |
| Hall | 10.8% | 89.2% | 222 | 7.8% | 92.2% | 781 |
| Lancaster | 17.8% | 82.2% | 828 | 14.8% | 85.2% | 3185 |
| Madison | 6.8% | 93.2% | 73 | 4.8% | 95.2% | 289 |
| Platte | 8.3% | 91.7% | 157 | 7.1% | 92.9% | 506 |
| Saline | 9.3% | 90.7% | 43 | 12.3% | 87.7% | 154 |
| Sarpy | 10.2% | 89.8% | 236 | 8.6% | 91.4% | 864 |
| Scotts Bluff | .0% | 100.0% | 28 | 2.3% | 97.7% | 133 |
| Urban (Douglas, Lancaster, Sarpy) | 15.0% | 85.0% | 1328 | 12.4% | 87.6% | 5076 |
| Rural | 8.5% | 91.5% | 767 | 6.8% | 93.2% | 2789 |
| Total | 12.6% | 87.4% | 2095 | 10.4% | 89.6% | 7865 |

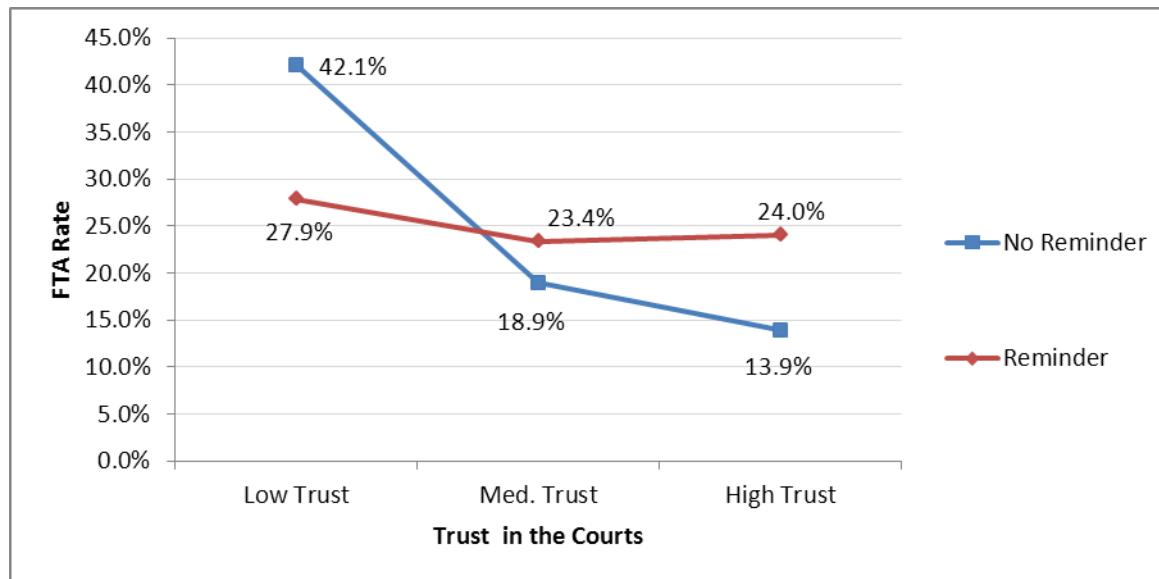
- The postcard reminders were somewhat more effective at reducing FTA among White and Hispanic defendants than among Black defendants, although the overall test of the interaction between reminder and race was not statistically significant.

Figure 1. Failure to Appear Rate by Race / Ethnicity



- Defendants who appeared in court had significantly higher levels of trust/confidence ($M = 3.23$, on a 5-point scale), and significantly greater perceptions of procedural justice ($M = 3.53$, on a 5-point scale), than defendants who failed to appear ($M_s = 3.02$ and 3.23 , respectively), $Fs > 6.6$, $ps < .05$.
- Reminders were more effective for defendants who were relatively low in trust in the courts than for defendants who were relatively high in trust, as shown by a significant reminder x trust interaction on FTA rate, $B = .79$, $p < .01$.

Figure 2. Failure to Appear Rates as a Function of Trust in Courts and Reminder Condition



- An exploratory analysis of the costs and benefits associated with FTA indicated that the benefits of a postcard reminder system outweigh the costs, at least in larger, urban counties with relatively high base rates of FTA.

Limitations and Future Directions

The study had a few limitations that provide avenues for future research:

- The postcard messages were pretested on a sample of college students. Because individuals charged with misdemeanors are likely more cynical about the justice system than students, this could explain why the reminder-combined condition—which emphasized aspects of procedural justice—was not more effective than the reminder-sanctions condition. Future research could attempt to strengthen the “positive” element of a court reminder system, such as by modifying the language or having it delivered in person (i.e., by phone) rather than in writing.

- The present sample included only three racial/ethnic groups that were large enough for analysis (Whites, Blacks, Hispanics). As the U.S. becomes increasingly more diverse, it would be interesting to extend the findings to other groups, such as Native Americans and Asian-Americans.
- Although felony defendants are often held in custody, many are released prior to arraignment, giving them an opportunity to fail to appear. In light of the present findings that defendants with multiple charges and with more serious charges were less likely to appear, it would be worthwhile to investigate a similar reminder system with defendants charged with more serious crimes (i.e., felonies).

Conclusions and Policy Recommendations

The study affords several conclusions:

- FTA rates are not uniformly higher for minorities than for Whites. Specifically, they did not differ across race/ethnicity when controlling for other factors, such as geography (urban-vs-rural) and number of offenses.
- It is possible to reduce the risk of FTA with a simple postcard reminder system. Any reminder works better than no reminder, and a substantive reminder works better than a simple reminder. However, a reminder emphasizing the procedurally fair aspects of the hearing process is not more effective than one emphasizing the negative consequences of failing to appear.
- The benefits of a postcard reminder system are roughly comparable across the racial/ethnic groups studied, with slight differences.

- Reducing FTA by even a few percentage points is associated with significant cost savings.
- Misdemeanor defendants who appeared in court had greater trust in institutions, more trust in the courts, and less cynicism than defendants who did not appear.

The study has important implications for criminal justice policy and practice, such as improving system efficiencies and cost savings through better compliance, increasing criminal defendants' perceptions of procedural justice, and reducing racial/ethnic disparities in the criminal justice system. We recommend that courts, especially in larger jurisdictions with relatively high base rates of FTA, adopt a reminder program for defendants and engage in outreach to increase offenders' trust/confidence. These efforts would have the following benefits:

- Expediting justice served, and saving offender and system costs, by reducing warrants, rescheduling, and penalties.
- Further reducing FTA, as a result of raising perceptions of trust and confidence.
- Reducing racial/ethnic disparities, by having the greatest potential benefit among groups that already have high FTA and low trust/confidence.

This work was supported by a grant from the National Institute of Justice of the U.S. Department of Justice (2008-IJ-CX-0022).