

Increasing Court Appearance Rates and Other Benefits of Live-Caller Telephone Court Date Reminders: The Jefferson County, Colorado, FTA Pilot Project and Court Date Notification Program

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This article describes a rare event in today's criminal justice system – the implementation of a valuable and sustainable program that solves a real-world justice system issue, to the satisfaction of judges and other system stakeholders, from a pilot project that used scientifically acceptable research methods (including a randomly assigned control group) to the satisfaction of criminal justice researchers.

In 2005, Jefferson County, Colorado, conducted a pilot project designed to measure the impact of telephone calls to defendants on the Jefferson County Combined Court's overall court appearance rate. That pilot project, which used a live telephone caller to (1) remind county court defendants of their upcoming court dates, and (2) notify defendants who failed to appear for court of their resulting warrants, was developed as part of a multifaceted approach by Jefferson County to reduce failure to appear rates and failure to appear warrants. For ten weeks, the caller collected data on approximately 30 variables from a total of 2,100 defendants summonsed to appear on misdemeanor and traffic offenses in the Duty Division of the court.

Comparing the court appearance rates for defendants who were contacted by the caller with those who were not, the pilot project successfully demonstrated that jurisdictions developing programs using protocols tested in the pilot are likely to see a significant increase (from 79% to 88% or more, depending on message delivery) in their overall court appearance rates. Based primarily on these results, as well as on various cost/benefit analyses, the Jefferson County's Sheriff's Office created its Court Date Notification Program, which has since expanded the population of defendants targeted for calls, further increased the court appearance rate, and significantly enhanced justice system customer service.

Introduction

Law schools and college criminal justice programs instill in us a grand sense of the important. As students, we study significant constitutional principles, we digest complex theories of crime and delinquency, and we wrestle with esoteric legal principles, many of which have risen to the weighty level of discussion found in esteemed appellate or Supreme Court opinions. Criminal law and procedure is no less concerned with notable issues and the great cases that surround them. Capital punishment? Here, among others, is *Furman v. Georgia*. The right to court-

appointed counsel for indigent defendants? I give you *Gideon v. Wainwright*. Fifth Amendment? *Miranda*. Failure to appear for court? Uh . . . what? We didn't cover that.

And so with our very first job in the justice system we are faced with the reality that “important” is a somewhat relative term. There is a saying in city government that the public’s idea of how well you are doing your job is only as good as how well you administer the water bills. That’s because every household gets one, and, for many citizens, it’s the only contact that that they will ever have with you. The same is true in criminal justice. Most people will never face a felony trial, but a whole lot of them will be summonsed into court on lesser charges such as misdemeanor and traffic offenses. For any particular defendant, a court appearance required by summons may be his or her singular personal experience with the legal system. And how we guide the defendant through that system says a lot about how we administer justice. Doing it well promotes the legitimacy of the judiciary by increasing the defendant’s overall sense of procedural fairness.

In 2004, Jefferson County, Colorado, criminal justice leaders found their notions of fairness linked with a sense of urgency over the issue of “compliance violators” in the jail. That year, consultants working on behalf of the National Institute of Correction’s Jails Division completed a local system assessment showing that 33% of the county jail’s inmates were compliance violators (i.e., failure to comply with court orders by failing to appear, pay, or perform some task), up from only 8% in 1995.¹ Subsequent jail population analyses found that three-fourths of these compliance violators had been booked in on failure to appear (“FTA”) warrants for misdemeanor, traffic, or municipal offenses. In 90% of the cases studied, these FTA warrants were issued for defendants missing the very first court event in their case. As the jail population in 2004 was rapidly nearing its operational capacity, County leaders felt compelled to address the increasing demand for jail beds. Nevertheless, fairness was foremost on their minds. A jail with roughly 25% of its population incarcerated for failing to appear for mostly lower level offenses did not seem like the best use of the limited jail resource. The seemingly atypical case of someone’s grandmother being jailed on an FTA warrant in a dog-at-large case was not so farfetched.

Criminal justice systems expend substantial resources to deal with FTA warrants. In Jefferson County, researchers found that there were roughly 600 traffic and misdemeanor FTA warrants issued in a single month in 2004.² Further study of those warrants revealed that after one year, 25% had been cleared by defendants coming in on their own, 50% had been cleared by arresting the defendant, and 22% of the warrants remained outstanding, outcomes that each result in significant financial and social costs. Indeed, from the time a particular defendant fails to appear for court, the burden from that FTA begins to drain public resources at multiple points in the system. Any persons associated with the case during the life of an FTA warrant, including judges, clerks, law enforcement officers, attorneys, and jail staff, find that their workloads

¹ The National Institute of Correction provides free technical assistance to state and local correctional agencies. For more information, go to <http://nicic.gov/TA>.

² These data were collected in August of 2005 by examining one-half of the court files of all defendants who were issued FTA warrants during June of 2004. The overall number of misdemeanor and traffic FTA warrants for that month (590) is somewhat higher than the number of warrants issued in July of 2005 (524). The June 2004 data were examined to collect arrest and walk-in rates after one year, and the number was rounded to 600 for ease of computation.

increase significantly. Moreover, the tangible and intangible costs of FTA warrants extend to victims, witnesses, and even to the defendants themselves. Finally, and perhaps most importantly, FTA warrants undermine the integrity of the justice system, as each warrant tends to erode the respect that is deserved of an independent judiciary.

With these data in hand, Jefferson County criminal justice leaders, through the County's Criminal Justice Strategic Planning Committee ("CJSPC"),³ initiated a multifaceted approach to increase court appearance rates⁴ and to lessen the impact of FTAs and FTA warrants on the jail. In this paper we describe the results of an experiment designed to study the effectiveness of one part of that approach – telephone reminder calls to defendants. The FTA Pilot Project, as it was called, was borne mostly of logic and knowledge of doctor office practice, but was patterned after successful programs found in King County, Washington, and the Seattle Municipal Courts. It ultimately spawned a fully-funded program, the Court Date Notification Program financed by the Jefferson County Sheriff, which has been the model for numerous similar efforts across Colorado, as well as several in other States. In addition to describing the details of the experimental pilot project, we also discuss the ongoing strategy and results of the Court Date Notification Program, and offer several observations concerning the implications of these findings and results for policy-making.

Why Was the Study Done?

Across America, police issue citations and summonses in a staggering number of cases. In Jefferson County, a county with roughly fifteen law enforcement agencies feeding into its court system, the local Sheriff's Office Patrol Division alone wrote 15,693 traffic tickets in 2009.⁵ As an issue connected to the topic of pretrial release or detention, the practice of issuing a citation in lieu of an arrest is one of delegated release authority, and is generally favored by national pretrial standards that recommend release prior to trial under the least restrictive conditions.⁶ Nevertheless, there are pros and cons to citation release. As noted in one report, while cost savings are greatest when field citations are used, "[c]itation release . . . has been criticized for

³ The Jefferson County Criminal Justice Strategic Planning Committee is a criminal justice coordinating committee in the nature of that described by Robert Cushman in the document, *Guidelines for Developing a Criminal Justice Coordinating Committee*, U.S. Dep't of Justice, Nat'l Inst. of Corr., NIC Accession No. 017232 (Jan. 2002).

⁴ The current trend in the field of pretrial justice is to use the phrase "court appearance rates," which focuses on the positive, and typically larger, number of defendants who actually appear for court, rather than the phrase "failure to appear rates," which focuses on the negative and less frequent cases. The two phrases represent different ways of describing the same phenomenon: a jurisdiction with a 97% court appearance rate has a 3% failure to appear rate.

⁵ See Linda Detroy Alexander, *Backing Law with a Lecture*, Golden Tr., Dec. 2, 2010, at 4, available at <http://www.great8newspapers.com/Articles-c-2010-12-02-218035.114125-sub-Backing-law-with-a-lecture.html> (on file with the Jefferson County Criminal Justice Planning Unit).

⁶ See *American Bar Association Standards for Criminal Justice* (3rd Ed.) Pretrial Release (2007), Std. 10-1.3, at 41 ("The principle of release under least restrictive conditions favors use of citations by police or summons by judicial officers in lieu of arrest at stages prior to the first judicial appearance in cases involving minor offenses."). The term "minor offenses" is used rather than "misdemeanors" because the latter term is often defined differently among jurisdictions across the United States. Generally, according to the commentary to Standard 10-1.3, "minor offenses" are the equivalent to lower-level misdemeanors. However, when the alleged offense involves danger or weapons – as, for example, is often the case in domestic violence misdemeanors – the Standard allows jurisdictions to determine that the offense is not 'minor,' regardless of its statutory designation." *Id.*

resulting in unacceptably high rates of failure to appear (FTA) and a consequent loss of justice system credibility in the eyes of the defendants and the general public.”⁷

The reason that people fail to show up for court for relatively minor offenses is the subject of debate. Some argue that the typically long period of time between the citation and the court date naturally leads to FTAs due to the relative instability of certain defendants. Others argue that defendants are largely unaware that failing to show up for court can lead to an arrest warrant for seemingly minor violations of the law. Some say defendants FTA on purpose. Others say they just forget. The Jefferson County Criminal Justice Planning Unit (“CJP”), staff to the Jefferson County CJSPC, interviewed numerous defendants jailed for failing to appear for court and found that their reasons for not appearing varied widely, and included each of the hypothesized reasons listed above.

A better understanding of why defendants FTA might help to formulate a testable hypothesis based on some established theory of crime or delinquency, such as “rational choice” theory, its offspring “routine activities theory,” or theories based on a defendant’s sense of anonymity, such as those written by noted psychologist Philip Zimbardo in the 1960s.⁸ However, the Jefferson County CJSPC had little time for this type of research. Like many entities struggling to find answers to pressing problems, the Committee was addressing the somewhat urgent issues of unsustainable jail population growth, increasing case filings, high FTA rates, and an unacceptable number of persons jailed pursuant to FTA warrants. Accordingly, the Committee was content with knowing that simple logic, coupled with the experience of at least one other jurisdiction (King County, Washington, esteemed in its advancement of innovative criminal justice practices) provided a basis for testing the hypothesis that court date reminder calls would improve court appearance rates in summonsed cases. This approach appeared also to follow the writings of at least some experts in the field of pretrial justice, who had documented the complicated nature of failures to appear and focused on practical system solutions involving pre-FTA court date reminders and swift action on warrants.⁹

Why Did We Use a Live Caller?

Jurisdictions seeking to increase their court appearance rates through reminder calls inevitably face the question of whether to use live versus automated callers. When the Jefferson County Pilot Project was undertaken, there was very little written on the efficacy of either approach. Through telephone conversations, King County, Washington, officials reported an overall decrease in failure to appear rates of approximately 60% using live reminder calls for misdemeanor defendants. At the time, those individuals advised against using an automated system, and stressed the need for the caller to have multiple data bases to find defendants’

⁷ Barry Mahoney, Bruce D. Beaudin, John A. Carver III, Daniel B. Ryan, and Richard B. Hoffman, *Pretrial Services Programs: Responsibilities and Potential*, Nat’l Inst. of Justice (Washington D.C. 2001), at 62 (further citation omitted) [hereinafter Mahoney, et al.], available at <http://www.ncjrs.gov/pdffiles1/nij/181939.pdf>.

⁸ In hindsight, Zimbardo’s theory may be the best one to describe the Jefferson County experience. In the 1960s, Zimbardo wrote of how a sense of anonymity versus a sense of community can cause social deviance. Many discussions surrounding calling defendants focused on letting defendants know that: (1) they were not anonymous; (2) they were part of a social community; (3) the court system recognized their individuality and humanity; and (4) the court also knew how to reach them if they failed to appear.

⁹ Mahoney, et al., *supra* note 7, at 39, 62.

contact information, as well as extensive knowledge of the criminal justice system to answer defendants' questions.

Through those same conversations, Jefferson County became aware of one other Washington study showing FTA rate decreases of approximately 38% using automated calls. Since then, Multnomah County, Oregon, began its own study of an automated Court Appearance Notification System ("CANS") in 2006. In the final report to that study, Multnomah County reported an overall decrease in FTAs of 37% using an automated calling system on the targeted population.¹⁰

In Jefferson County, the live caller option was ultimately chosen primarily for practical purposes: at a meeting in March 2005, the head of the Probation Department announced that he had money in his budget to hire a person part-time for the following three months to call defendants. Combined with the fact that there was scarce hard data for either option, as well as the perceived complexity over the logistics of setting up an automated system, there was no debate over this opportunity, and the Pilot Project proceeded with a live caller.

What Did the Researchers Do?

The FTA Pilot Project

The Subcommittee assembled a small Implementation Team, made up of a County Court Judge, the Court Clerk, the hired caller, and CJP Staff to work out the logistics of the live-caller study. The Team felt that it was important for the caller to see the actual court files when calling, but those files were not allowed out of the courthouse. Accordingly, the court made space for the caller in a vacant room on the floor where most of those files were kept. Due to time constraints, the caller was given access to only a telephone book to aid in searching for defendants' phone numbers. The effectiveness of the Pilot Project was thus somewhat at the mercy of police officers legibly writing down telephone phone numbers on their citations and summonses. Typically, tickets with no numbers or with illegible numbers meant that no telephone call could be made.

The court provided the caller with a desk, a computer with a spreadsheet for data collection, and a telephone. Throughout the study, CJP Staff would also work in the room entering defendant information into the spreadsheet.

The Implementation Team created a script both in English and Spanish. The script was to be used as a primary tool for conveying information to the defendant when he or she was reached directly, and to be read verbatim when leaving a message on voicemail. The script was framed in terms of defendant choice, reflecting the experience of one Team member from the field of psychology. A strong sanctions message for "choosing" to not show up for court was included intentionally, although that language has been softened since. The fact that such a script was created quickly (and the fact that it was apparently successful) should not diminish the crucial role of script content. As seen with recent important studies by the Nebraska Public Policy

¹⁰ See Nice, *Court Appearance Notification System: Process and Outcome Evaluation*, A Report for the Local Public Safety Coordinating Council and the CANS Oversight Committee (Mar. 2006).

Center, variations in content can affect overall appearance rates.¹¹ The logistics for the pilot project required the Team also to develop a fairly detailed procedure for gathering files, separating cases, making calls, inputting data, and monitoring outcomes.

For ten weeks, the caller collected data on approximately 30 variables from a total of 2,100 defendants summonsed to appear on misdemeanor and traffic offenses in the Duty Division of the Jefferson County Court.¹² Although the Duty Division handles felony cases, those cases, along with cases in which defendants had legal representation, were excluded. The Pilot Project proceeded in two phases. In the first phase, defendants were called one-week ahead of their court dates to remind them to appear. In the second phase, defendants who had failed to appear were called the next day to advise them of their FTA warrants.

Call-Ahead Phase

On average, there were 70 unrepresented misdemeanor and traffic cases per day in the Duty Division. Each day during the Pilot Project the caller would take a random sample of all cases with arraignments scheduled exactly one week in the future to use for data input. All of the data, such as the case number, defendant demographics, offense information, statutory penalties, etc., were gathered from the court file and recorded on a spreadsheet.

The parameters for calling defendants were strict. The caller was given only three opportunities to telephone defendants, exactly seven days prior to the initial court date, to remind them of the upcoming proceeding.¹³ If the caller “successfully contacted” a defendant, the caller read a script (in either English or Spanish) reminding the defendant of the court date, giving directions to the court, and warning the defendant of the consequences of failing to appear. The script was carefully worded with guidance from the judges assigned to Duty Division, and included a list of anticipated defendant questions with appropriate answers to those questions. A “successful contact” was defined as any call in which the script was read to either: (a) the defendant; (b) the defendant’s voice-mail; or (c) an apparently responsible adult living with the defendant. Because the caller had three opportunities to reach the defendant, the caller had some discretion in how to use those opportunities. In order to collect the maximum amount of data, however, the caller’s protocol was to read the script on voice-mail anytime the caller reached a recording that was clearly the defendant’s. “Successful” and “unsuccessful” (wrong number, no number on ticket, disconnected number, etc.) contacts were documented in fields for each of the three allowable attempts. A “comments” section on the spreadsheet allowed the caller to identify trends or clarify miscellaneous data issues, and to qualitatively document defendant and other household member reaction. All of the telephone calls were made between 8:00 a.m. and 7:00 p.m., Monday through Friday. Throughout the project, an individual from the CJP Unit collected and separately input complete control data, which were taken from randomly selected defendants who were not contacted by telephone. The outcome measured was whether or not the defendants failed to appear on their scheduled dates.

¹¹ See Michael N. Herian and Brian H. Bornstein, *Reducing Failure to Appear in Nebraska: A Field Study*, The Neb. Lawyer, Vol. 13, No. 8, at 11 (Sept. 2010).

¹² Colorado’s First Judicial District’s (made up of Jefferson and Gilpin Counties) County Court Judges take turns staffing a “Duty Division,” which handles, among other things, defendants on felony, misdemeanor, and more serious traffic citations and summonses. Less serious traffic and misdemeanor cases are handled in “Division T” by a magistrate. The Pilot Project focused solely on cases heard in the Duty Division.

¹³ These parameters were chosen arbitrarily.

Call-After Phase

In the call-after phase, on the day after the Duty Division arraignments the caller collected all of the files for those defendants who had failed to appear (on average, 15 per day). The caller randomly selected one-half of the files and collected the same demographic and case-specific data as described in the call-ahead phase. The caller also filled out an “outcome sheet,” which included the defendants’ names and case numbers, as well as check-boxes designed to help the court clerks to document the outcome measures for this phase. Given the same strict calling parameters, the caller telephoned defendants to advise them of their failure to appear and to explain the consequences of the arrest warrant. Again, a carefully worded script (in English and Spanish) was created to convey that message. Each of the judges assigned to the Duty Division agreed, in advance, to stay these warrants for five business days after the FTA; accordingly, the caller also advised the defendant that if he or she came into court within five business days, the warrant would not be issued. As in the call-ahead phase, the caller documented the results of “successful” and “unsuccessful” contacts across the three allowable calling attempts. Again, a second individual collected complete control data for later comparison. The files were returned that day to the court clerks, along with the outcome sheet, with explicit instructions to hold the files for five business days. The outcomes that were measured were whether defendants came to court within five business days, and what defendants did when they appeared for court (e.g., pleaded guilty, re-scheduled, etc.).

What did the Researchers Find?

The Call-Ahead Phase

Normally, the court appearance rate in the Jefferson County, Colorado, Duty Division for the types of cases studied was 79%. When defendants were successfully contacted¹⁴ and reminded of their court dates one week in advance of their arraignments, however, the court appearance rate was increased to 88% (a 43% reduction in the FTA rate). This overall increase in the court appearance rate can be further broken down by how the successful contact was made. If a message was left with either voice mail or a responsible adult, the court appearance rate was increased to 87%.¹⁵ If the message was left with the actual defendant, however, the court appearance rate rose to approximately 92%.

The Call-After Phase

Normally, 10% of persons who FTA returns to court on their own initiative within five business days. When defendants were notified of their warrant after they failed to appear, however, 50% or more came to court within five business days.

The Jefferson County Court Date Notification Program

Based on the success of the Pilot Project, the Jefferson County CJSPC created a Task Force to make recommendations for creating a permanent reminder call program designed to increase

¹⁴ In the call-ahead phase, the caller attempted to contact 1,176 defendants, and “successfully contacted” 695, for a successful contact rate of approximately 60%. By contrast, only 44% of the defendants in the call-after phase were “successfully contacted.”

¹⁵ The decrease in the FTA rate for leaving a message with either voice mail or with a responsible adult (38%) was approximately the same as the decreases shown in the Multnomah County, Oregon, and King County, Washington, studies reporting on the decreases shown by using automated reminder calls.

court appearance. Those recommendations, along with a detailed cost/benefit analysis of FTA reduction,¹⁶ were subsequently presented to the CJSPC, which unanimously supported the concept of developing a program using a live caller to telephone defendants to remind them in advance of their upcoming court dates.

Because pre-FTA call reminders and post-FTA call notifications were shown to be equally effective during the pilot project, the Task Force and the Committee discussed the advantages of starting with one component over the other. While there was some consensus that the ideal program would likely consist of both pre and post-FTA calls, the Task Force and Committee ultimately recommended that the caller begin by making reminder calls to defendants one week in advance of their arraignments.

This recommendation was made for several reasons. First, the Committee and Task Force recognized the substantial effort that goes into preparing for the first court appearance. Decreasing failures to appear altogether, rather than simply using the warrant as an incentive to get defendants back into court, would maximize the initial work of court staff and would reduce the amount of redundant efforts expended when a defendant arrives sometime after the planned appearance date. Second, the Committee and Task Force felt that calling defendants in advance of their court dates would provide opportunities to tell those defendants important information about their particular case that would reduce the chances of a continuance. For example, the court experienced many unnecessary continuances in car insurance and license cases when defendants arrived without proof of insurance or proof of license reinstatement. The pre-call script, it was believed, could be drafted to tell these defendants what they needed to bring with them so that their case can be resolved. Third, the Committee was already working on other projects designed to reduce FTA bookings after the warrant was issued, and the Committee and Task Force felt that pre-calls would provide balance to these other post-FTA initiatives. Finally, and perhaps most importantly, the pre-calls primarily focused on customer service, a priority of the Jefferson County Board of County Commissioners. In addition to reminding defendants about their court dates, it was felt that pre-calls would provide a human voice to guide defendants through a daunting criminal justice system, and would ultimately reduce the number of frantic phone calls placed by defendants to court clerks.

The program, now named the Jefferson County, Colorado, Court Date Notification Program, is funded and staffed by the Sheriff's Office, and is located inside the Jefferson County Combined Court. The staff person who served as the caller during the Pilot Project was hired full time as a civilian Program Specialist to implement the program. As originally planned, this Program Specialist was hired to spend roughly equal amounts of time on program implementation and expansion, with fifty percent of her time spent actually calling defendants, and fifty percent spent

¹⁶ There appear to be relatively few cost/benefit analyses on this issue. The Jefferson County analysis concluded that, using the FTA Pilot Project's result of a reduction in misdemeanor and traffic warrants of 43% in Duty Division, an FTA reduction program aimed at all misdemeanor and traffic offenses in the County would: (1) reduce the overall number of FTA warrants issued for those cases from 7,200 to 4,100 per year; (2) reduce the overall time spent by court clerks processing the warrants from 3,800 to 2,200 hours per year; (3) reduce law enforcement officer hours spent serving the warrants from 5,400 to 3,100 hours per year; (4) reduce the hours spent by jail booking staff to process the arrestee from 7,200 to 4,104 hours per year; and (5) assuming an arrest rate at 50% and a two day length of stay for persons with FTA warrants (both documented), save approximately \$200,000 per year in jail bed costs. A more detailed cost/benefit assessment may be obtained by contacting the authors.

on evaluating the effectiveness of those calls and on investigating program elements necessary to address the FTA issue associated with other courtrooms and court events. The Program Specialist (hereinafter the caller) began making calls for the Program during the last week of March 2006.

Program Process

Like the FTA Pilot Project, the Court Date Notification Program began by focusing on the court appearance rate for the Duty Division of the Jefferson County Court. That particular division is currently staffed on a rotating basis by seven county court judges in Jefferson County. At Program inception, the Duty Division heard an average of seventy-seven unrepresented traffic and misdemeanor cases summonsed into court by municipal, county, and state ticketing agencies. Because the initial intent of the Program was for the caller to spend only half of her time making calls, a program implementation group consisting of a county court judge, the Court Clerk, and others decided to initially limit those calls to defendants who had “no proof of insurance” (“NPOI”) as one of their charges. This emphasis on NPOI cases was made for several reasons. First, files containing this charge accounted for over half of the cases seen in Duty Division each day. Second, defendants facing an NPOI charge often had other charges associated with the same traffic stop. Third, fines for these charges were typically high; increasing court appearance rates for these cases might ultimately lead to significant increased revenue to the State. Fourth, as noted previously, defendants facing NPOI charges frequently asked for continuances to bring in the required documentation, causing additional strain on the court’s workload. After this decision was made, the implementation group created a customized script specifically for NPOI cases.¹⁷

File security issues and the need to create non-obtrusive working relationships with court division clerks led to a logistical decision to locate the program in the court building, on the same floor as the county court judges and clerks. Because the Program’s caller would be working primarily from documents in the official court file, this location allowed the caller and the clerks to share files with little disruption to their normal work flow. The caller worked Monday through Friday during business hours. Her office was private, with a computer with access to multiple databases for data collection and defendant tracking, and a telephone with call-back capability.¹⁸ The primary spreadsheet for data collection had twenty fields, which included defendant contact information, call outcomes, and court appearance outcomes. To adequately measure the court appearance outcomes of the program, the caller created (with input from the judges and Court Clerk) a colored sheet of paper that she filled out and placed in each file that she targeted for calling. The paper had three possible outcomes for the case that the court clerks were to check, and that were ultimately measured in the data set: (1) FTA; (2) Disposition (pled, settled, or dismissed); and (3) Pretrial Conference, which is also used to indicate a continuance for any reason. This colored outcome check-sheet was an additional duty given to court clerks, but it provided (and continues to provide) crucial data needed for the ongoing evaluation of the Program.

¹⁷ For example, because defendants with NPOI charges typically face steep fines, the script made a specific reference to “payment options,” which was designed to allay defendants’ fears concerning any inability to pay.

¹⁸ Giving defendants the ability to telephone the caller back is an important improvement over the Pilot Project, which had no call-back capability.

Due to the rotation in Duty Division, the caller had to adapt her own processes to accommodate different procedures among the judges. Nevertheless, as reported in 2006, her daily routine was fairly consistent between divisions. Each day, the caller would ask Duty Division clerks about the FTAs from the day before.¹⁹ She then collected the colored outcome measures sheets, and typed the outcomes into the spreadsheet.²⁰ The caller next retrieved the files for all misdemeanor and traffic cases that were set to be heard in Duty Division in seven days. The caller read through the files, looking for her target group of NPOI defendants. The information found in those files, primarily from the summonses, was then transferred onto a printed docket sheet and into the Program's spreadsheet. If there was no contact information for any particular defendant, the caller used one of two online directories to try to locate a useable telephone number.²¹ Once she input the required data into the spreadsheet, the caller was prepared to telephone the defendants. In the initial stages of the Program, the caller became accustomed to alternately entering a page or two of data, and then making the initial calls.

In the Pilot Project, the caller was limited to only three attempts at calling any particular defendant. The program was designed with no such restrictions; however, the caller apparently placed the same limits on her calls to keep from clogging the workflow. Calls were documented using the following code: (1) – talked to defendant personally; (2) – left message on defendant's home/personal voice mail; (3) – talked with relative/roommate of defendant and left message; (4) – wrong number; (5) – phone disconnected; (6) – no answer, no device on phone for messages, busy signal, "subscriber not available" message on cell phones; (7) no phone number listed on summons or found with online directory, as well as a variety of sub-codes to record other information the caller deemed to be relevant. "Successful contacts" were those in the first three categories. If the caller "successfully contacted" a defendant, she read a script (in either English or Spanish) reminding the defendant of the court date, giving directions to the court, and warning the defendant of the consequences of a failure to appear. The caller had (and still has) considerable discretion as to whether she would leave a message or call back later. In many cases, the caller simply left a generic message for the defendant to return her call, and she then fielded return calls from the defendants throughout the day.

Six Month Outcomes

During the first six months of the Court Date Notification Program, the total number of docketed cases with unrepresented defendants facing traffic or misdemeanor charges in County Court Duty Division reached approximately 10,000, for an average of 385 per week. Of those 10,000 cases, approximately 5,600 were targeted for telephone calls. Of those targeted, approximately 3,500 defendants were "successfully contacted" (defined as either talking to the defendant in person, or by leaving a message on the defendant's voice mail or with a third party) and 2,100 were unsuccessful, for a successful contact rate of 63%. As documented in the FTA Pilot

¹⁹ The caller compared the clerk's verbal report of FTAs to the outcome sheets as an error check.

²⁰ While the program was not designed to track and contact defendants after they failed to appear, the caller nonetheless informally kept track of FTAs for defendants with whom she had spoken to directly. After six months, the caller reported that a follow up call appeared to cause more defendants to come back to court at a higher rate than those who were not called; however, more formalized study is required to make any definitive conclusions on the effectiveness of this practice.

²¹ In the pilot project the percentage of tickets that had no defendant telephone numbers or were unreadable was approximately 10%. Currently, the percentage of tickets which have no telephone numbers and which are not found in either of the two online directories is 4.4%.

Project, the normal court appearance rate for NPOI defendants was 77%. When these defendants were successfully contacted and reminded of their court dates one week in advance of their arraignments, however, the court appearance rate was increased to 89%. This result represented a 52% decrease in the FTA rate for the targeted population.²² In more concrete terms, it meant that 425 FTA warrants were avoided during the first six months of the program.

Additional analysis of data from June and September 2006 again showed that the overall court appearance rate varied based on how the successful contact was made. As in the Pilot Project, direct contact with a defendant led to the highest court appearance rate, as high as 93% in the September data set. Contact by leaving a message was second best (86% in June, 90% in September), and contact by leaving a message with a third party was the least effective method. These numbers again suggested the need to convince law enforcement to collect verifiable defendant contact information at the scene, and to perhaps revise program elements (e.g., adding additional data bases for finding defendants with bad contact information; calling defendants at night or on weekends) to better locate the defendants themselves in order to further increase the overall court appearance rate.

Finally, the six month data showed that of those defendants successfully contacted, most (approximately 54%) came to court and reached a disposition on their case on the day the case was set for arraignment, but that approximately 35% of the defendants had their cases continued. This latter percentage suggested the need to inquire into the reasons for these continuances, and to assess whether they were unnecessary or otherwise burdensome to the criminal justice system.

Program Expansion

During 2006, the Program's caller was able to increase the number of cases called by using volunteers (when available) obtained through the Sheriff's Office volunteer pool. On certain days, this meant providing full-time coverage, which allowed the caller to target 100% of the traffic and misdemeanor docket. Nevertheless, that docket was still only a part of the overall number of cases having FTA issues in the Combined Court. In response to queries by the Sheriff and Chief Judge of the District, CJP Staff analyzed the extent of the FTA issue in all courts of the District, and made a number of recommendations, including: (1) expanding the procedure to the remaining cases in Duty Division, including felony summonses, using certain techniques to improve the "successful contact" rate; (2) based on the analyses in the report, work with the judges to identify and target other court events (such as "pro se sentencing hearings," etc.) requiring telephone reminder or notification calls; (3) begin making calls for cases in Division T, the division devoted to less-serious misdemeanor and traffic matters; (4) allow program staff time to conduct continuing research into best practices; and (5) implement a "court closure notification system" to cover emergency court closures due to weather, etc.

Based, in part, on these recommendations, the Sheriff hired a second full time Program Specialist, who now assists with the daily calls. With her addition, the program has significantly expanded to include calls to 100% of unrepresented traffic and misdemeanor cases in Duty

²² The Pilot Project used a true experimental design, using a random experimental and control group. The comparison group for the Court Date Notification Program are those defendants not "successfully contacted."

Division and 100% of the unrepresented misdemeanor and non-infraction²³ traffic cases in Division T. Most recently, the program has expanded to begin calling pro se defendants with felony summonses in one division of the district (felony-level) court,²⁴ and has plans to expand to three other district court divisions in early 2011, and possibly to three more by the end of the year.

Court Appearance Benefits

Overall, the results of the program to date are exceptional. The “successful contact” rate has risen each year, from an initial rate of 60% in the Pilot Project to 74% in 2010 for the Duty Division, and from 78% in 2009 to 80% in 2010 Division T. In 2007, the court appearance rate for defendants who were successfully contacted was 91%, compared to a court appearance rate of 70.5% for those who were not. In 2010, combining all statistics from both Duty Division and Division T, the court appearance rate for defendants who were successfully contacted was 92%, compared to a court appearance rate of 73% for those who were not. These increases have significantly reduced the costs of FTAs, including the somewhat intangible costs to victims and society in general. Moreover, although not empirically tested, these numbers indicate that the use of a live caller appears to have permitted experimentation and “tweaking” of the process, which has, in turn, fostered steady improvement.

Other Benefits

In addition to increasing court appearance rates, Jefferson County has experienced both a number of intended and unintended benefits from the Court Date Notification Program. Perhaps most important is the enhanced customer service being provided to defendants by giving them personal reminder calls. The civilian Sheriff’s Office callers in the Program not only give the information found in the script, they also field questions from calls that would normally go to court clerks,²⁵ give driving and busing directions, look up other court information, forward calls to other appropriate agencies, and generally allay the fears of defendants who may be intimidated by the criminal justice system. Several of the court’s division clerks have heard from numerous defendants, who have praised these mostly immeasurable aspects of the program. In comments compiled throughout 2007 and 2008, defendants themselves routinely articulated their appreciation for the reminder. The callers have been named by some the “goodwill ambassadors” of the Sheriff’s Office, offering a helpful and friendly component to the case that that many persons do not normally perceive from their experiences with law enforcement. Although customer service is one of the four key values articulated by the Jefferson County Board of County Commissioners, opportunities for providing quality customer service in the criminal justice system can seem elusive. Nevertheless, the Jefferson County Court Date

²³ Failure to appear for low level traffic infractions in Colorado results in a civil judgment rather than an arrest warrant.

²⁴ In Colorado, district courts generally handle more serious criminal and civil cases, as well as probate, domestic relations, and juvenile cases. While most defendants appearing on the district court’s criminal docket have representation, FTAs still occur, at varying frequencies, in approximately 70% of court events.

²⁵ Anecdotally, court clerks have told the authors that prior to the Court Date Notification Program many defendants would call the day before their court date with numerous questions about their cases. The Program has, to some extent, taken that burden from the clerks. Not surprisingly, by proactively calling defendants the callers have also learned that many defendants have forgotten about their court dates, do not have directions, have lost their tickets, or have questions about the consequences of certain actions, such as failing to appear. In extreme cases, the callers have helped defendants re-schedule cases, helped family members with incarcerated or deceased defendants, and helped defendants with multiple cases navigate the system.

Notification Program has shown that local leaders can provide quality and sometimes unexpected customer service in a delicate government function that is too often seen as cold and unfriendly to its participants.

Answering questions, though, represents only one aspect of the program's ability to enhance customer service. Additionally, the callers have provided significant benefits as quality control agents for "internal" customers. In particular, the callers have caught and corrected many advisement, ticket, and ticket agency records errors, have helped clerks to combine cases, and have even uncovered instances of identity theft.²⁶ When the callers learn that a defendant is already incarcerated, they are able to advise the court so that an FTA warrant will not be issued. With access to the Sheriff's records management system, the callers are also able to gather additional contact information that is unavailable through traditional online directories, and to update the court files accordingly.

Quality control is also reflected in at least two more global endeavors. First, primarily due to the callers' frustration with the existing half-page Colorado Uniform Summons and Complaint (the ticket issued for most traffic and misdemeanor offenses) Jefferson County created a "Ticket Task Force," made up of municipal, county, and state agencies, to create a model full-page summons for use across Colorado.²⁷ Since then, members of that Task Force have independently worked to begin developing electronic citations using the data fields from the full-page ticket. Second, recognizing that having officers collect good defendant contact information is foundational to the calling program, the callers have kept detailed records of both agencies and individual officers who are deficient in doing so. The callers have contacted at least one officer to gently discuss the need for legible telephone numbers on the tickets, and the callers continue to discuss the efficacy of alternative methods, such as emails or text messaging, for contacting defendants.

Finally, the Court Date Notification Program has benefitted numerous other jurisdictions as the live callers of the Program continue to educate – free of charge – others seeking to implement the same or similar programs. For example, after visiting with Jefferson County, Coconino County, Arizona, essentially replicated the Jefferson County FTA Pilot Project in 2006, independently finding that calling defendants prior to their court appearance resulted in a court appearance rate of 87.1%, compared to 74.6% for the control group.²⁸ Other jurisdictions, too, have visited the County to see the program first hand, and many of those jurisdictions have begun similar projects.²⁹ As one notable example, Douglas County, Colorado, recently implemented a "Court Call Ahead Program" that is similar to the Court Date Notification Program, and that County has

²⁶ This has occurred when the callers have contacted a defendant, only to learn that a third party had used the defendant's identification during a traffic stop.

²⁷ In the full page ticket, the Task Force made room for two separate phone numbers to enhance the callers' ability to successfully contact defendants.

²⁸ See White, *Court Hearing Call Notification Project*, found at <http://www.coconino.az.gov/cjcc.aspx?id=4692>. Like the Jefferson County Pilot Project, the rates varied based on how contact was made – the highest court appearance rate was for defendants who were personally contacted (94.1%), followed by the rate for defendants for whom a message was left with another person (85%) and for whom the message was left on an answering machine (79%).

²⁹ The ongoing list of those interested in the program includes visitors from three Colorado municipalities, three other Colorado Counties, and jurisdictions in seven other states. Many of those jurisdictions have adapted version of the Jefferson County script.

reported an increase in its court appearance rate to slightly above 98% for the targeted population.³⁰

Implications for Public Policy

What causes defendants to fail to appear for court? Is it the length of time between the citations or summonses and the court dates? Is it their fear of the system? Is it their sense of anonymity? Do they do it on purpose, or do they just forget? Until we know the answers to these questions, we can nonetheless recognize that, for whatever reason, telephone reminders using live callers work very well. They increase court appearance rates, dramatically reducing the significant costs associated with FTAs and FTA warrants. These costs include fiscal impacts, such as money to process, serve, and house defendants on FTA warrants, but also include the varied social costs triggered by needlessly arresting and incarcerating individuals for a behavior that might be prevented by a simple phone call. In Jefferson County, the benefits of reducing FTAs clearly outweigh any costs associated the Notification Program,³¹ and other agencies (i.e., municipal police agencies, prosecutors, court clerks and judges) have realized the benefits of a decreased workload at no cost to them.

FTAs also tend to adversely affect defendants and the larger society long after the initial case is resolved, and reminder calls can help minimize those effects. For example, a person's bail is often determined largely on the number of FTAs on his or her criminal record, and removing false or unfair indicators of FTAs from defendants' records has become an important but complex issue for discussion among those who rely upon criminal histories to guide them in the bail setting process. To the extent that the justice system can avoid the FTA altogether, no indication of any failure can exist on the criminal history, and the issue of a needless FTA affecting a later case is largely avoided.

Court date reminder programs can also be important additions to any pretrial justice initiative that seeks to increase the use of summonses and citations, as is recommended by national standards on pretrial release.³² Because there is often criminal justice system reluctance to purposefully increase the use of citations and summonses, knowledge of a workable notification system may mitigate system fears and thus reduce system resistance to pretrial justice reform in this area.

³⁰ Douglas County, Colorado, performed its own pilot project from April to September of 2009, using a live caller to remind defendants of their upcoming court dates, and has since funded its own "Call Ahead Program," which calls defendants in advance but also includes an "FTA recovery" component that involves calling defendants again if they fail to appear. In a short description of the pilot and resulting program, one County official stated as follows: "The general consensus is that the public appreciates the courtesy call and the opportunity to ask questions as to what they can expect when they report to the Justice Center. With specific instructions as to where to appear along with defined expectations regarding resolving court matters the docket management experienced a noticeable improvement in efficiency and a decrease in FTA warrants." For more information on that particular program, contact Scott Mattson at SMatson@douglas.co.us.

³¹ CJP Staff has estimated that in 2006 alone, the Sheriff's Office spent roughly \$900,000 processing and housing persons arrested on FTA warrants. CJP staff further estimated that if the program became fully implemented throughout the First Judicial District and reached its full potential of reducing FTA warrants by 52% (its six month benchmark), the Sheriff's Office could realize a net savings of approximately \$400,000 per year.

³² See, e.g., *American Bar Association Standards for Criminal Justice (3rd ed.) Pretrial Release* (2007), at 41, 63-70.

A significant, albeit empirically unmeasured, benefit to using live reminder calls appears to be in the area of customer service, an area often overlooked in the criminal justice system. The Jefferson County Court Date Notification Program strives to make most persons' first, and often only, trip to the courthouse something other than an entirely negative experience.

Finally, as demonstrated by the FTA Pilot Project, calling persons *after* they have failed to appear for court can be equally effective at increasing court appearance rates, and although such calls lack the full customer service benefits of reminder calls, they can be done for significantly less money. The future of the Jefferson County Court Date Notification Program, and perhaps the model program for the future, includes strategic use of a combination of court date reminders along with a call-after notification component for all court events, based on empirical data indicating the need for intervention. The hope is that this strategic planning, coupled with ongoing research and practice to increase the number of "successful contacts" (especially contacts with defendants themselves) might lead to court appearance rates of 95% and higher. Additional research needed to move toward this goal should focus on script content, message timing (for example, one week versus three days prior to the court date), message delivery (for example, using a male versus a female voice, and the nuances between leaving a message with a human being versus a machine), program placement and operation (for example, operated by the law enforcement versus operated by the courts), and new ways of communicating with defendants, such as via email or text message.

Conclusion

For many jurisdictions, the singular response to defendants failing to appear for court is to issue warrants, typically with high cash bonds attached, and then to wait for law enforcement to serve those warrants through arrests.³³ Unfortunately, this way of doing business is costly, and has resulted in some jurisdictions having court appearance rates as low as 70%. Innovative ways of dealing with the issue of court appearance rates should be of primary concern to all persons in the criminal justice system, including judges. The Jefferson County FTA Pilot Project demonstrated that live telephone callers either reminding defendants to come to court or notifying them of their warrant status after they FTA can dramatically increase court appearance rates. The resulting Court Date Notification Program has shown that these results could be improved, and that customer service is significantly enhanced through the use of a live caller intervening in advance of the court event.

The administration of justice does not normally play out in the types of cases that dominate the newspaper headlines. More often, justice is done in the routine, if not mundane cases at the lower end of the criminal justice system, such as misdemeanor and traffic cases – the figurative water bills of the justice system. The aggregate commonality of these cases should not erode our sense of urgency in dealing with them fairly; instead, we should see them as opportunities to demonstrate a glimpse of justice on a grand scale. Doing so, quite simply, is good public policy.

³³ As reported by the Denver Post, the spokesperson for the Jefferson County Sheriff's Office stated that their deputies "most common arrest is for those who don't appear in court, a needless use of time." *Phone Roundup Helping Courts Stay Filled*, Denver Post, at http://www.denverpost.com/ci_7536476?source=bb.

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