

Stopping the Blame Game

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Identifying and Addressing the Real Barriers to Appearing in Court in Harris County, Texas

Thousands of Americans miss court dates every year, a problem that snowballs both for courts (who have to spend resources following up with users) and for people interacting with them (who risk steeper fines, arrest, and sometimes jail time). Working with Harris County, Texas, we interviewed people with court cases (“court users”) to identify the structural and behavioral barriers holding people back from appearing, and recommended ways to make it easier for people to follow through on their legal obligations.

Introduction

We have all missed appointments with an emphatic apology but minimal or no further penalty. Yet missing court for even a low level offense can carry devastating consequences: arrest, jail time, and further loss of freedom while awaiting trial. What is increasingly regarded as an “old-guard” law enforcement approach assumes that people miss their court dates to intentionally evade their legal obligations, and therefore the threat of punishment should deter people from such behavior.

But behavioral science (the study of how people act and make decisions in the real world) reveals an entirely different story. It’s less about “intention” and more about the complexities of living in 21st-century America: those with less wealth, resources, and power face more challenges to successfully appearing in court.

Project Overview

Harris County partnered with ideas42 to expand its understanding of why people so often miss their court date, and to identify solutions focusing specifically on the wealth-based barriers people face in getting to court. This builds on previous work done in New York City to identify the behavioral barriers that keep people from court by exploring how they are specifically exacerbated by contexts of **chronic scarcity**.

Through both quantitative and qualitative methods, including extensive interviews with 43 court users, as well as interviews with representatives from every facet of the court process (judges, pretrial, public defenders, prosecutors, corrections) and a variety of community stakeholders (treatment centers, shelters), common themes of

Highlights

- ▶ Courts in the United States have traditionally tried to incentivize people to meet their court dates by imposing harsh penalties for nonappearance. But that view mistakes the real reasons people miss court.
- ▶ Overwhelmingly, people do try to meet their court obligation. The reasons they miss have more to do with lacking resources, and for reasons tied to flaws inherent in the criminal legal system—fear of an unknown process; fear of being jailed; or an expectation that they will be treated unfairly by judges, prosecutors, and even their own lawyers.
- ▶ With this more nuanced understanding of the barriers to court appearance, the legal system can implement solutions to get people to court that are more effective and compassionate than arrest warrants and jail.

the barriers court users experience emerged. We also conducted a broad scan of evidence-based¹ and promising but as of yet untested practices used by jurisdictions across the country. We combined these findings with input from local stakeholders and experts to conduct a behavioral design process to develop unique solutions for Harris County to reduce nonappearance.

Problem

Why nonappearance is bad for people in court

Over 13 million Americans are charged with misdemeanors every year, and each charge triggers court dates people must attend.² Missing just one of those court dates can carry severe consequences, including warrants, arrests, jail time, and loss of future bail while awaiting trial. Because those with less wealth face both disproportionate involvement in the legal system and more barriers to appearing in court, missing court exacerbates existing inequities. The downstream effects of warrants and jail time can wreak havoc on people's lives, such as losing employment, housing, benefits, vehicles, and general stability.

Why nonappearance is bad for courts

Missed court appearances are an expensive problem, costing cities and states across the United States tens of millions of dollars every year in expenses such as executing arrest warrants, jail expenses, and court delay.³ "National numbers for missed court dates are hard to come by, but local numbers range from 17% to 22% for serious crimes like felonies, and they tend to rise as the severity of the crime falls."⁴ For example, in 2015 New York City had a 40% nonappearance rate for low-level offenses, and currently, in North Carolina, 1 in 6 criminal cases have at least one missed appearance, affecting 250,000 cases per year.⁵

The context of scarcity

People who experience poverty and its related challenges live under conditions of scarcity, meaning a relative lack of the key resource of money and financial security. When people experience scarcity, their attention becomes narrowly focused on solving the immediate problems in front of them, like securing housing or making it to work, to the exclusion of less urgent priorities.

For example, when under a tight deadline at work, one's focus is devoted to getting that project done while the laundry and mail pile up. This narrowing of attention, called "tunneling," can be adaptive in the short term since it lets us focus on addressing urgent matters. But when experienced over the long run, it costs us: we can forget and/or neglect future concerns and become less effective in our broader lives.

For many people living in poverty, the scarcity induced tunnel vision is a constant, leaving them with little space to plan for the future (like how to get to court) or weigh longer-term consequences (like warrants for missing court). In this context, it makes sense that people may forget about court or make decisions that address their immediate needs despite worse future consequences.

¹ The evidence-based practices included our own work reducing nonappearance in NYC by 36%. Fishbane, Alissa, Aurelie Ouss, and Anuj K. Shah. 2020. "Behavioral nudges reduce failure to appear for court." *Science* 370(6517), eabb6591, DOI: 10.1126/science.abb6591.

² Stevenson, Megan, and Sandra Mayson. 2018. "The Scale of Misdemeanor Justice." 98 *Boston University Law Review*, 731-37. https://digitalcommons.law.uga.edu/fac_artchop/1210. Garrett, Brandon L., Sandra Guerra Thompson, Dottie Carmichael, Iftekhairul Islam, Andrea Seasock, and Songman Kang. 2022. "Monitoring Pretrial Reform in Harris County: Fourth Report of the Court-Appointed Monitor." <https://jad.harriscountytexas.gov/Portals/70/documents/ODonnell-Monitor-Fourth-Report-Final.pdf>.

³ Fishbane, Alissa, Aurelie Ouss, and Anuj K. Shah. 2020. "Behavioral nudges reduce failure to appear for court." *Science* 370(6517), eabb6591, DOI: 10.1126/science.abb6591.

⁴ Fishbane, Alissa, Aurelie Ouss, and Anuj K. Shah. 2020. "Behavioral nudges reduce failure to appear for court." *Science* 370(6517), eabb6591, DOI: 10.1126/science.abb6591.

⁵ Rex, Ethan. 2022. "The Court Appearance Project." North Carolina Criminal Law [blog]. June 14. <https://nccriminallaw.sog.unc.edu/the-court-appearance-project/>.

What's more, the challenge of nonappearance is only set to grow. Harris County, Texas, the third most populous county in the United States, reformed its bail system such that most people charged with misdemeanors are now automatically released from jail (85% of 55,000 people facing these charges) but still required to appear in court. This means tens of thousands more people need to show up to multiple court dates every year, which makes the problem of nonappearance urgent to solve.

Solution: Why do people *actually* miss court?

Conventional thinking assumes people miss court intentionally to evade their obligation. Consequently, courts try to deter that behavior by punishing people for not appearing with arrest and jail.

Instead, as we interviewed people who had to come to court, we found that they **take their appearances seriously and go to surprisingly great lengths to appear but nonetheless face barriers that stymie their efforts**. For example, many people live far away from court and must navigate hours-long trips on complex, unreliable public transportation; others spend considerable time asking friends for rides that may not materialize the day of court; and one even arrived from another city the night before and slept on the street to make court the next day. Court users are not only trying but trying hard to get to court, and nonappearance often relates more to the condition of poverty than one's resolve or desire to get there.

Our research also revealed new, surprising drivers of nonappearance:

- ▶ **Fear:** Fear, especially of arrest, drives nonappearance for both first-timers and those with past involvement in the legal system. Both groups reported feeling fear before the court date, when traveling to the court date, and while in court. Although fearing court dates is not surprising, the intensity, depth, and commonality of this emotion is striking. Two people we spoke with arrived at court on time but their fear of the unknown drove them to leave before their cases were called.
- ▶ **Expectation of Unfairness:** The expectation of unfairness, real and perceived, creates barriers to appearances. Court users expressed little hope, great frustration, marked powerlessness, and a lack of understanding as to the processes. They expected unfairness and disrespect from all court actors, including judges, prosecutors, pretrial officers, and even their own lawyers.
- ▶ **Scarcity:** Scarcity limits the mental bandwidth available to navigate the court experience and requires people to work through more challenges to get to court. In addition to the stress of a court case, many court users living in scarcity also reported experiencing grave medical conditions, trauma, grief, safety concerns, housing insecurity, substance use disorder, and a lack of basic scaffolding such as access to reliable transportation and communication.
- ▶ **Confusing Communication:** Court users receive confusing, incomplete, and incorrect information about upcoming court dates. Ambiguous communication from lawyers exacerbates this problem, as does the lack of a simple process to clarify court date information.
- ▶ **The Usual Suspects:** Our research also confirmed past scrutiny into what drives nonappearance: lack of transportation, childcare challenges, work obligations, housing instability, substance use, mental health, and lack of consistent smartphone access, among others.

Recommendations

Our recommendations, [listed here](#), include practices grounded in procedural justice and principles for applying behavioral design in contexts of chronic scarcity. Below are three recommendations we made for Harris County; we hope they will serve as a model for any court struggling with nonappearances:

Fewer required appearances for the court user

This is a common experience of American courts: users waiting, often for hours, only to have their case called, the lawyers report progress (or lack thereof) to the judge, and the case gets rescheduled. The fact is that court users do not need to be present at the majority of court dates. Requiring their appearance (and thus increasing the chances of a missed date) can unnecessarily impede the process. Instead, courts could require users to appear (physically or virtually) only at arraignment, or any dispositive hearing, while their lawyers continue to do their jobs at the majority of court dates.

Improved court communications and reminders

Most court documents people receive (release forms or notices of next court date) have been designed for court processing, not for court users. We can help courts, like Harris County in a [related project](#), redesign their forms with a behavioral lens to help people better understand, remember, and go to court dates. Additionally, courts can send text message reminders [with behaviorally informed language proven to improve appearances](#).⁶

Video clarifying the journey of a case

Many people do not understand what the court process entails, and under the threat of criminal charges, jail, and fines, the experience can be fearful. Many users had no idea what to expect at “arraignment,” mistakenly assumed they could be sent to jail or be forced to plead guilty or pay fines that day, and had nowhere to find clarifying information. A short, informative, engaging video about the arraignment process could reduce fear, clarify the process, and increase first appearances. It could be shown when people are booked awaiting release and also sent as a link with the court text reminder.

Our complete findings and recommendations are presented in our report [“Navigating the real-life challenges of appearing in court.”](#)

⁶ Fishbane, Alissa, Aurelie Ouss, and Anuj K. Shah. 2020. “Behavioral nudges reduce failure to appear for court.” *Science* 370(6517), eabb6591, DOI: 10.1126/science.abb6591.

What's Next

Harris County is preparing to implement a selection of our recommendations in 2023 and measure the effects on appearance. Courts across the country can also use our findings and recommendations and adapt them to their own context. Our research directly contradicts the assumption that people intend to miss court and therefore seriously calls into question the effectiveness of punishment as the sole solution.

We urge courts to start with the premise that court users want to meet their legal obligation to attend court but need help with known barriers that can get in their way. Courts will need to address these barriers (fear, expectation of unfairness, scarcity) in addition to well-known logistical barriers (transportation, childcare, work schedules) in their efforts to improve court appearances.

Last, we urge more research centered on the experience of court users, the true experts on the barriers to court appearances. Most people we spoke with discussed their past and present struggles with appearing but ultimately appeared. Research with court users who never appeared could yield information even more relevant to solving the problem of nonappearance, which, ultimately, gets closer to a justice system that is more efficient and equitable for courts and users alike.