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Reducing Failure to Appear in Nebraska: A Field Study*

by Mitchel N. Herian & Brian H. Bornstein

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Failure to appear (FTA) rates in the U.S. can be as high as 25-30% depending on jurisdiction and type of offense. These failures to appear are costly for the criminal justice system as they can lead to inefficient use of time and resources, and FTA can also be costly for defendants by leading to additional court dates, enhanced penalties, and even collateral consequences such as suddenly missing work while detained on the FTA charge (even though the original offense did not result in a detention). What's more, minorities are more likely to fail to appear than Whites, raising a race justice situation. Might it be possible to reduce FTA via a simple intervention?

This article presents the results of an experimental field study that tested the effectiveness of a pilot court reminder program for defendants in 14 of Nebraska's County Courts.

From March 2009, to May 2010, researchers at the University of Nebraska Public Policy randomly sent misdemeanants one of three different postcard reminders or provided no reminder. We were interested in measuring the effectiveness of the three different types of court date reminder postcards at reducing FTA rates for defendants. We also measured whether the court date reminders differentially impacted Blacks, Hispanics, and Whites. Finally, we surveyed a portion of defendants to determine whether perceptions of procedural justice and trust in the courts were different for those who appeared for court and those who did not.

Court Date Reminder Postcards

We focused on misdemeanor defendants who had com-



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mitted non-waiverable, non-traffic offenses in 14 counties. In total, 7,865 defendants were included in the study. Participants were randomly assigned to one of four conditions. Defendants in the *control condition* received no postcard reminder and served as the baseline against which the effectiveness of the different postcard messages was measured. Defendants in the *simple reminder condition* received a postcard that simply stated the time and place of the scheduled court hearing. In the *reminder-sanctions condition*, defendants were sent postcards that included the simple reminder message as well as a description of possible penalties for failing to appear for a court date. In the *reminder-procedural justice condition*, defendants were sent postcards that included the simple reminder message, the description of possible sanctions, and a “procedural justice” message that highlighted the defendant’s ability to speak on his or her own behalf by appearing for court, and indicated to the defendant that he or she would be treated with respect by the judge and other court personnel. All defendants assigned to receive a reminder were sent a postcard via postal mail approximately four days prior to the scheduled hearing.

Drawing upon scholarship in psychology and criminology, we developed a number of expectations related to the messages contained on the postcards. First, we hypothesized the postcard containing the procedural justice message would have the greatest impact on reducing FTA rates. Research by Tom Tyler and others has consistently shown that individuals who perceive their experience with the criminal justice system to be fair are more likely to follow court directives. Thus, we expected the reminder postcard highlighting the fairness of the courts would be most effective. Next, because research has shown that defendants respond more positively to procedural justice concerns than to threats of sanctions, we expected the reminder-sanctions message not to have as large an impact on reducing FTA as would the procedural justice message, but we expected the sanctions message to have a greater impact than the simple reminder message.

Among the sample, there was a baseline FTA rate of 12.6% (the baseline FTA rate represents the FTA of the control condition). The baseline FTA rate varied greatly by geography, with defendants in Douglas, Lancaster and Sarpy counties much more likely to FTA than defendants in more rural counties. The rates also varied by type of offense and number of offense, with defendants charged with Class 2 Misdemeanors and city ordinance offenses most likely to FTA, and defendants with multiple charges most likely to FTA.

Upon examining the effectiveness of the postcard treatments, we saw a number of interesting results. Most importantly, we found that the effect of receiving any type of postcard reduced the FTA rate from 12.6% to 9.7%. This decrease was statistically significant, and it suggests that *any* reminder generally will help to reduce FTA among misdemeanor defendants.

The simple reminder reduced FTA to 10.9%, but the reduction was not statistically significant when compared to the control group. Counter to our expectations, the results showed that the reminder-sanctions postcard, rather than the procedural justice postcard, had the greatest absolute reduction in FTA. There was an 8.3% FTA rate for the reminder-sanctions group, but a 9.8% FTA rate for the reminder-procedural justice group; statistically speaking, both FTA rates were significantly lower than the control group. However, follow up tests indicated that the FTA rates between those in the reminder-sanctions group and the reminder-procedural justice groups were not statistically different. This finding signals that while the absolute FTA rates were actually lower for the sanctions group than for the procedural justice group, statistical tests do not allow us to say that there is a significant difference between the effectiveness of the two conditions.

Racial Aspects of FTA

To determine whether the various postcard reminder messages varied across racial groups, we examined the three major racial groups in our sample separately. As expected, baseline FTA rates varied by the race of the defendant. Blacks (18.7% FTA rate) were most likely to fail to appear, and, somewhat unexpectedly, Whites (11.7%) were slightly more likely to not appear than Hispanics (10.5% FTA) (see Table 1). Focusing first on the White sample, we found that the simple reminder postcard reduced FTA to 9.6%, the reminder-sanctions postcard reduced it to 8.0%, and the reminder-procedural justice message reduced FTA to 8.8%. For Blacks, the simple reminder FTA rate (18.8%) was virtually identical to the control group, while the reminder-sanctions and procedural justice FTA rates dropped about the same (13.5% and 13.6%, respectively). For Hispanics, the simple reminder actually increased FTA rates from 10.5% to 11.8% (though this increase is not statistically significant), but the reminder-sanctions treatment reduced FTA to 4.7%, a statistically significant drop. The reminder procedural justice message reduced FTA non-significantly to 10.1% for Hispanic defendants.

Table 1

Failure to Appear Rate by Race/Ethnicity				
Reminder Postcard Treatment	FTA Rates			Total (n=7,122)
	Whites (n=5,487)	Blacks (n=793)	Hispanics (n=842)	
Control	11.7%	18.7%	10.5%	12.4%
Simple Reminder	9.6%	18.8%	11.8%	11.0%
Reminder Sanctions	8.0%	13.5%	4.7%	8.1%
Reminder PJ	8.8%	13.6%	10.1%	9.5%
Total	9.5%	16.4%	9.4%	10.3%

Because the greatest absolute decrease from the baseline FTA rate for each racial group was among those in the sanc-

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tions condition, the results present fairly compelling evidence that the reminder-sanctions message was the most effective at reducing FTA. For Whites, the sanctions treatment significantly reduced the FTA by 3.7%. For Blacks and Hispanics, the effect was especially acute as the sanctions message helped reduce FTA by 5.2% and 5.8%, respectively; however, the 5.2% reduction for Blacks was not statistically significant, whereas the 5.8% reduction for Hispanics was statistically significant. The results also show that the procedural justice message was received differently by the three racial groups. In particular, Hispanics appear to be the least receptive to procedural justice concerns, as there was just a .4% decrease (10.5% to 10.1%) from the baseline FTA rate; furthermore, follow up statistical tests show that the sanctions treatment was significantly more effective for Hispanics than the procedural justice treatment. For Whites and Blacks, however, the reminder-procedural justice message had a fairly similar impact upon FTA rates as the reminder-sanctions message, as there was no statistically significant difference between the two conditions. The results suggest that Whites and Blacks respond to procedural justice messages and punitive messages similarly, while Hispanics tend to reduce non-appearance after receiving a punitive message.

Procedural Justice and Trust & Confidence

To better understand the attitudes of defendants, a select number of participants were mailed a survey asking them about their attitudes toward the courts and their interaction with the criminal justice system. In total, 452 participants returned survey (19.2% response rate). We asked about perceptions of procedural fairness: "How fair or unfair were the procedures used by the judicial system to handle your case?" We asked questions about peoples' general trust: "On a scale from 1 to 5 where 1 means 'People can be trusted' and 5 means 'You can't be too careful when dealing with people,' where would you say your opinion of people, in general, falls?" And we asked about trust in courts: "Judges in my county do their job well." Again drawing upon relevant academic literature, we expected to see differences in attitudes among our participants, such that racial and ethnic minorities would be less likely to have positive attitudes about public institutions.

The results of our analysis showed that perceptions of procedural justice did not differ significantly between the three racial groups, but that there were significant differences among racial groups on a number of attitudinal measures related to trust and confidence in institutions. Specifically, Blacks and Hispanics were significantly less likely than Whites to say that they trust people in general. Regarding attitudes toward government, Blacks were also less likely than Whites to express trust in government and trust in the courts. Interestingly, aside from the questions about general trust in other people, the

attitudes of Whites and Hispanics did not appear to diverge significantly.

We also examined whether procedural justice attitudes and trust in government and the courts differed as a function of whether one failed to appear for court. The results of this inquiry showed that individuals who did not appear for court were much less positive about government and the courts. Specifically, individuals who failed to appear perceived lower levels of procedural justice in the courts; were more cynical toward the courts; had lower levels of trust in the courts; and were less trusting of government in general. Though we cannot draw any causal connections between defendants' attitudes and their likelihood of appearing in court, we can say with a fair degree of confidence that individuals who fail to appear for court have significantly more negative views of the courts and government.

The results of this inquiry lead us to three broad conclusions. First, the most general lesson that we learned from this study was that reminder postcards can, in fact, reduce FTA rates in the misdemeanor cases we studied. Second, the results of the experiment suggest that the type of message included on the postcard matters, and that the messages can have differential impacts upon different racial groups. As discussed above, the reminder postcard with the punitive message was the most effective at reducing the absolute FTA rate for all three major racial categories we studied, but was especially effective for Whites and Hispanics. There were statistically significant impacts for these two groups when we measured the effectiveness of the sanctions condition in relation to the baseline FTA rates. Similarly, the procedural justice message also had a strong, absolute effect for Whites and Blacks, but not Hispanics. Finally, the results of this study provide evidence that individuals within different racial groups hold differing levels of trust toward other individuals, as well as differing levels of trust and confidence in political institutions. In particular, it appears that Blacks are significantly less trusting than Whites, and that Whites and Hispanics are fairly similar in their opinions about the courts. In a similar way, we saw that individuals who appeared for their court dates were more positive in their attitudes toward courts and governmental institutions than those who did not appear.

Policy Implications

When any sort of reminder was mailed to defendants, there was a 2.9% overall reduction in FTA. When spread over thousands of cases, this reduction can lead to significant cost savings for lower courts and law enforcement as a result of increased compliance with court orders. In addition, court users might benefit from a court reminder program modeled on this study by simply reminding them of their hearing date, thus



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decreasing the potential penalties that might result from inadvertent or purposeful absence from their hearing. Therefore, the results of this study suggest that courts might do well to consider implementing such a reminder program. However, because a court reminder program would require personnel and infrastructure, the costs of implementation must be weighed against the perceived or calculated benefits to the courts and court users. As we noted above, rural jurisdictions in Nebraska had quite low FTA rates in comparison to the rural counties of Douglas, Lancaster, and Sarpy. Thus, the benefits of a court reminder program might be more likely to be seen in urban jurisdictions. Indeed, a preliminary cost-benefit analysis of the study described here suggests that the savings of a court reminder program modeled on this one are more likely to be realized in urban counties in Nebraska where caseloads are relatively high.

In addition to the potential economic implications of this study, we believe that there are some lessons for courts and the criminal justice system regarding attitudes toward the courts and attitudes toward government more generally. As the results showed, messages emphasizing the sanctions associated with FTA had the greatest absolute reduction in FTA rates for each racial category we examined. And as we saw, the threat of sanctions was especially strong for Hispanics. In contrast, Whites and Blacks tended to react to the procedural justice message and the sanctions message in similar ways. On balance, then, the results provide evidence that Hispanics react strongly to punitive messages in relation to other races and ethnicities (at least in Nebraska; there is considerable diversity in the U.S. Hispanic population across jurisdictions, depending on country of origin and other factors, and various Hispanic subgroups might respond differently). It is, of course, difficult to draw causal links in a study such as this, but it is reasonable to suspect that Hispanics' likely heightened sense of the legal issues associated with immigration interacts with the reinforcing punitive message included on the postcard to induce greater compliance among this group.

Research has shown that compliance with court orders is associated with the perceived legitimacy of the courts, suggesting that in order for the courts to operate smoothly, it is beneficial for them to be seen as legitimate by all users. Our

analysis, however, showed that attitudes toward the courts and government vary significantly across races. Specifically, we saw that Blacks and Hispanics were less trusting in general, and that Blacks were significantly less trusting of government in particular in relation to Whites. While these results are not necessarily surprising considering the large body of research that has shown there to be attitudinal differences across racial groups, we do feel that it is important for practitioners to recognize such differences among users of the courts. Furthermore, it is imperative that court personnel understand that there are strong attitudinal differences between those who appear for court and those who do not. Again, this study does not allow us to draw causal links between attitudes and behaviors such as appearing for court, but it does allow us to consider that possibility that individuals who FTA may do so because their trust in the court has diminished due to negative prior experiences with the courts or other parts of the criminal justice system, or because of negative attitudes toward governmental bodies more generally.

Conclusion

In order for the law to be effective, people must obey it. This study has shown that it is possible to induce compliance with the law through the simple act of reminding defendants about their court hearing. What this study has also shown, however, is that care must be taken to ensure that the messages encouraging compliance with the law are developed with the understanding that individuals react to messages differently, depending upon such factors as race and other, related socio-economic characteristics. In recognition of the various limitations to this study (e.g., it was carried out in a single state), we do not claim that our results are definitive. However, we feel that our findings provide enough evidence of the existence of racial and ethnic differences, and attitudinal differences toward the courts, that researchers must continue their work in the area so that practitioners might be in a better position to work with an increasingly diverse public. Failure to pursue this objective poses not only immediate challenges to courts and criminal justice systems, but may also prove damaging to the long term legitimacy of the criminal justice system, upon which rests much of the stability of the American political system as a whole. 