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To: Jim Greiner
From: Yiping Li
RE: Alan J. Tomkins, et al., *An experiment in the law: studying a technique to reduce failure to appear in court*, 48 Court Rev. 96 (2012).
Date: October 21, 2018

Title: An experiment in the law: studying a technique to reduce failure to appear in court
Authors: Alan J. Tomkins, Brian Bornstein, Mitchel N. Herian, David I. Rosenbaum, and Elizabeth M. Neeley
Location: 14 counties across Nebraska
Sample: N = 7,865
Timeline: March 2009 – May 2010
Target group: Defendants with misdemeanors scheduled to appear for a hearing
Intervention type: postcard reminder program to reduce the rate of failure to appear
Research papers: <https://heinonline-org.ezp-prod1.hul.harvard.edu/HOL/Page?lname=&public=false&handle=hein.journals/ctrev48&page=96&collection=journals>
Partners: Nebraska Administrative Office of the Courts, U.S. National Institute of Justice

Abstract

Failure to appear in court is costly to both the courts and the defendants. Researchers conducted a randomized controlled trial in Nebraska in which defendants either received no reminder about their upcoming court date or one of three postcards with different wordings. The researcher found that a reminder that included information about procedural justice and possible punishments for failure to appear significantly decreased the rate of failure to appear compared to a simple reminder.

1. Policy Issue

Data suggested that one in three misdemeanor defendants failed to appear (FTA) for their court hearing. FTAs incurred a cost for both the courts and the defendants because it meant longer pre-trial incarceration and larger fines than originally warranted. However, there had not been a systematic investigation into whether defendants who were more likely to commit FTAs shared certain characteristics or why they were committing FTAs.

From a psychological perspective, the authors hypothesized that defendants were more likely to commit FTAs when they perceived the criminal justice system as unfair. Did a postcard reminder system decrease the rate of FTAs in a cost-effective manner compared to a no-reminder system?

II. Context of Evaluation

The study was conducted in 14 counties of Nebraska. Phone reminders were too costly to implement on a large scale, so the researchers decided to use postcards to remind people of their hearings. There was a notably high proportion of Spanish speaking residents in the 14 study counties.

III. Details

The researchers examined the cases uploaded to the database of the Nebraska Administrative Office of the Courts to search for participants. Researchers included all defendants with non-waiverable offenses whom the researchers discovered in time to send a postcard five or more days before their court date. The researchers randomly assigned the participants to one of four conditions.

There were three experimental conditions and one control condition. The defendants in the control condition did not receive a reminder postcard about their upcoming court date. In the three experimental conditions, one postcard reflected elements of procedural justice, emphasizing the neutrality and impartiality of the court and the respect and dignity the defendants deserved, combined with possible punishments the defendants might suffer for an FTA (Reminder-Combined condition). The second postcard was a simple reminder (Reminder-Only); the third was a simple reminder accompanied by a warning of the possible punishments the defendants might suffer for an FTA (Reminder-Sanctions). The postcards included the content in both Spanish and English because of the high proportion of Spanish-speakers.

The researchers then sent a follow-up survey to all 819 of the defendants who failed to appear for their hearing and to 20 percent of those who did. The survey asked about perception of procedural justice and trust in the criminal justice system.

IV. Results and Policy Lessons

There was a significantly lower rate of FTAs in the Reminder-Sanctions (8.3 percent) and Reminder-Combined (9.8 percent) conditions compared to the Reminder-Only (10.9 percent) condition ($p < 0.05$) while the Reminder-Sanctions and Reminder-Combined did not differ significantly ($p = 0.11$). Therefore, a reminder with more substantive content was more effective than a simple reminder with no additional information.

The defendants who failed to appear did not differ significantly by gender or race. The FTA rate was significantly greater for urban jurisdictions than rural counties (12.4 percent vs. 6.8 percent, $p < 0.001$). The FTA rate significantly differed by offense type ($p < .0001$) and number of offense ($p < 0.001$) in that the rate of FTAs was greater for those with 2 or more offenses than those with 1 offense.

In the follow-up survey, the researchers found that those who appeared for their hearing had significantly higher perception of procedural fairness than those who did not ($p = 0.01$). Those who appeared also had significantly higher trust ($p = 0.005$) and confidence ($p = 0.006$) in the court than those who did not. At the same time, the defendants who did not appear were significantly more cynical of the court system ($p = 0.015$). Overall, Whites had more trust than Blacks and Hispanics ($p < 0.001$) but there was no difference for procedural justice perception. Those with high levels of trust were significantly more likely to appear ($p = 0.14$).

The researchers concluded that the experimental conditions helped to decrease the rate of FTAs for those with particularly low trust in the court system.

V. Quality of the Study

The researchers did not explain the statistical significance for the effect of offense type on FTA rate. For instance, the FTA rates for city ordinances violations and Class 2 misdemeanors were higher than those for Class 1, W, and 3 but it is unclear how this is substantially meaningful. For many of the comparison they ran, there was no way to determine specifically which condition had a larger effect and what that effect was. The amount of statistical testing that occurred in the paper was of concern because there was no mention that the researchers controlled for multiple comparisons, which would drive up the rate of finding significant results.

While the results were promising, there was no indication on whether we could expect to see this pattern on a larger scale or in another state. The researchers provided no demographics information about how the 14 counties in Nebraska compared to the rest of the United States or the rest of Nebraska.

The authors also acknowledged that a methodological flaw was that they were not allowed to have a postcard with only procedural justice information but that the state required it be combined with warnings of harsher punishments. Since the researchers did not find any difference, it was impossible to tell whether the procedural justice information had any effect on the participants.