

# An Experiment in the Law:

## Studying a Technique to Reduce Failure to Appear in Court

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It would be ideal if we knew the best ways to structure the judicial system, the best processes to use to ensure fairness for litigants, and the best incentives to ensure compliance with the law. Unfortunately, as all of us who work in or with the system and those of us who study such issues well know, we do not. So what should we do?

As social scientists trained to examine the judiciary and judicial processes from the perspectives of economics, law, political science, psychology, and sociology, we suggest that *systematic experimentation should be used* whenever feasible and warranted to study the operations of the courts for purposes of improving the courts' functioning. As has been learned in the case of medical procedures and treatments, systematic, experimental, or quasi-experimental study helps to determine what works, what does not, and why. Decades ago, in the face of charges that experimentation in the law would undermine due

process and equal treatment, the Federal Judicial Center rebutted these concerns, arguing that rather than thwarting justice, experimentation in the law promotes justice, ensuring an evidentiary basis for court reforms and administrative decision making.<sup>1</sup> Our work operates under this approach to examining potential judicial reforms. In this article, we discuss our use of the methods of science<sup>2</sup> to examine systematically whether there might be a technique that would, without costs that exceeded their benefits, reduce misdemeanants' failure to appear in court.<sup>3</sup>

It is not *overly* hyperbolic to assert that failure to appear (FTA) at a scheduled court appearance<sup>4</sup> is an epidemic problem afflicting defendants who do not have attorneys: Some estimates of misdemeanants who do not appear for their court hearing are as high as one in three, depending on the jurisdiction and offense type.<sup>5</sup> FTAs increase resources that need to be expended

We are grateful for the research assistance of Caitlin Cedfeldt, Joe Hamm, Nicole Hutsell, Lindsay Klug, Jennifer Li, Sucharitha Rajendran, and Maria Warhol, and also for the contributions of our colleagues, Larry Heuer (Columbia University), Lisa PytlikZillig (Public Policy Center), and David Rottman (National Center for State Courts). Finally, a specific caveat: Any opinions, findings, and conclusions or recommendations expressed in this article are those of the authors and do not necessarily reflect the views of any state or county governmental official or entity in Nebraska, nor of our funder, the National Institute of Justice (Award # 2008-IJ-CX-0022).

### Footnotes

1. FEDERAL JUDICIAL CENTER, EXPERIMENTATION IN THE LAW: REPORT OF THE FEDERAL JUDICIAL CENTER ADVISORY COMMITTEE ON EXPERIMENTATION IN THE LAW (1981). See also Jerry Goldman, *Experimenting with Justice: The Federal Judicial Center Report*, 8 L. & SOC. INQUIRY 733 (1983).
2. See, e.g., David Goodstein, *How Science Works*, in REFERENCE MANUAL ON SCIENTIFIC EVIDENCE 37 (3d ed., 2011).
3. The research summarized here is based on a project funded by the National Institute of Justice (Award # 2008-IJ-CX-0022) and is adapted from three peer-reviewed publications: The project's final report submitted to NIJ, BRIAN H. BORNSTEIN, ALAN J. TOMKINS, & ELIZABETH M. NEELEY, REDUCING COURTS' FAILURE TO APPEAR RATE: A PROCEDURAL JUSTICE APPROACH (2010), available at [http://www.michigan.gov/documents/corrections/Reducing\\_Courts\\_Failure\\_to\\_Appear\\_Rate\\_376119\\_7.pdf](http://www.michigan.gov/documents/corrections/Reducing_Courts_Failure_to_Appear_Rate_376119_7.pdf) (NIJ does not endorse project final reports, but they do subject them to internal and peer review before the final report is accepted and made available through the Inter-University Consortium for Political and Social Research [ICPSR] data and document repository, hosted by the University of Michigan); and two journal articles, Brian H. Bornstein et al., *Reducing Courts' Failure-to-Appear Rate by Written Reminders*, 18 PSYCHOL. PUB. POL'Y & L. (in press) (PDF version available online, doi: 10.1037/a0026293; page numbers herein refer to the PDF version because the pagination for the journal article are not presently available); and David I. Rosenbaum et al.,

*Using Court Date Reminder Postcards to Reduce Courts' Failure to Appear Rates: A Benefit-Cost Analysis*, 95 JUDICATURE 177 (2012). The primary data themselves also are available through ICPSR, at <http://dx.doi.org/10.3886/ICPSR28861.v1>. See also Joseph A. Hamm et al., *Exploring Separable Components of Institutional Confidence*, 29 BEHAV. SCI. & L. 95 (2011) (psychometric development of trust and confidence measures); Joseph A. Hamm et al., *Deconstructing Public Confidence in State Courts* (unpublished manuscript, available upon request, currently under review for publication, 2012) (further psychometric refinement of trust/confidence measures). We also published preliminary insights in our state's bar magazine, Mitchel N. Herian & Brian H. Bornstein, *Reducing Failure to Appear in Nebraska: A Field Study*, NEB. LAWYER, Sept. 2010, at 11.

4. Over the past 40 years, the issue of failure to appear in court has primarily been studied in the context of whether to liberalize pre-trial release for defendants who are charged with minor offenses to reduce unnecessary detention of defendants who do not appear to be risks for non-appearance. E.g., STEVENS H. CLARKE, JEAN L. FREEMAN, & GARY G. KOCH, THE EFFECTIVENESS OF BAIL SYSTEMS: AN ANALYSIS OF FAILURE TO APPEAR IN COURT AND REARREST WHILE ON BAIL (1976); CHRIS W. ESKRIDGE, AN EMPIRICAL STUDY OF FAILURE TO APPEAR RATES AMONG ACCUSED OFFENDERS: CONSTRUCTION AND VALIDATION OF A PREDICTION SCALE (1978); RICHARD R. PETERSON, PRETRIAL FAILURE TO APPEAR AND PRETRIAL RE-ARREST AMONG DOMESTIC VIOLENCE DEFENDANTS IN NEW YORK CITY (2006); QUDSIA SIDDIQI, ASSESSING RISK OF PRETRIAL FAILURE TO APPEAR IN NEW YORK CITY: A RESEARCH SUMMARY AND IMPLICATIONS FOR DEVELOPING RELEASE-RECOMMENDATION SCHEMES (1999). In this study, however, we look at failure to appear for the initial hearing. This has become a topic of interest because of the high failure-to-appear rates seen for misdemeanor offenses across the nation. See *infra* notes 5-7.
5. See, e.g., Warren Davis, *Should Georgia Change Its Misdemeanor Arrest Laws to Authorize Issuing More Field Citations? Can an Alternative Arrest Process Help Alleviate Georgia's Jail Overcrowding and Reduce the Time Arresting Officers Spend Processing Nontraffic*

for courts and law-enforcement agencies and can increase penalties for defendants, including pretrial incarceration and greater fines for what sometimes begin as minor offenses. FTAs thus are costly to both court systems and defendants.<sup>6</sup>

Why would a defendant not appear in court? Why would a person risk a greater penalty when charged with a relatively minor offense? Why not simply show up and accept whatever is going to happen given that the consequences tend to be relatively minor for misdemeanors? Some commentators note that some defendants willfully fail to appear, but they also find, unsurprisingly, that many defendants fail to appear not only because they fear the consequences of the legal proceedings but also because they are unable to arrange for transportation to court, they have other, competing responsibilities (e.g., work, care for child or other person), or they are disorganized, forgetting the appointment or losing critical information (e.g., citation, contact, or location).<sup>7</sup>

We wondered whether there might be a discernible pattern of defendants' psychosocial characteristics that influence their failure to appear in court. Tom Tyler and others have found

that positive compliance with the law is increased when people feel like they have been subjected to fair procedures and have high levels of trust and confidence in the legal system.<sup>8</sup> Inspired by judicial reminder programs that have conceptualized non-appearance in court as a client-management challenge similar to appearing for one's health-care appointment, we wondered whether the apparent success of such programs might be explained by defendants' perceptions of procedural justice combined with their trust and confidence in courts. If so, it could provide an empirical roadmap for courts to use to increase compliance with the law.

We also saw this as an opportunity to study systematically what effect implementing a reminder program has on defendant-appearance rates. Court reminder programs have been implemented somewhat haphazardly across the country, primarily using telephone reminders.<sup>9</sup> A call-reminder system, however—either automated or using employees to make the calls—can be expensive.<sup>10</sup> Might it be as effective to use reminder *postcards* as it is to use the telephone? Postcards are relatively cheap to process and mail, and studies in other con-

*Misdemeanor Offenders?* 22 GA. ST. U. L. REV. 313 (2005); Eric Helland & Alexander Tabarrok, *The Fugitive: Evidence on Public Versus Private Law Enforcement from Bail Jumping*, 47 J. L. & ECON. 93 (2004); Timothy J. McGinty, "Straight Release": Justice Delayed, Justice Denied, 48 CLEV. ST. L. REV. 235 (2000); Christopher Murray, Nayak Polissar, & Merlyn Bell, *The Misdemeanor Study: Misdemeanors and Misdemeanor Defendants in King County, Washington* (1998), available at <http://your.kingcounty.gov/exec/news/1999/030499fos.rtf>; MATT 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), available at [http://www.thecourtbrothers.com/fta\\_repo/cans\\_eval\\_00206\\_final.pdf](http://www.thecourtbrothers.com/fta_repo/cans_eval_00206_final.pdf); Matt O'Keefe, Court Appearance Notification System: 2007 Analysis Highlights, available at [http://www2.co.multnomah.or.us/County\\_Management/Budget/Budget%20Office%20Evaluation/Reports/Public%20Safety%20Research/CANS%20Highlights.pdf](http://www2.co.multnomah.or.us/County_Management/Budget/Budget%20Office%20Evaluation/Reports/Public%20Safety%20Research/CANS%20Highlights.pdf); Timothy R. Schnacke, Michael R. Jones, & Dorian M. Wilderman, *Increasing Court Appearance and Other Benefits of Live-Caller Telephone Court-Date Reminders: The Jefferson County, Colorado, FTA Pilot Project and Resulting Court Date Notification Program*, 48 CT. REV. 86 (2012) (this issue); WENDY F. WHITE, COURT HEARING CALL NOTIFICATION PROJECT (May 17, 2006), available at [http://www.thecourtbrothers.com/fta\\_repo/Coconino\\_County\\_court\\_hearing\\_notification\\_project.pdf](http://www.thecourtbrothers.com/fta_repo/Coconino_County_court_hearing_notification_project.pdf).

6. *Id.*

7. BARRY MAHONEY ET AL., PRETRIAL SERVICE PROGRAMS: RESPONSIBILITIES AND POTENTIAL 39-40 (Off. Just. Programs, Nat'l Inst. Just.) (March 2001), available at <http://www.ncjrs.gov/pdffiles1/nij/181939.pdf>. See also references in note 5, *supra*. See generally Court Brothers, FTA Repository (2012), available at [http://www.thecourtbrothers.com/web\\_court/fta\\_fta\\_repository.pl](http://www.thecourtbrothers.com/web_court/fta_fta_repository.pl); Marie VanNostrand, Kenneth J. Rose, & Kimberly Weibrecht, STATE OF THE SCIENCE OF PRETRIAL RELEASE RECOMMENDATIONS AND SUPERVISION 15-20 (June 2011), available at [http://pretrial.org/Featured%20Resources%20Documents/PJI%20State%20of%20the%20Science%20Pretrial%20Recommendations%20and%20Supervision%20\(2011\).pdf](http://pretrial.org/Featured%20Resources%20Documents/PJI%20State%20of%20the%20Science%20Pretrial%20Recommendations%20and%20Supervision%20(2011).pdf).

It is likely some undocumented defendants fear being deported, and this is a reason for non-appearance. However, there is no evidence that this reason constitutes a large proportion of failures to appear.

8. E.g., TOM R. TYLER, WHY PEOPLE OBEY THE LAW (2006). See especially Kevin Burke & Steve Leben, *Procedural Fairness: A Key Ingredient in Public Satisfaction*. 44 CT. REV. 4 (2007-2008) (AJA White Paper on Procedural Fairness). See generally *Procedural Justice*, 44 CT. REV. 1 (2007-08) (special issue devoted to procedural justice with numerous citations to key empirical evidence regarding procedural justice as well as public trust and confidence), available at <http://aja.ncsc.dni.us/courtrv/cr44-1/CR44-1-2.pdf>. Public trust and confidence in the courts is closely related to procedural justice. In fact, Tyler and others treat trust and confidence as a component of procedural justice. See, e.g., TYLER, *supra* note 8. See also *Public Trust and Confidence in the Courts*, CT. REV., Fall 1999, at 1, available at <http://aja.ncsc.dni.us/courtrv/cr36-3/CR%2036-3.pdf>, and *Public Trust and Confidence in the Courts*, 19 BEHAV. SCI. & L. 197 (2001) (both special issues devoted to public trust and confidence in the courts and include empirical evidence and legal commentary related to the nationwide survey of trust and confidence in the courts conducted by the National Center for State Courts; see NAT'L CTR. ST. CTS., HOW THE PUBLIC VIEWS THE STATE COURTS: A 1999 NATIONAL SURVEY [1999]).

9. There even is a company that offers calling services, nationwide. The Court Brothers, Reminder Call Service, available from [http://www.thecourtbrothers.com/web\\_court](http://www.thecourtbrothers.com/web_court). The Court Brothers calling service costs range from \$0.75 to \$3.00 per defendant per appearance, depending on the services desired. Email from Chad Columbus, The Court Brothers, to Alan J. Tomkins, Director, University of Nebraska Public Policy Center (Oct. 19, 2012) (on file with author). See also notes 5 & 7, *supra*.

10. Cost estimates for Multnomah County, OR, were \$40,000 in FY 2006 and \$56,000 in FY 2007. O'Keefe, *supra* note 5. Also, as noted previously, *id.*, the Court Brothers calling service can cost as high as \$2.00 per defendant. [http://www.thecourtbrothers.com/web\\_court/pf\\_features.pl](http://www.thecourtbrothers.com/web_court/pf_features.pl) (features). In contrast, another company, Tavoca, offers cheaper calling services for physician-appointment reminders. Tavoca, available at [http://www.tavoca.com/ac\\_calculatecosts.asp](http://www.tavoca.com/ac_calculatecosts.asp) (depending on numbers of calls, call costs are in the 10 to 20 cents per call range).

texts suggest they are effective.<sup>11</sup>

Although others have examined reminder programs, there are limitations in how informative these inquiries have been for determining impacts. Because there have been no comparison groups, the extent of increases in appearance rates due to the interventions were not clear, and although there have been estimates of benefits,<sup>12</sup> these estimates tend to be general rather than passing muster of what would be expected of a high-quality, benefit-cost analysis conducted by an economist.<sup>13</sup>

In our study, we used experimental methods, guided by theory<sup>14</sup> (specifically, procedural justice and trust/confidence) to guide our assessment of the use of postcards to reduce failure to appear in a cost-effective manner *compared* to no postcards. We also conjectured there would be a race-of-defendant effect, with our hypothesis being the greatest impact would accrue to minority defendants. Thus, while we understood that a one-jurisdiction inquiry is at best simply suggestive but is not definitive, we thought we could advance the field with our systematic research effort.

## THE STUDY AND ITS RESULTS

### A. METHODS

With the partnership of the Nebraska Administrative Office of the Courts and funding from the U.S. National Institute of Justice, we implemented a postcard-reminder study in 14 counties across Nebraska between March 2009 and May 2010.<sup>15</sup> We hypothesized misdemeanants' likelihood of failing to appear would be reduced if defendants were sent a postcard reminder of the hearing date. For all misdemeanants who met certain criteria in these 14 counties during the study,<sup>16</sup> we randomly assigned them to receive one of three different postcard reminders or a control condition of no reminder. One postcard was intended to reflect elements of procedural justice, specifically addressing *voice* concerns, letting the defendant know a *fair* and *neutral* fact-finder (*i.e.*, judge) was interested in *hearing* the defendant's side of the story. Moreover, the judge would treat the defendant with *respect* and would take the defendant's *concerns seriously*. This postcard also informed defendants of the punishments that were possible if they failed to appear.

The other two postcards were a) simple reminders, and b) reminders coupled with a caution that harsher punishments were possible for those who failed to appear (but without the procedural-justice information). Different postcard versions were used to determine whether the postcard's content or message would make a difference in appearance rates, that is, whether effects could be obtained simply by notification (Reminder-Only Condition), whether the threat of sanctions by itself would increase compliance (Reminder-Sanctions), or whether a postcard that included both the sanctions information and the elements of procedural justice (Reminder-Combined) were key.<sup>17</sup>

We encountered a practical problem that conflicted with our scientific desire to keep the postcard conditions as different from one another as possible. Specifically, we would have preferred that the postcard that included the procedural-justice elements not also include a statement about sanctions. However, the real-world intruded, and the courts' personnel we worked with asked us not to send out a postcard that excluded the potential for greater sanctions if the defendant failed to appear in court. The concern was that it might be misleading, and unfair, not to mention the potential of harsher penalties. Consequently, the Reminder-Combined postcard also included the same language about sanctions as the Reminder-Sanctions postcard.<sup>18</sup>

Because of a substantial proportion of Spanish-speaking residents in Nebraska, the postcard content was provided in both Spanish and English in all conditions.<sup>19</sup> Thus, there was a no-reminder (*control*) condition or one of three different postcards. The postcard versions are presented in Figure 1.

The participants in our study were 7,865 defendants (19 and older)<sup>20</sup> issued a non-traffic ticket by law-enforcement officials instructing them to appear in court for an initial hearing on their non-waiverable, misdemeanor offense. The race/ethnic distribution was 69.8% White, 10.7% Hispanic; 10.1% Black, 6.6% Unknown; 1.6% Native American; 1% Asian American; and .2% Other.<sup>21</sup>

On a daily basis during the workweek, researchers reviewed the database of cases uploaded by the 14 trial courts to the

11. Cf. Eric B. Larson et al., *Do Postcard Reminders Improve Influenza Vaccination Compliance?: A Prospective Trial of Different Postcard Cues*, 20 MEDICAL CARE 639 (1982).

12. E.g., O'Keefe, *supra* note 5.

13. For an example of a more systematic benefit-cost study, see the Jefferson, CO, FTA study conducted by Schnacke, Jones, and Wilderman, *supra* note 5, at n.15.

14. This approach, using experimental methods guided by theory, is the *sine qua non* of science. See e.g., Goodstein, *supra* note 2.

15. The complete NIJ report of the project is available online. BORNSTEIN, TOMKINS, & NEELEY, *supra* note 3. See also *supra* note 3 for the other peer-reviewed publications stemming from this project.

We benefited tremendously from the efforts of court administrators and clerks in the 14 counties where we collected data, as well as from the support of the Nebraska Minority Justice Committee. We thank the Clerk Magistrates from each of the 14 counties for allowing us to test this program in their counties, and we also are grateful to the Committee for its support and assistance in developing and implementing this study. We would also

like to thank staff at the Nebraska Administrative Office of the Courts, particularly Sherri Dennis and Ross Johnson, for their help in collecting data and for their insights.

16. See *infra* notes 22-23 and accompanying text.

17. Our design was thus akin to a clinical trial in a medical study, with each postcard a level of intervention (*i.e.*, reminder), and the no-reminder condition serving as the comparison group.

18. We pretested the *order* in which we would present the information, and these results guided our decision to place the sanctions information first, followed by the procedural-justice information. BORNSTEIN, TOMKINS, & NEELEY, *supra* note 3, at 19-20.

19. We used the practice of two different translators, with a translation from the English version to Spanish first, and then an independent translation of the Spanish version back into English. The process revealed an acceptable Spanish version of the postcard.

20. Because the age of majority in Nebraska is 19, we excluded any offender younger than 19.

21. The officer issuing the citation generally made the race/ethnicity classification. Our data were extracted from the citation or other information obtained from the case file.

**FIGURE 1  
POSTCARD REMINDER CONDITIONS**

**REMINDER-ONLY**

Dear XXXX XXXX:

This notice is to remind you that you have a hearing scheduled at the XXXX County Courthouse at 1:30 PM on 12/11/2009.

Estimado(a) XXXX XXXX:

Este aviso es para recordarle que tiene una audiencia programada en la Corte del Condado de XXXX a las 1:30 PM en el día 12/11/2009.

Case ID: C X CR X XXXX

If you have questions about this postcard, please call: (XXX) XXX-XXXX

**REMINDER-SANCTIONS**

Dear XXXX XXXX:

This notice is to remind you that you have a hearing scheduled at the XXXX County Courthouse at 1:30 PM on 5/1/2009.

Failure to appear for this hearing may result in a number of negative consequences, including:

- You may be charged with the additional crime of failure to appear, which is a Class II misdemeanor.
- You may receive up to six months in jail and/or a \$1,000 fine for this additional charge.
- A warrant may be issued for your arrest.
- It may be harder to get bail in the future.
- Even if you are not formally charged with a failure to appear, failing to appear may be considered by the judge in determining your sentence on the original misdemeanor charge.

We strongly encourage you to not miss your hearing on the date and time listed above!

If you have questions about this postcard, please call: (XXX) XXX-XXXX  
Case ID: C X CR X XXXX

Estimado(a) XXXX XXXX:

Este aviso es para recordarle que tiene una audiencia programada en la Corte del Condado de XXXX a las 1:30 PM en el día 5/1/2009.

El no presentarse para esta audiencia puede traer como resultado un número de consecuencias negativas, que incluyen:

- Ud. puede ser acusado de un delito adicional por faltar a comparecer, que es un delito menor, Clase II.
- Ud. puede recibir hasta seis meses en la cárcel y/o una multa de \$1,000 por este cargo adicional.
- Una orden judicial puede ser expedida para su arresto.
- Puede ser más difícil calificar para una fianza en el futuro.
- Aunque no sea acusado formalmente por faltar a comparecer, el faltar a comparecer puede ser considerado por el juez en la determinación de su pena por el delito menor original.

¡Le advertimos enérgicamente que no falte a comparecer en la fecha y el tiempo descrito arriba y que no deje de presentarse!

**REMINDER-COMBINED**

Dear XXXX XXXX:

This notice is to remind you that you have a hearing scheduled at the XXXX County Courthouse at 1:30 PM on 5/1/2009.

Failure to appear for this hearing may result in a number of negative consequences, including:

- You may be charged with the additional crime of failure to appear, which is a Class II misdemeanor.
- You may receive up to six months in jail and/or a \$1,000 fine for this additional charge.
- A warrant may be issued for your arrest.
- It may be harder to get bail in the future.
- Even if you are not formally charged with a failure to appear, failing to appear may be considered by the judge in determining your sentence on the original misdemeanor charge.

This Court aims to serve the best interests of both you and the public by:

- Providing neutral and consistent judgments to all defendants. The judge who presides over your hearing will be fair and open-minded.
- Treating all defendants charged with the same kind of offense in the same way.
- Treating all defendants politely, with courtesy, dignity and respect.
- Taking defendants' concerns seriously. We understand that you might be worried about the hearing and its consequences, and we are prepared to listen to your concerns and offer explanations as best we can.
- Allowing defendants to explain the situation from their perspective.

We strongly encourage you to not miss your hearing on the date and time listed above, and to be sure to appear for it!

If you have questions about this postcard, please call: (XXX) XXX-XXXX  
Case ID: C X CR X XXXX

Estimado(a) XXXX XXXX:

Este aviso es para recordarle que tiene una audiencia programada en la Corte del Condado de XXXX a las 1:30 PM en el día 5/1/2009.

El no presentarse para esta audiencia puede traer como resultado un número de consecuencias negativas, que incluyen:

- Ud. puede ser acusado de un delito adicional por faltar a comparecer, que es un delito menor, Clase II.
- Ud. puede recibir hasta seis meses en la cárcel y/o una multa de \$1,000 por este cargo adicional.
- Una orden judicial puede ser expedida para su arresto.
- Puede ser más difícil calificar para una fianza en el futuro.
- Aunque no sea acusado formalmente por faltar a comparecer, el faltar a comparecer puede ser considerado por el juez en la determinación de su pena por el delito menor original.

Esta Corte tiene la meta de servir mejor a los intereses de Usted y del público al:

- Emitir fallos neutrales y contundentes para todos los acusados. El juez que preside sobre su audiencia será justo y de actitud abierta.
- Tratar a todos los acusados con igual justicia.
- Tratar a todos los acusados con buenos modales, con cortesía, dignidad, y respeto.
- Tomar seriamente en cuenta las preocupaciones de los acusados. Entendemos que Ud. pueda estar preocupado sobre la audiencia y sus consecuencias, y estamos preparados para escuchar sus preocupaciones y para ofrecerle la mejor explicación que podamos.
- Permitir a los acusados explicar la situación desde su perspectiva o punto de vista.

¡Le advertimos enérgicamente que no falte a comparecer en la fecha y el tiempo descrito arriba y que no deje de presentarse!

Nebraska Administrative Office of the Courts. As we explained in one of our earlier articles:

All of the misdemeanor categories provided for by state statute were represented in the sample, with most coming from the relatively severe categories. For example, 30.5% of defendants were charged with an alcohol-related misdemeanor (e.g., first offense driving-under-the-influence charge) and an additional 31.0% were charged with violations of city ordinances (e.g., injuring or destroying property). Roughly one-sixth (17.6%) were charged with a Class 1 misdemeanor (e.g., carrying a concealed weapon, first offense; failing to stop and render aid), with the remainder charged with a Class 2 (9.3%; e.g., shoplifting \$0-\$200) or Class 3 misdemeanor (11.2%; e.g., minor in possession of alcohol). Four individuals were charged with a Class 3A misdemeanor (0.1%; e.g., possession of marijuana, third offense); 21 were charged with a Class 4 misdemeanor (0.3%; e.g., possession of marijuana, second offense); and five were charged with a Class 5 misdemeanor (0.1%; e.g., unlawful entry of state park without a park permit).<sup>22</sup>

Once we determined the offense was non-waiverable, and there was sufficient time to send out a postcard at least five days before the scheduled court date, the defendant was included in the study. We then randomly assigned defendants to one of the four experimental conditions: the control condition or one of the three postcard conditions.

## B. RESULTS

### 1. Failure-to-Appear Rates: Impact of Reminder Conditions

As shown in Table 1,<sup>23</sup> the baseline (control) FTA rate in our sample was 12.6%.<sup>24</sup> The data revealed *postcard reminders significantly reduced FTA rates*.<sup>25</sup> The specific amounts of reduction varied, dropping to about 11% FTA rate for the Reminder-Only postcards, about 10% for Reminder-Combined postcards, and about 8% for the Reminder-Sanctions postcards. The two reminders that included substantive information (sanctions or sanctions plus procedural justice) resulted in greater, statistically significant reductions than the simple reminder postcard.<sup>26</sup> There was no statistical difference between the two substantive postcards.<sup>27</sup> Thus, the critical

finding from our extensive study is that while a postcard reminder has an effect overall, there likely is an even greater impact if the postcard contains substantive language beyond the reminder of the court date.

Reminder Postcard Treatment	Appeared For Court		Total
	No	Yes	
Control	12.6%	87.4%	2,095
Reminder-Only	10.9%	89.1%	1,889
Reminder-Sanctions	8.3%	91.7%	1,901
Reminder-Combined	9.8%	90.2%	1,980
<b>Total</b>	<b>10.4%</b>	<b>89.6%</b>	<b>7,865</b>

### 2. Other Factors that Predict FTA: Race/Ethnicity, Sex, Rural vs. Urban Jurisdiction, and Nature/Number of Offense(s)

In light of previous work that indicated a relationship between trust/confidence and compliance with the law,<sup>28</sup> we hypothesized there would be a race/ethnicity impact, specifically, that Non-Whites would have higher baseline FTA rates than Whites. We did not anticipate there would be a sex difference. We wondered whether there would be a difference for rural versus urban defendants, hypothesizing that there would be a greater FTA rate for urban defendants. Finally, we examined whether FTA rates differed significantly depending on the severity of offense and/or on the number of offenses charged (one versus two or more). We were not aware of literature that would lead us to make a prediction one way or the other regarding offenses, but our belief was that offense would be an important factor to measure.

The *overall* FTA rate (all conditions combined) varied as a function of the defendant's race/ethnicity, with greater FTA rates for Black defendants (16.4%) than Whites (9.5%) or Hispanics (9.4%). The control condition (no postcard) revealed the *baseline* FTA rates likely started differently: Nearly 19% for Blacks versus approximately 12% for Whites and 10.5% for Hispanics (Table 2). Although it may appear as if there is a substantial race/ethnicity effect, our statistical analy-

22. Bornstein et al., *supra* note 3, at 5.

23. These and the other data tables and figures are taken or adapted from the three, primary publications from the project. For example, Table 1 is taken from BORNSTEIN, TOMKINS, & NEELEY, *supra* note 3, at 14, Table 1; Table 2 is taken from Bornstein et al. *supra* note 3, at 9, Table 2. See also Rosenbaum et al., *supra* note 3, at 180, Table 1 (same data but presents the information for each of the postcard combinations, not limited to experimental conditions as we have presented in the table here). Similarly, the statistical tests we report beginning with note 24 *infra* are also taken from these other publications, but are not hereinafter cross-referenced.

24. This is a comparatively lower rate than reported in other jurisdictions.

25. The omnibus test showed the four conditions were different from one another.  $X^2(3) = 20.90, p < .001, \phi = .05$ . Additional (*i.e.*, post hoc) analyses pinpointed the differences were between the reminders (taken together) versus no reminder (control condition).  $X^2(1) = 14.29, p = .001, \phi = .04$ . For background information on the use of statistics, intended for legal audiences, see ROBERT M. LAWLESS, JENNIFER K. ROBBENOLT, & THOMAS S. ULEN, *EMPIRICAL METHODS IN LAW* (2009).

26.  $X^2(1) = 4.63, p = .031, \phi = .03$ .

27.  $X^2(1) = 2.60, p = .11, \phi = .03$ .

28. *E.g.*, TYLER, *supra* note 8.

sis indicated there was not, when we used a statistical test controlling for other factors,<sup>29</sup> such as offense type and number of offenses.<sup>30</sup> Sex also did not reveal a statistically significant difference, although the FTA rate for male defendants was slightly greater than for female defendants (10.8% vs. 9.4%).<sup>31</sup> As expected, the FTA rate was greater in urban jurisdictions than in rural counties (12.4% vs. 6.8%) (Table 3).<sup>32</sup> We found a strong effect for the offense variables: Offense type significantly influenced FTA rates (Table 4),<sup>33</sup> as did the number of offenses charged (Table 5).<sup>34</sup> Thus, offenses in general, and specifically the number of offenses, are the strongest predictors of FTA we found in our study.

**TABLE 2  
FAILURE-TO-APPEAR RATE BY RACE/ETHNICITY**

Reminder Postcard Treatment	FTA Rates			Total
	Whites	Blacks	Hispanics	
Control	11.7%	18.7%	10.5%	12.6%
Simple-Reminder	9.6%	18.8%	11.8%	11.0%
Reminder-Sanctions	8.0%	13.5%	4.7%	8.1%
Reminder-Combined	8.8%	13.6%	10.1%	9.5%
<b>Total</b>	<b>9.5%</b>	<b>16.4%</b>	<b>9.4%</b>	<b>10.3%</b>

**TABLE 3  
FAILURE-TO-APPEAR RATE BY COUNTY AND URBAN/RURAL AREAS**

County	Baseline Appearance Rate			Overall Appearance Rate		
	Appeared for Court		n	Appeared for Court		n
	No	Yes		No	Yes	
Adams	33.3%	66.7%	3	33.3%	66.7%	6
Buffalo	3.4%	96.6%	59	1.8%	98.2%	225
Colfax	50.0%	50.0%	4	19%	81.0%	21
Dakota	8.8%	91.2%	57	10.0%	90.0%	211
Dawson	9.5%	90.5%	84	6.1%	93.9%	314
Dodge	2.7%	97.3%	37	5.4%	94.6%	149
Douglas	10.6%	89.4%	264	8.2%	91.8%	1,027
Hall	10.8%	89.2%	222	7.8%	92.2%	781
Lancaster	17.8%	82.2%	828	14.8%	85.2%	3,185
Madison	6.8%	93.2%	73	4.8%	95.2%	289
Platte	8.3%	91.7%	157	7.1%	92.9%	506
Saline	9.3%	90.7%	43	12.3%	87.7%	154
Sarpy	10.2%	89.8%	236	8.6%	91.4%	864
Scotts Bluff	0.0%	100%	28	2.3%	97.7%	133
<b>Urban (Douglas, Lancaster, Sarpy)</b>	<b>15.0%</b>	<b>85.0%</b>	<b>1,328</b>	<b>12.4%</b>	<b>87.6%</b>	<b>5,076</b>
<b>Rural</b>	<b>8.5%</b>	<b>91.5%</b>	<b>767</b>	<b>6.8%</b>	<b>93.2%</b>	<b>2,789</b>
<b>Total</b>		<b>87.4%</b>	<b>2,095</b>		<b>89.6%</b>	<b>7,865</b>

**TABLE 4  
FAILURE-TO-APPEAR RATE BY OFFENSE TYPE**

Offense Type	All Conditions		Control		Reminder-Only		Reminder-Sanctions		Reminder-Combined	
	FTA Rate	n	FTA Rate	n	FTA Rate	n	FTA Rate	n	FTA Rate	n
Class 1	7.6%	1,377	7.3%	358	8.2%	365	7.0%	330	8.0%	324
Class W (alcohol)	9.4%	2,389	9.7%	628	11.1%	96	7.2%	567	9.4%	598
Class 2	13.8%	732	18.9%	212	11.7%	145	10.5%	191	13.0%	184
Class 3/3A/4/5	8.4%	908	10.2%	254	8.5%	213	6.8%	220	7.7%	2,212
City Ordinance	12.9%	2,424	17.5%	636	13.2%	560	10.1%	587	10.6%	641

**TABLE 5  
FAILURE-TO-APPEAR RATE BY NUMBER OF OFFENSES**

Offense Type	Baseline Appearance Rate			Overall Appearance Rate		
	Appeared for Court		n	Appeared for Court		n
	No	Yes		No	Yes	
1 Offense	6.7%	93.3%	1,012	5.4%	94.6%	3,868
2 or More Offenses	18.2%	81.8%	1,067	15.4%	84.6%	3,962
<b>Total</b>	<b>12.6%</b>	<b>87.4%</b>	<b>2,088</b>	<b>10.4%</b>	<b>89.6%</b>	<b>7,830</b>

29. The statistical analysis appropriate for this determination is a regression analysis.  $B = -.09$ ,  $S.E. = .09$ ,  $p = .32$ ,  $\text{Exp}(b) = .91$ ,  $\text{Exp}(b)$  CI (.77-1.09). We did find that the Reminder-Sanctions postcard had the greatest absolute impact upon reducing FTA rates for Hispanic defendants, as the FTA rate was reduced to 4.7% from 10.5% in the control condition,  $X^2(1) = 4.94$ ,  $p < .026$ ,  $\phi = .11$ . For Black defendants, the decrease from 18.7% to 13.5% was not statistically significant, though it would have been significant had there been a larger number of Black defendants in the sample. For more detailed information and additional race-related analyses, see BORNSTEIN, TOMKINS, & NEELEY, *supra* note 3, at 16-18, 21-23; Bornstein et al., *supra* note 3, at 9-14.

30. See *infra* notes 33-34 and accompanying text.  
 31.  $B = -.10$ ,  $S.E. = .09$ ,  $p = .29$ ,  $\text{Exp}(b) = .91$ ,  $\text{Exp}(b)$  CI (.76-1.09).  
 32.  $B = .40$ ,  $S.E. = .11$ ,  $p < .001$ ,  $\text{Exp}(b) = 1.50$ ,  $\text{Exp}(b)$  CI (1.21-1.86).  
 33.  $B = -.18$ ,  $S.E. = .03$ ,  $p < .001$ ,  $\text{Exp}(b) = .83$ ,  $\text{Exp}(b)$  CI (.79-.88).  
 34. Only 5.4% of defendants with one offense failed to appear, whereas 15.4% of individuals with two or more offenses failed to appear.  $B = -1.28$ ,  $S.E. = .10$ ,  $p < .001$ ,  $\text{Exp}(b) = .28$ ,  $\text{Exp}(b)$  CI (.23-.34).

### 3. Procedural-Justice and Trust/Confidence Perceptions

To reiterate, in the main part of our FTA study, we did not find that a postcard containing procedural-justice language (that also included an admonition about potential sanctions, as discussed previously) had the anticipated, beneficial impact, over and above merely mentioning sanctions. It might be the case, however, that because we were not able to single out procedural-justice elements in the postcard communication, we missed its potential added value. Or it might be that we did not adequately communicate critical procedural-justice elements in a meaningful way to defendants. Although we are unable to determine such limitations of this study, we were able to conduct a follow-up inquiry that allowed us to inquire further into the potential impact of perceptions of procedural justice, as well as trust and confidence perceptions.

In our follow-up inquiry, we sent a survey that included questions about procedural-justice and trust/confidence perceptions to all 819 of the misdemeanants who did not appear for their hearing and to 20% (1,538 randomly selected) of those who appeared.<sup>35</sup> For the survey part of the study, 77.6% of the survey respondents were White, 7.8% Black, and 5.7% Hispanic.

The 19.2% (452) overall response rate was 21.6% (335) for participants who appeared in court and 14.5% (117) for those who failed to appear.<sup>36</sup> The survey items for defendants who did not appear included questions about fairness, bias, and respect generally related to the judicial system. We also asked the defendants who appeared for their hearing additional questions about the procedural-justice subconstructs of fairness, voice, dignity, and respect.<sup>37</sup>

We had hypothesized that those defendants who appeared for their hearing would have greater levels of perceived procedural justice and be more likely to indicate higher levels of trust and confidence in the courts. The data confirmed our procedural-justice hypotheses, such that defendants who appeared for their hearing rated levels of procedural justice in their overall experience with the criminal justice system (General Procedural Justice scale) higher than those who did not appear.<sup>38</sup>

35. We sent the defendants a pre-notification that we would be sending them a survey one week after the hearing date. Two weeks later, the defendants were sent a survey accompanied by a \$2 bill as a token of appreciation. Replacement surveys were mailed two weeks later. Each of these steps are in accordance with suggested best practices to increase responsiveness to survey requests. DON A. DILLMAN, JOLENE D. SMYTH, & LEAH MELANI CHRISTIAN, *INTERNET, MAIL AND MIXED-MODE SURVEYS: THE TAILORED DESIGN METHOD* (3d ed. 2008).

36. For more details about the sample, including differences in responses rates across race/ethnicity (proportionally more Whites responded), offense types (defendants with certain misdemeanors were more likely to respond), and age (older defendants more likely to respond), as well as lack of sample differences (residing in urban versus rural county, number of offenses, reminder condition), see BORNSTEIN, TOMKINS, & NEELEY, *supra* note 3, at 10-11.

37. For complete details regarding the items we used and scales we created, see BORNSTEIN, TOMKINS, & NEELEY, *supra* note 3, at 19-23; Bornstein et al., *supra* note 3, at 11-12.

Our findings also provided quite a bit of support for the hypothesized impact of trust and confidence. Those defendants who appeared in court had significantly greater *confidence* scores (Total Institutional Confidence scale)<sup>39</sup> and *trust* scores (Trust in the Courts scale)<sup>40</sup> than those who did not. We also found that defendants who did not appear were more *cynical* than those who appeared.<sup>41</sup> Of further interest is the fact that we found high correlations between our measures of procedural justice and trust/confidence.<sup>42</sup>

Based on an extensive literature indicating that Blacks, in particular, have less trust and confidence in the courts than other groups in the U.S., especially Whites,<sup>43</sup> we had hypothesized that there would be significant race/ethnicity differences. As shown in Table 6, our results revealed significant differences for dispositional trust<sup>44</sup> and on the two trust scales, Total

**TABLE 6**  
**TRUST/CONFIDENCE AND PROCEDURAL-JUSTICE**  
**SCALE MEANS BY RACE/ETHNICITY**

Scale	Whites		Blacks		Hispanic		F	Sig.
	Mean	SD	Mean	SD	Mean	SD		
Trust in the Courts	3.26 <sup>a</sup>	0.84	2.79 <sup>b</sup>	0.91	3.24 <sup>a,b</sup>	0.87	4.34	.014
Total Institutional Confidence	3.20 <sup>a</sup>	0.70	2.84 <sup>b</sup>	0.81	3.15 <sup>a,b</sup>	0.66	3.71	.025
Dispositional Trust	2.90 <sup>a</sup>	0.80	2.34 <sup>b</sup>	1.02	2.44 <sup>b</sup>	0.89	9.20	.000
General Procedural Justice	3.35	1.04	3.13	1.31	2.99	0.98	0.23	.795
Specific Procedural Justice	3.47	1.04	3.38	1.13	3.35	1.03	1.34	.264

Note. Within a row, means with different superscripts are significantly different,  $p < .05$ .

38.  $M = 3.53$  versus  $3.23$ ,  $F(1,438) = 6.61$ ,  $p = .01$ ,  $\eta_p^2 = .02$ .

39.  $M = 3.24$  versus  $3.02$ ,  $F(1,445) = 7.82$ ,  $p = .005$ ,  $\eta_p^2 = .02$ .

40.  $M = 3.30$  versus  $3.04$ ,  $F(1,441) = 7.78$ ,  $p = .006$ ,  $\eta_p^2 = .02$ .

41.  $M = 3.48$  versus  $3.20$ ,  $F(1,444) = 5.984$ ,  $p = .015$ ,  $\eta_p^2 = .01$ .

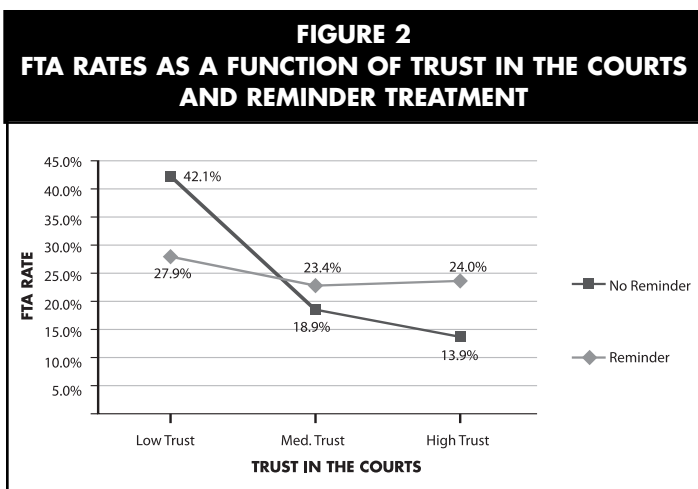
42. See BORNSTEIN, TOMKINS, & NEELEY, *supra* note 3, at 19-21.

43. E.g., Richard R. W. Brooks & Haekyung Jeon-Slaughter, *Race, Income and Perceptions of the U.S. Court System*, 19 BEHAV. SCI. & L. 249 (2001); David B. Rottman & Alan J. Tomkins, *Public Trust and Confidence in the Courts: What Public Opinion Surveys Mean to Judges*, CT. REV., Fall 1999, at 24; Tom R. Tyler, *Public Trust and Confidence in Legal Authorities: What Do Majority and Minority Group Members Want From the Law and Legal Institutions?*, 19 BEHAV. SCI. & L. 213 (2001). See generally NAT'L CTR. ST. CTS., *supra* note 8 (nationwide survey of public trust and confidence in the courts, sufficiently large to allow breakdown of the data by race/ethnicity).

44.  $F(2,401) = 9.20$ ,  $p < .001$ ,  $\eta_p^2 = .04$ , Whites greater than both Blacks and Hispanics.

Institutional Confidence<sup>45</sup> and Trust in the Courts.<sup>46</sup> We tested for, but did not find, a race effect for procedural justice.

We also tested for a more complicated relationship between those lower in trust and the impact of a postcard reminder.<sup>47</sup> It was the case that higher levels of trust in the courts were associated with a greater probability of appearing.<sup>48</sup> Yet the reminder made a difference, significantly reducing the FTA rate for those in our sample with the lowest trust (but not for the medium- or high-trust categories—see Figure 2). Put another way, the reminder eliminated differences in FTA rates as a function of degree of trust in the courts.



Finally, we asked the defendants for the reasons they did or did not appear. The primary reasons for appearing were to avoid additional sanctions (an FTA offense, additional penalties) or because of a feeling that the law should be obeyed. For those defendants who did not appear, scheduling issues and work conflicts were rated as the primary reasons for non-appearance, followed by transportation issues. Overall, however, those defendants who did not appear indicated they were influenced less by the reasons they gave for not appearing than those who appeared.

#### 4. Benefit-Cost Analysis<sup>49</sup>

We conducted an analysis of the benefits associated with the postcard reminders, compared to the costs, at the county level.<sup>50</sup> Benefits were estimated by determining the labor cost

45.  $F(2,402) = 3.71, p = .025, \eta_p^2 = .02$ . Additional statistical analyses showed the significant difference was driven by the gap between Whites and Blacks rather than differences between Whites and Hispanics or between Blacks and Hispanics.

46.  $F(2,398) = 4.34, p = .014, \eta_p^2 = .02$ . Additional statistical analyses showed the significant difference was driven by the gap between Whites and Blacks rather than differences between Whites and Hispanics or between Blacks and Hispanics.

47. We used a binary logistic regression. As explained in greater detail elsewhere, we dichotomized the reminder variable (i.e., any reminder vs. none), turned trust in the courts into a categorical variable (i.e., low, medium, or high), and controlled for race. BORNSTEIN, TOMKINS, & NEELEY, *supra* note 3, at 21-24; Bornstein

**TABLE 7**  
**REASONS FOR APPEARANCE/NON-APPEARANCE**

REASON FOR APPEARANCE	MEAN	STD. DEV.
I wanted to avoid an additional offense (for failure to appear) on my record.	4.60	1.02
I wanted to avoid additional penalties.	4.59	.98
I felt I should obey the law.	4.38	1.05
The system depends on compliance from people like me.	3.73	1.37
I wanted to tell my side of the story.	3.16	1.62
REASON FOR NON-APPEARANCE	MEAN	STD. DEV.
I had scheduling conflicts.	2.77	1.81
I had work conflicts.	2.39	1.66
I had transportation difficulty.	2.07	1.59
I forgot about the hearing date.	1.89	1.50
I had family conflicts (e.g., childcare conflicts).	1.84	1.44
I was afraid of what the outcome would be if I went to court.	1.72	1.20

*Note.* The scale ranged from 1 (affected not at all) to 5 (affected very much). Ns ranged from 317-325 for appearers, and from 109-113 for non-appearers.

avoided by not having to detain, at a subsequent date, those defendants who had failed to appear. County-specific FTA-cost estimates were developed for the largest urban counties since they have the most misdemeanor, non-traffic offenses each year and are the three most-populous counties in Nebraska. In County A, law enforcement estimated that approximately 70% of FTA bench warrants were resolved through arrest. In County B, a judge and a law-enforcement official independently estimated the percentage of FTA bench warrants resulted in arrest at 30% and 50%, respectively. An average of these two estimates, 40%, was used in County B's per-unit arraignment, FTA-cost estimate. County C law enforcement estimated that at least 50% of FTA bench warrants resulted in arrests.

Table 8 indicates the annual and hourly salary costs of labor in Nebraska as derived from the U.S. Bureau of Labor Statistics.<sup>51</sup> Table 9 presents the range of costs associated with

et al., *supra* note 3, at 12-13.

48.  $B = 0.79, p = .008, \text{Exp}(b) = 2.21, \text{Exp}(b) \text{ CI } (1.23-3.94)$ .

49. See Rosenbaum et al., *supra* note 3, for the complete benefit-cost analysis, including more detailed explanations of the assumptions and methodologies employed.

50. Although it is the case that benefits and costs accrue to both the county and the state, using the county as the level of analysis was deemed most appropriate given that the county is the unit of government where the costs and benefits primarily and directly accrue.

51. U.S. Dep't Labor, Bureau of Labor Statistics, *Occupational Employment Statistics*, available at <http://www.bls.gov/oes/2008/may/chartbook.htm#organization>.



<b>TABLE 8 ANNUAL AND HOURLY SALARY COSTS 2008</b>		
<b>POSITION</b>	<b>NEBRASKA MEAN ANNUAL SALARY</b>	<b>NEBRASKA MEAN HOURLY COST</b>
Judge	\$125,349	\$60.26
Law Clerk	\$32,630	\$15.69
Court Clerk	\$32,140	\$15.45
Patrol Officer	\$44,020	\$21.16

<b>TABLE 9 SUMMARY OF POTENTIAL LABOR-COST SAVINGS FROM ONE FTA REDUCTION ACROSS THREE COUNTIES</b>		
<b>EVENT</b>	<b>MINIMUM</b>	<b>MAXIMUM</b>
Type of Warrant Issued:	–	–
Bench Warrant	\$15.49	\$15.49
Arrest Warrant	\$14.78	\$14.78
FTA Charge Added	\$1.05	\$3.20
Clearing Warrant from System	\$4.70	\$4.70
Arrest for Outstanding Warrant and Booking Processing	\$18.51	\$32.40
Bond Processing	\$2.50	\$2.86
Jail (Cost/Inmate for 24 hrs)	\$60.00	\$85.00
<b>Total Cost</b>	<b>\$49.41</b>	<b>\$80.10</b>

an FTA. Although there are variations in costs across counties, the procedures used in the wake of a defendant's failure to appear are similar across counties.<sup>52</sup> Likewise, although there are some labor cost differences across counties, we used constant labor-cost estimates for all the counties in the study. There were differences across counties in the likelihood of an FTA incident; thus, we adjusted the expected benefit of one FTA reduction for each county for the benefit-cost analysis. As we described elsewhere:

As a proxy for jail utilization in all three counties, each arrested defendant who does not post bond spends an estimated .75 jail days waiting for arraignment. The figure for the value of estimated jail utilization for each arraignment FTA is thus the county FTA arrest percentage multiplied by the percentage that do not post bond multiplied by 0.75. The three largest counties are similar in that bench warrants are issued when defendants fail to appear for arraignment. In the cost estimates of all three counties, the estimated rate of unresolved warrants used is five percent. These figures are conservative estimates based on interviews with county officials.<sup>53</sup>

52. Rosenbaum et al., *supra* note 3, at 180-182 and summarized at 181, Fig. 2.

53. *Id.* at 183.

54. The Reminder-Only postcard cost \$0.27 in postage, whereas the

<b>TABLE 10 AVERAGE COST PER POSTCARD</b>			
	<b>TYPE OF POSTCARD</b>		
	<b>REMINDER-ONLY</b>	<b>REMINDER-SANCTION &amp; REMINDER-COMBINED</b>	<b>WEIGHTED AVERAGE</b>
Labor	\$1.15	\$1.15	\$1.15
Materials	\$0.04	\$0.04	\$0.04
Postage	\$0.27	\$0.49	\$0.42
<b>Total</b>	<b>\$1.46</b>	<b>\$1.68</b>	<b>\$1.61</b>

As Table 9 shows, the savings from each reduction in a failure to appear ranges between \$49.91 and \$80.10 across the three counties.

We also determined cost estimates for the entire reminder-postcard process. Using an estimate of 335 labor hours for the reminder-postcard process (including identifying cases, addressing the postcards, and then printing and mailing them), we came up with a labor cost of \$1.15 per postcard. Costs for each of the postcards, however, were estimated independently because they had differential impacts on FTA-reduction rates, and because there were different postage costs associated with mailing the two postcards with substantive content.<sup>54</sup> A cost estimate of \$1.46 was determined for the Reminder-Only postcard and \$1.68 for the Reminder-Sanctions and Reminder-Combined postcards, with a weighted-average cost per postcard of \$1.61 (Table 10). We also estimated that if the identification of cases was automated rather than manualized as in our project, the costs would decrease to \$.69 for the Reminder-Only postcard and \$.91 for the other two postcards, with a weighted-average cost of \$.84 per postcard.<sup>55</sup>

Given that not all postcards were deliverable and that there was not a one-to-one correspondence between postcards mailed and reductions in failures to appear, the cost of each failure to appear in terms of postcards mailed was determined. These costs were \$55.81 for the combined Reminder-Sanctions and Reminder-Combined postcards and \$97.99 for Reminder-Only postcards. The difference was driven by 1) the different effectiveness of each treatment in reducing FTA rates, and 2) the different costs in mailing the varying types of postcards. The next step in the benefit-cost assessment was to assess the benefit of an FTA reduction relative to its cost, which effectively determines the net benefit of postcard reminders; that is, the benefit of a one-unit reduction in FTA minus the cost of a one-unit reduction under the different postcard options, calculated on a per-unit and aggregate basis. Table 11 shows that the net benefit of an FTA reduction for three of the counties<sup>56</sup> differs as a function of which postcard is used. It also changes depending on whether automation can be used. Thus, if automation were used, the net benefit from using the Reminder-Sanctions and Reminder-Combined postcards is \$50

postage cost for the other two was \$0.49 each.

55. Rosenbaum et al., *supra* note 3, at 184-186.

56. To preserve the confidentiality of the jurisdictions involved, we have not specifically identified the three counties.

**TABLE 11  
NET BENEFIT OF A 1-UNIT FTA REDUCTION**

COUNTY	Benefit from Preventing One FTA	COSTS TO PREVENT ONE FTA WITHOUT AUTOMATION			COSTS TO PREVENT ONE FTA WITH AUTOMATION		
		Reminder Only	Reminder Sanctions & Reminder Combined	All 3 Weighted	Reminder Only	Reminder Sanctions & Reminder Combined	All 3 Postcards Weighted
		\$97.99	\$55.81	\$64.08	\$46.39	\$30.28	\$33.49
<b>A</b>	\$80.10	(\$17.89)	\$24.29	\$16.02	\$33.71	\$49.82	\$46.61
<b>B</b>	\$49.91	(\$48.08)	(\$5.90)	(\$14.17)	\$3.51	\$19.63	\$16.42
<b>C</b>	\$58.72	(\$39.27)	\$2.91	(\$5.36)	\$12.33	\$28.44	\$25.23

**TABLE 12  
AGGREGATE IMPACT OF POSTCARD-REMINDER SYSTEM**

COUNTY	2009 Misdemeanor Non-Traffic Offenses*	Estimated Non-Waiverable Offenses (33%)	Estimated FTA Reduction with Rem. Sanctions & Rem. Combined (3.5%)	Aggregate Net Benefit Without Automation	Aggregate Net Benefit With Automation
<b>C</b>	33,884	11,182	336	\$977	\$9,556
<b>A</b>	22,991	7,587	228	\$5,537	\$11,358
<b>B</b>	8,810	2,907	87	(\$516)	\$1,715
<b>3 County Total</b>	65,685	21,676	651	\$5,999	\$22,628

\* Nebraska Judicial Branch, 2009 Annual Caseload Report, available at <http://www.supremecourt.ne.gov/sites/supremecourt.ne.gov/files/reports/courts/cc-caseload-09.pdf>.

per FTA reduction in County A, almost \$30 in County C, and nearly \$20 in County B.

The aggregate benefit, of course, varies as a function of case numbers and case types. In Table 12, using numbers of misdemeanor offenses in 2009 for each of the focus counties, we estimate the number of citations eligible to receive postcard reminders,<sup>57</sup> and the benefits that would be accrued from the positive impacts of the Reminder-Sanctions and Reminder-Combined postcards. Without automation, the benefits range from 228 fewer FTAs at an aggregate net benefit of \$5,537 in County A to 87 fewer FTAs at a net cost of \$516 in County C. With automation, the benefits from reductions in FTAs increase to over \$11,000 in County A and generate a positive, net benefit of \$1,715 in County B.

### III. CONCLUSIONS

In this experimental study, we asked whether postcard reminders would decrease failure-to-appear rates for misdemeanants in Nebraska, and if so, what would be their cost-effectiveness. We found that postcard reminders did, indeed, reduce failure-to-appear rates. Based on procedural-justice and trust/confidence theories, we predicted that failure-to-appear rates would decrease for all defendants if they were reminded of the court-hearing date and time using language that included components of procedural justice. Although postcard reminders did decrease FTA significantly, the postcard with the procedural-justice information did not differentially decrease FTA rates compared to the postcard with only sanctions infor-

mation. The two substantive reminder postcards, however, were generally superior to the simple reminder postcard. FTA rates also varied as a function of geography (urban versus rural) and the nature and number of the offenses.

We also had predicted, consistent with theories of the impacts of procedural justice and trust and confidence, that procedural-justice and trust/confidence perceptions would be related to failure to appear. Our data revealed some support for procedural justice and even greater support for trust and confidence, in that defendants scoring higher on these constructs were more likely to appear. We also found effects for race/ethnicity related to trust/confidence perceptions.

Our more elaborate benefit-cost analysis allowed us to learn that while postcards were cost-effective overall, they were not so in all cases. Moreover, projections indicated that more benefits would accrue if the reminder process could be automated.

Thus, our experimental approach to examining a court reform allowed us to obtain specific insights into what worked, what the circumstances were for what worked versus what did not, and why things worked. Moreover, by conducting an actual benefit-cost analysis, we were able to show more precisely what costs versus benefits were associated with the reforms. This approach to assessing potential administrative changes to court procedures provides insights that allow for more strategic decision making than simply implementing a reform and/or globally projecting cost-savings.<sup>58</sup> In fiscally challenging times, it is worthwhile to know whether incurring the costs for more expensive interventions such as phone calls

57. There were 18,581 offenses, of which 6,149 were non-waiverable.  
58. Our approach was similar to the approach taken in Jefferson County, where different variations were assessed, systematically

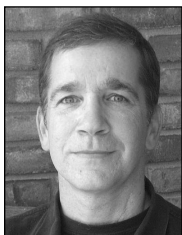
and using random assignment to conditions. Schnacke, Jones, & Wilderman, *supra* note 5.

makes sense when automated postcards might bring more bang for the buck.<sup>59</sup>

There might be a range of solutions that could be used to increase court appearances for misdemeanants.<sup>60</sup> In the end, research in general, and experimentation in particular, along with systematic evaluation, should guide court reforms and help identify justice policies and practices that protect public safety without incurring unnecessary costs.<sup>61</sup>



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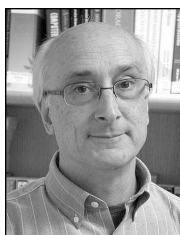


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59. Other options exist besides calling defendants or mailing them postcard reminders. For example, Nebraska's 11th judicial district, in collaboration with the National Center for State Courts, is currently piloting whether text-message reminders for probation/restitution payments will increase compliance with court-ordered payments. This same free text-messaging technology, which uses the Administrative Office's database, could be used to implement court reminders.

60. It certainly makes sense to avoid unnecessary incarcerations, so the practice of citing defendants for misdemeanors and expecting them to appear is good policy. See, e.g., <http://www.pretrial.org/> (arguing for pretrial practices that assure safety without compris-

ing defendants' liberty interests).

61. We realize we are preaching to the choir: Members of the American Judges Association have long used experimental techniques to assess court reforms. See, e.g., Deborah A. Eckberg & Marcy R. Podkopacz, *Family Court Fairness Study* (Fourth Jud. District Res. Division, Hennepin Co., MN) (2004), available at [http://www.mncourts.gov/Documents/4/Public/Research/Family\\_Court\\_Fairness\\_Report\\_Final\\_\(2004\).pdf](http://www.mncourts.gov/Documents/4/Public/Research/Family_Court_Fairness_Report_Final_(2004).pdf) (past-AJA President Kevin Burke's court's experimental study of the use of messaging decisions to defendants, based on procedural-justice principles, as part of domestic-violence case).