The Problem of Default, Part I

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Abstract

We study the problem of routine default by human defendants, using the Boston Municipal Court's debt collection docket as our laboratory. As we explain, routine default threatens the foundations of the United States court system. Arbitraging various non-law literatures, we designed interventions consisting of two forms of mailings. We study the effectiveness of our two mailings in a randomized control trial that includes a no-intervention control group. We find no difference in effectiveness between our two mailings, and that both roughly double the rate at which defendants participate in their lawsuits (results are statistically significant). We discuss implications of our findings.

I. Introduction

The fundamental model of United States adversarial system of litigation posits that parties on opposing sides of a dispute, each armed with resources sufficient for the purpose, will contest issues of fact and law, with the contest allowing a disinterested adjudicator to generate outputs that comport with law and, on good days, perhaps even with justice. For decades, quantitative and qualitative evidence has mounted calling into question the descriptive accuracy and analytical usefulness of this model, perhaps for all cases in United States adjudicatory systems, perhaps just for cases in which at least one of the parties to the dispute is a human being (as opposed to a business entity, a government, a labor union, or some other incorporeal entity). Scholars have contended that persons with justiciable issues[1] infrequently bring those issues to courts or other adjudicatory bodies;[2] how well-resourced repeat players mold adjudicatory

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[1] By "justiciable issues," we mean issues for which the formal legal system purports to provide a remedy, or at least a dispute resolution system. Hazel Genn, Paths to Justice: What People Do and Think about Going to Law XX (1999).

[2] Causes of such in action range from the sociological, *see* Rebecca L. Sandefur, *The Importance of Doing Nothing: Everyday Problems and Responses of Inaction*, TRANSFORMING LIVES: LAW AND SOCIAL PROCESS 123 (Pascoe Pleasence, Alexy Buck, Nigel Balmer, eds., 2007), to the economic, *see* Lucian A. Bebchuk and Alon Klement, Discussion Paper No. 656: Negative-

bodies to their own ends;[3] that formal rules as simple as filing fees can bar litigants from invoking adjudicatory proceedings, even proceedings designed specifically for the benefit of the financially destitute;[4] that, in certain classes of cases, procedural and substantive complexity in the legal system renders access to adjudicatory bodies impossible without professional assistance;[5] that, even among parties blessed with resources sufficient to afford counsel, inequality of resources among parties can affect adjudicatory outputs;[6] and so on.

Perhaps the most existential threat to the legitimacy and effectiveness of the United States adversarial model of litigation comes from an obvious and everyday occurrence: routine default. By default, we mean when a plaintiff wins an adjudicatory contest because the defendant fails to appear in court to contest it. A sports analogy clarifies the existential nature of the threat: which is more likely to result in an asterisk in the record books of a major sports league, a final game "decided" by poor officiating, or a final game "decided" by one team's boycott?[7] Routine defendant defaults may be a greater threat to the legitimacy of United States adjudicatory systems than is a routine failure, or perhaps an inability, of putative plaintiffs to bring claims to the formal legal system. In both a defendant's default and a plaintiff's inability to file, no battle is joined, and thus the adversarial model has little hope of producing "truth." But only in the former does the system, despite the absence of a battle, publicly declare a winner.

Moreover, routine default by human being defendants may also be a symptom of an access to civil justice problem. Particularly when there is reason to believe that defenses

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Expected-Value Suits, John M. Olin Center for Law, Economics, and Business, Harvard Law School (2009) (reviewing the law and economics literature on negative expected value lawsuits), available at http://www.law.harvard.edu/programs/olin_center/papers/pdf/Bebchuk_656.pdf (last visited January 5, 2015).

[3] See, e.g., Marc Galanter, Why The "Haves" Come out Ahead: Speculations on the Limits of Legal Change, 9 Law & Society Review 95 (1974); see generally, In Litigation, Do the "Haves" Still Come Out Ahead? (Herbert M. Kritzer and Susan Silbey eds. 2003).

[4] See especially United States v. Kras, 409 U.S. 434 (1973); see also Ortwein v. Schwab, 410 U.S. 656 (1973); Frank I. Michelman, The Supreme Court and Litigation Access Fees: The Right to Protect One's Rights, Part II, 1974 Duke Law Journal 527 (1974); Frank I. Michelman, The Supreme Court and Litigation Access Fees: The Right to Protect One's Rights, Part I, 1973 Duke Law Journal 1153 (1973).

[5] See, e.g., Richard Zorza, Some First Thoughts on Court Simplification: The Key to Civil Access And Justice Transformation, 61 Drake Law Review 845 (2013).

[6] See, e.g., Kathryn E. Spier and David Rosenberg, On Structural Bias in the Litigation of Common Claims (2012), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1950196.

[7] See, e.g, Colleen Curry, NBA Players Were Willing to Boycott If Sterling Wasn't Punished (2014), available at http://abcnews.go.com/US/nba-players-boycott-sterling-punished/story?id=23520534. Many of the public values undermined by default are discussed in Owen M. Fiss, Against Settlement, 93 Yale Law Journal 1073 (1984).

(perhaps excellent ones[8]) are available to defendants who contest lawsuits, routine default may suggest that litigants without lawyers may not be able, or (just as importantly) may not feel able, to do what appears to be in their best interest. If it turns out that defenses are available, then routine default means that the United States adjudicatory system is routinely churning out legally incorrect rulings that impose legally unwarranted costs on individual members of the public.

This paper is about default. Specifically, it is about discerning how to decrease routine default by human defendants and, in doing so, to discern why such routine default occurs. From the previous paragraphs, our normative structure should be self-evident: we think default by human defendants is bad—perhaps not every particular default, but routine default.

Despite our unabashed normative commitment, we are empiricists. More specifically, we are interventionists. We believe that one can generate useful knowledge, both about what works and what does not as well as about how socio-legal systems operate, by intervening in the world (in the right way), by observing what happens, and by theorizing from those results. Evaluating interventions to learn about what works and what does not requires little further explanation, except perhaps to say that in our view, such evaluations should be conducted via randomized controlled trials (RCTs) whenever possible. We report the results of an RCT here.

With respect to using an intervention to generate useful knowledge about how socio-legal systems operate, our methodology is that of diagnosis by treatment. The idea is that if there are (say) two competing explanations for a phenomenon, but under only one of those explanations would a particular intervention result in observable result, then one can learn which of the two explanations is more likely by deploying that intervention and seeing what happens. Physicians know, for example, that sometimes the best way to find out whether a patient has a particular disease is to administer a cure for that disease and see if the patient gets better.[9] To the extent one accepts these interventionist premises, one need not agree with our normative commitment to find our research useful.

In this paper, we report the results of an RCT evaluating the effectiveness of interventions designed to attempt to lower default rates in debt collection cases against human defendants. Debt collection lawsuits against human defendants represent an obvious milieu in which to investigate routine default. As we explain below, in the Boston Municipal Court's general civil docket (where our study took place), we observed a baseline default rate in this class of cases of over 95%, and studies of other jurisdictions have reported comparable default rates in debt collection litigation against human defendants.[10] Indeed, as some courts have held,

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[8] Comptroller of the Currency, United States Department of Treasury. 2013. "In re JPMorgan Chase Bank, N.A., et al." No. AA-EC-13-76, available at http://www.occ.gov/static/enforcement-actions/ea2013-138.pdf (last visited January 7, 2015).

[9] See, e.g., X. Lum, Erik, Chris Tymchuk, Randa Serag, and Nasim Afsarmanesh, "Diagnosis by Treatment," 6 Journal of Hospital Medicine 546–549 (2011).

[10] See Mary Spector, Debts, Defaults, and Details: Exploring the Impact of Debt Collection Litigation on Consumers and Courts, 6 Va. L. & Bus. Rev. 257, 288 (2011) (reporting an 77% default rate in debt collection cases in the Dallas County Courts at Law); Claudia Wilner &

certain players in the debt collection litigation industry file lawsuits with intent to "proceed" only in those cases in which the defendant defaults,[11] and thus parts[12] of the debt collection industry in the United States depend on routine default. Further, there is reason to believe that many defendants in debt collection cases have winning defenses, particularly in cases brought by debt buyers, where the most effective defense may be the argument that the burden of proof in civil litigation is on the plaintiff.

Our interventions consisted of mailings. We built our mailings around two hypotheses. The first was that not all debt collection defendants were debtors who knew that they owed the debt and sought to delay the inevitable by failing to appear. Rather, at least some were individuals who either (i) did not understand what was happening, or what would happen, or how to respond to it, or (ii) faced psychological and social barriers to contesting lawsuits even if provided with the right information. Second, because of the psychosocial barriers just mentioned, we hypothesized that we had to do more than provide information about how to respond. Rather, we hypothesized (and subsequently found qualitative evidence suggesting) that some debt collection defendants defaulted because of "shame, a sense of insufficient power, fear, . . . and frustrated resignation."[13] We deployed a range of tactics to provoke a response from defendants:

Nasoan Sheftel-Gomes, Neighborhood Economic Development Advocacy Project, Debt Deception: How Debt Buyers Abuse the Legal System to Prey on Low Income New Yorkers. 6 (2010), available at http://www.nedap.org/pressroom/documents/DEBT_DECEPTION_FINAL_WEB.pdf (finding an 80% default rates in a sample of New York City Small Claims Court cases); United States Government Accountability Office, GAO-09-748, Credit Cards: Fair Debt Collection Practices Could Better Reflect the Evolving Debt Collection Marketplace And Use of Technology.
41 (2009) (reporting a 45% default rates in debt collection cases in Cook County, Illinois); Russell Engler, Out of Sight and Out of Line: The Need for Regulation of Lawyers' Negotiations with Unrepresented Poor Persons, 85 California Law Review 79, 119 (1997) (finding 70-90% default rates in "consumer cases," concededly a broader category than debt collection cases).

[11] See, e.g., Miller v. Javitch, Block & Rathbone, 561 F.3d 588 (2013); Royal Financial Group, L.L.C. v. Perkins, No. ED98991 (Mo. Ct. App. Aug. 20, 2013), available at http://www.courts.mo.gov/file.jsp?id=64644 (last visited January 7, 2015).

[12] But not all: cite to email Greiner received from debt collection attorney who welcomes the involvement of the defendant.

[13] The quotation above is from Rebecca L. Sandefur, *The Importance of Doing Nothing: Everyday Problems and Responses of Inaction,* TRANSFORMING LIVES: LAW AND SOCIAL PROCESS, Pascoe Pleasence, Alexy Buck, Nigel Balmer, eds., 2007, 123-25, and it refers to four of the five reasons why, according to Sandefur, individuals in general frequently do not engage with the formal legal system. In another project in which both of us (with others) are engaged, we have collected extensive qualitative evidence of the overwhelming feelings of shame, nervousness, guilt, and fear (including fear of incarceration) experienced by debt collection defendants merely upon being served with process. Quotations from interviews of debt collection defendants are startlingly vivid. A sample: "[Y]ou are so nervous when you get a summons and complaint: you think jail/arrest! It is very stressful." Another sample: "Q: How did you feel when you were first notified of the lawsuit in the summons and complaint? A: Nervous. Q: How do you think others feel who are less smart or knowledgeable than you? A:

adult education techniques (particularly cartoons) to increase users' understanding of the legal process;[14] explanations of costs and benefits to incentivize participation; and appeals to defendants' sense of procedural justice.[15]

In summary form, our results are as follows: As compared to a randomly selected Control group with a 13% answer rate (corresponding to an 87% default rate), our "Limited" intervention group saw a 24% answer rate, and our "Maximal" intervention group saw a 24% answer rate. The corresponding rates for whether the defendant appeared at the first scheduled court hearing were 7.5%% for the Control group, 14% for the Limited group, and 15.3 for the Maximal group. Differences between the Control versus the Limited and Maximal groups were statistically significant. Differences between the Limited and Maximal groups were not.

This article proceeds in three additional parts. In Part II, we summarize the existing literature on debt collection lawsuits and on default rates. In Part III, we summarize the factual and logistical background for our study, explain the theoretical foundations upon which we constructed our interventions, and discuss the quantitative results of our RCT. In Part IV, we hypothesize explanations for the result of our study and discuss what evidence it contributes on the variety of debates at issue. Further, we outline an agenda for rigorous future research on why *pro se* defendants do not access the courts, and how to address the problem of default.

II. Default: The Problem, and Competing Explanations

A. Default and Debt Collection

In recent years, consumer advocates and government regulators have increased attention paid to the problem of default in debt collection lawsuits.[16] This phenomenon presents a

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More scared." D. James Greiner, Dalié Jiménez, and Lois R. Lupica, Lay Deployment of Professional Legal Knowledge, 11 & nn. 50, 52 (2014) (unpublished manuscript, on file with authors).

[14] *See, e.g.*, W. Howard Levie & Richard Lentz, *Effects of Text Illustrations: A Review of Research*, 30 Educational Communication and Technology 195 (1982) (analyzing 155 studies on the effect of illustrations on reading comprehension); Peter S. Houts et al., *The Role of Pictures in Improving Health Communication: A Review of Research on Attention, Comprehension, Recall,* and *Adherence*, 61 Patient Education Counseling 174 (2006); Chris Delp & Jeffrey Jones, *Communicating Information to Patients: The Use of Cartoon Illustrations to Improve Comprehension of Instructions*, 3 Academic Emergency Medicine 264 (1996); J.M.H. Moll, *Doctor-Patient Communication in Rheumatology: Studies of Visual and Verbal Perception Using Educational Booklets and Other Graphic Material*, 45 Annals of the Rheumatic Diseases 198 (1986).

[15] *See* TOM R. TYLER, WHY PEOPLE OBEY THE LAW (2006).

[16] *See, e.g.*, Rick Jurgens & Robert J. Hobbs, Nat'l Consumer Law Ctr., *the Debt Machine: How the Collection Industry Hounds Consumers and Overwhelms Courts* (2010), *available at* http://www.nclc.org/images/pdf/pr-reports/debt- machine.pdf.; U.S. Bureau of Consumer Fin. Prot., *Fair Debt Collection Practices Act: CFPB Annual Report 2012* (2012) *available at* http://files.consumerfinance.gov/f/201203_cfpb_March_FDCPA_Report1.pdf; U.S. Bureau of

particular case of a broader trend: Americans facing adverse civil legal proceedings, including but not limited to family law disputes, small claims lawsuits, and eviction cases, are often unlikely to do anything in response.[17] The more vulnerable the household to an adverse consequence, the less likely the household is to act in order to remedy the issue.[18] Default judgments are case dispositions in which plaintiffs obtain judgments against defendants because those defendants do not contest the plaintiff's case in court. These judgments are frequent in many types of courts and many types of cases. While statistics on default judgments do not exist for every type of case, some estimate that debt collection suits in some court systems have default rates upward of 90%.[19]

The issue of default judgments against individuals poses a particularly troubling problem. Assuming that *pro se* defendants default at higher rates that represented defendants, such behavior presents an access to justice problem in that low- and middle-income people are not benefiting from—and are in fact disproportionately suffering adverse consequences from—the formal administration of justice. Further, the high rates of unrepresented defaults raises the possibility that not having the funds to access a lawyer may be related to the desire or ability to contest a lawsuit, no matter how much or how little merit there is to the plaintiff's claims.

To our knowledge, our study is the first of its kind to evaluate an intervention intended to reduce default rates in civil cases using a randomized control trial.[20] The majority of quantitative studies of legal services providers ("LSPs") concern the effectiveness of services rendered after some kind of contact by the potential client with the service provider, meaning that potential clients who do not make contact with service providers go unaddressed. Of these studies, only a small number of studies randomize the intervention they intend to test.[21] Faced with overwhelming demand, LSPs are seldom in a position to feel the negative effects of high default rates.

Consumer Fin. Prot., *Fair Debt Collection Practices Act: CFPB Annual Report 2013* (2013), *available at* http://files.consumerfinance.gov/f/201303_cfpb_March_FDCPA_Report1.pdf.

[17] *See* Rebecca L. Sandefur, *The Importance of Doing Nothing: Everyday Problems and Responses of Inaction*, TRANSFORMING LIVES: LAW AND SOCIAL PROCESS, Pascoe Pleasence, Alexy Buck, Nigel Balmer, eds., 2007, 123-25.

[18] *Id*. at 123.

[19] Jon Leibowitz et al., U.S. Federal Trade Comm'n, *Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration* (2010) (hereinafter, "Broken System"), 7, *available at* http://www.ftc.gov/os/2010/07/debtcollectionreport.pdf.

[20] In the criminal context, see Alan Tomkins, Brian Bornstein, Mitchel Herian, David Rosenbaum & Elizabeth Neeley, *Reducing Courts' Failure to Appear Rate: A Procedural Justice Approach*, Document No. 234370 (May, 2011) (on file with authors), and Alan Tomkins, Brian Bornstein, Mitchel Herian, David Rosenbaum & Elizabeth Neeley, *An Experiment in the Law: Studying a Technique to Reduce Failure to Appear in Court*, 48 COURT REVIEW 96.

[21] See D. James Greiner & Cassandra Wolos Pattanayak, Randomized Evaluation in Legal Assistance: What Difference Does Representation (Offer and Actual Use) Make?, 121 Yale Law Journal (2012).

A default judgment occurs when a judge grants a plaintiff's claims against a defendant due to the defendant's failure to appear for proceedings. Depending on the procedures of various courts, defendants often are not defaulted for failing to file an answer to plaintiff's complaint; in many small claims courts, for example, no answer is required, or even allowed. However, failing to appear for the first (or, at least, an early) court date will result in a judgment in favor of the plaintiff. In the debt collection context, this judgment can both serve and frustrate the purposes of a debt collector. First, obtaining a judgment against a debtor—through default or not—allows a debt collector to begin collection activities pursuant to that court's judgment. That said, an absent defendant does not come face-to-face with the plaintiff or the judge, and therefore does not witness the judge's pronouncement that a debt is owed and must be paid. Nor does a defendant have an opportunity to air his or her narrative concerning the plaintiff's claims. Without these interactions, a defaulted defendant may question the legitimacy, veracity, or fairness of a judgment against him. Most commonly, court actors and judges consider high default rates a public harm, as the administration of justice suffers when parties do not meet in an adversarial proceeding in order to resolve claims. [22]

B. Two Competing Hypotheses

Qualitative research on inaction on legal issues has revealed complex rationales on the part of low and middle-income people who do nothing to resolve justiciable problems. Rebecca Sandefur's study on "doing nothing," which encompasses but is not limited to failures to appear in court, identifies five "rationales for inaction: shame, a sense of insufficient power, fear,

[22] See, e.g., *Jackson v. Beech*, 636 F.2d 831, 835 (D.C. Cir. 1980) ("Default judgments are not favored by modern courts . . . ."); *Velazquez-Rivera v. Sea-Land Serv., Inc.*, 920 F.2d 1072, 1079 (1st Cir. 1990) ("In a close case, doubts should be resolved in favor of adjudicating contested claims on the merits."); *Affanato v. Merrill Bros.*, 547 F.2d 138, 140 (1st Cir. 1977) ("Default judgments are disfavored in the law."); *Oberstar v. F.D.I.C.*, 987 F.2d 494, 504 (8th Cir. 1993) ("The judicial preference for adjudication on the merits goes to the fundamental fairness of the adjudicatory process."); *In re Worldwide Web Sys., Inc.*, 328 F.3d 1291, 1295 (11th Cir. 2003) ("there is a strong policy of determining cases on their merits and we therefore view defaults with disfavor."); *In re Schnell*, 148 B.R. 365, 366 (D. Mass. 1992) ("[D]efault judgments are generally disfavored, and cases should be tried on their merits whenever possible."); *E. Elec. Corp. of New Jersey v. Shoemaker Const. Co.*, 652 F. Supp. 2d 599, 604 (E.D. Pa. 2009) ("the entry of a default judgment is disfavored because it has the effect of preventing a case from being decided on the merits."); *In re USN Commc'ns, Inc.*, 288 B.R. 391, 394 (Bankr. D. Del. 2003) ("Generally, the courts of the Third Circuit have disfavored default judgments . . . ."); *Wenger v. Wenger*, 239 Kan. 56, 61, 716 P.2d 550, 554 (1986) (noting "the law favors trial of causes on the merits and looks with disfavor on default judgments."); *Evangelidis v. Cuevas*, 2008 Mass. App. Div. 88 (Dist. Ct. 2008) (noting a "general judicial policy disfavoring defaults"); *Scannell v. Ed. Ferreirinha & Irmao, LDA*, 23 Mass. App. Ct. 465, 470, 503 N.E.2d 668, 671 (1987) ("[W]e give weight to the strong judicial preference for seeing serious and substantial cases dealt with on the merits with representation of all parties by counsel, rather than by default."); *Murray v. Matusiak*, 247 A.D.2d 303, 304, 669 N.Y.S.2d 278, 280 (App. Div. 1998) ("[I]t is the established policy of this State that disputes be resolved on their merits.").

gratitude, and frustrated resignation."[23] While Sandefur notes that these rationales often interacted with resource constraints like a lack of information or financial resources, they ware "frequently presented as the sufficient and sole reason" for an individual's failure to take action.[24]

Each of these factors suggests an intervention aimed at reducing default should focus on something more than providing information about what to do to avoid default. Were resource constraints alone responsible for default rates, publicizing information about the court process and available free legal resources would resolve the issue. But as Sandefur suggests, "subtler forces are at work."[25] Of particular relevance in debt collection lawsuit, individuals report feelings of shame and embarrassment as barriers to taking action to resolve problems. Others describe their assessment of the court system as skewed against their interests, identifying their own lack of power as a result of the opposing party's "authoritativeness" or relative advantage in resources as determinative of the outcome no matter what may happen in a court proceeding. As a result, individuals describing an unfavorable balance of power are unwilling to expend their time and energy confronting the opposing party in court or out of court, or even seeking information about their situation. Finally, Sandefur cites fear, gratitude, and frustrated resignation resulting from past experiences, even when past problems "were not causally linked"[26] to the instant legal issue, as justifications advanced by some individuals who declined to take action. Frustrated resignation seems particularly resonant in the context of debt collection actions, wherein defendants are likely to have been "dunned" by original issuers or third-party debt collectors through mail-based collection notices and phone calls.

Moving from the realm of qualitative empirical research to that of political posturing, two explanations have emerged for defendants do not contest their debt collection lawsuits. In the first explanation, which we will refer to as the "debt collector narrative," defendants refuse to attend court because they are attempting to avoid the inevitable. By hiding, delaying, and refusing to respond to plaintiffs' attempts to communicate, defendants force debt collectors or original credit issuers to resort to the court system in order to enforce their contracts. A 2010 Federal Trade Commission report on debt collection solicited comments from researchers, consumer advocates, and industry representatives. The report quoted various debt collectors arguing as follows: "[M]ost of the people . . . don't file an answer because they have no defense."[27] Another claimed, among other reasons, "lack of money to repay debt" is the reason for high default rates.[28] Another argued defendants default because of "helplessness and hopelessness . . . [because] they owe the debt."[29] Another debt collector, interviewed in a Boston

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[23] Rebecca L. Sandefur, *The Importance of Doing Nothing: Everyday Problems and Responses of Inaction*, TRANSFORMING LIVES: LAW AND SOCIAL PROCESS, Pascoe Pleasence, Alexy Buck, Nigel Balmer, eds., 2007, at 123.
[24] *Id*.
[25] *Id*. at 126.
[26] *Id*. at 124.
[27] Federal Trade Commission, "Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration," July 2010, at 12, quoting Buckles Transcript I at 24.
[28] *Id*. quoting Leibsker Transcript I at 62.
[29] *Id*. quoting Zezulinski Transcript V at 50.

Globe report on the debt collection industry, characterized defendants as having an "ostrich mentality."[30] While certainly not a random sampling of debt collector opinions, these views have been publicized and, in the case of the FTC report, submitted as indicative of the industry's explanation for default rates. Some of these statements posit that every single debt collection defendant who fails to contest does so because he lacks a viable defense. We deem this extreme argument frivolous, but we take seriously the hypothesis that most defaulting defendants are guilty procrastinators.

In a second explanation, which we will call the "LSP narrative," lack of legal resources, ignorance of the court system, and psychological barriers (which we will collectively call "access to justice issues") prevent defendants from answering lawsuits. Low-income individuals do not have the financial resources to hire a lawyer; do not feel comfortable making appearances in court; do not believe that they possess sufficient social, economic, or political power to make an appearance in the court system worthwhile; or do not have sufficient flexibility in their lives to attend court without running the risk of a catastrophic consequence (such as losing a job or leaving a child unattended). Specifics may differ, but generally these views hold that individuals need some kind of help to get themselves to the point of taking legal action.

At present, advocates of both views are free to assert them as loudly as they desire, unburdened by evidence. We inform this debate by deploying an intervention, then reasoning backwards from what we see. Our critical assumption is the following: were the debt collector narrative true, no information intervention would have a significant impact on default rates. Defendants seeking only to hide or delay would not change their thinking on whether to appear based on information provision or persuasion. So if an information intervention moves the default rate in debt collection lawsuits, then the debt collector narrative is incomplete, at least with respect to the fraction of individuals who do engage with court processes.

III. This Study

In this Part, we detail the impetus for, theory behind, and design of our study. Section A discusses the origins of the project, including some of the logistical details about how the operations of the Boston Municipal Court, the site of our study. Section B describes our initial quest for guidance on how to design our intervention. Section C details the development of our mailings, including the substance of the material, our method of design and format, and the various components. Section D describes the setup and implementation of our RCT. Finally, Section E provides results.

A. Study Origins

This study began when the Boston Municipal Court (the "BMC") and the Volunteer Lawyers' Project (the "VLP"), a local pro bono organization, sought our assistance in increasing defendant responsiveness to debt collection lawsuits. The VLP coordinates volunteer lawyers to

[30] http://www.boston.com/news/special/spotlight_debt/part1/page4.html

assist pro se individuals throughout the Boston area civil court system. Among other activities, the VLP operates a "Lawyer for the Day" ("LFTD") table outside the BMC's "CV" docket. The CV docket, with jurisdiction up to $_____ in controversy, has 3000-4000 filings per year, roughly 20-25% of which are debt collection cases against individual defendants. The CV docket is not a small claims court; to avoid default, a defendant must file an answer to a complaint, at which point court will schedule a Case Management Conference (a "CMC"). The full panoply of rules of evidence and civil procedure apply to subsequent proceedings.

Pro se parties on either side of a lawsuit may approach the LFTD table immediately outside of the BMC courtroom to request legal advice. LFTD volunteer lawyers also provide some income- and asset-eligible pro se parties with gratis "limited assistance representation," consisting of negotiating with opposing counsel, filing motions (such as motions to amend answers or to remove default), or arguing before the court. Absent unusual circumstances, the assistance ends when the pro se litigant leaves the court that day.

In the BMC, the LFTD program suffered from a problem rare in legal services. While plaintiffs' lawyers frequently appeared, few pro se defendants contested their lawsuits. As a result, the LFTD table experienced a borderline Kafkaesque situation of too many lawyers available to offer free assistance to too few eligible clients. We agreed to propose an intervention on the condition that we be allowed to test it via an RCT and to publish the results (whatever they were).

B. Guidance in Designing Our Intervention

Because the VLP and the BMC have scarce resources to allocate toward reducing default, we sought to create a functional but low cost intervention. Strongly suspecting that the problem of default in debt collection cases was national in scope, we also sought a scalable intervention. Further, we knew that case-specific information available to us at little or cost would be severely limited. We could not expect to examine each case's complaint or summons at reasonable cost, and given the featherweight and conclusory allegations provided in a typical debt collection complaint, we judged that such an examination would have provided little useful information anyway. Telephone numbers were unavailable without an independent search, and the pre-lawsuit dunning practices of debt collection plaintiffs made us reluctant, at least in this first study, to pursue high-operational-cost interventions such as personal calls or text messages.[31] Personal visits were out of the question in this first study on cost grounds alone. That left the mail. We knew that we could obtain the defendant's name and address,[32] the case number, the plaintiff's name, and the name and address of the plaintiff's attorney from BMC's electronic records.

But what kind of mailing? We had hoped to obtain significant guidance from both personal interviews of debt collection defendants and the literature (any literature) on the design of a mailing. Our hopes were unrealized.

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[31] *Cf.* Laura C. Haynes, Donald P. Green, Rory Gallagher, Peter John, and David J. Torgerson, Collection of Delinquent Fines: An Adaptive Trial To Assess the Effectiveness of Alternative Text Messages, 32 J. Policy Anal. & Manag. 718 (2013).

[32] Or, at least, the address the plaintiff provided. See below for further information on this score.

1. Interviews of Debt Collection Defendants

We obtained 100 addresses of debt collection defendants from the BMC CV docket. We hired two Sociology graduate students to deliver a flyer we developed jointly with them to these addresses. The flyer invited recipients to call a provided number to participate in a study run by researchers at Harvard Law School on how to structure mailings to provide assistance to our target population. The flyer did not mention debt collection, and it offered $20 in return for an anonymous, 45-minute interview to be conducted in person at the recipient's convenience.

Nothing happened. Essentially, no one responded to the flyers. Despite their best efforts, the graduate students were able to conduct only two interviews, only one of which was with a person likely to be a debt collection defendant. The interviews were professionally conducted, but with such a small number of recipients, we could not use the information produced.

2. Literature review on intervention design

Our literature review on mailings to pro se people encompassed two kinds of sources, (i) examples from other courts and LSPs, and (ii) academic and trade literature. Neither source provided much fruitful information.

Regarding the first source, we found no shortage of examples of mailings from courts or LSPs to defendants, including debt collection defendants, either providing information about responding to lawsuits and/or notifying them of available legal services, including lawyer for the day programs. When we found examples, we (with the assistance of research assistants) interviewed their authors to investigate the thought processes that went into the design and content of these materials. For at least two reasons, this effort resulted in few usable lessons. First, there seemed to be little thought placed into the design of the mailings, other than a desire to use simple, plain prose. There appeared to be little intentional about the appearance of the delivery envelope; the way in which the provided content would appear on the page; the method of identifying the sender to the recipient; and a myriad of other aspects of mailings that seemed to us likely to affect whether the mailings would generate responses. Second, examples are not evidence. No one we interviewed had, or knew of anyone who had, any evidence (even evidence from poor research designs) regarding the effectiveness of the mailings used.

Lacking evidence from the specific field in which we were operating, we sought guidance elsewhere. We were particularly hopeful that two users of mass mailings, junk mailers and political campaigns, would have generated useful and publicly available guidance. As before, our hopes were largely unrealized.[33] Perhaps the most useful lesson that we drew from this literature review was the sense that the construction of our mailing had to focus on three conceptual tasks: (i) inducing recipients to open whatever envelope we sent; (ii) inducing

[33] The next paragraphs are largely drawn from a memorandum completed by a research assistant. *See* Limore Torbati, Methods for Encouraging Litigants to Follow Through with Their Legal Commitments: A Marketing and Psychology Based Perspective (January, 2014, on file with authors).

recipients to read the information included; and (iii) inducing recipients to take the recommended action. We kept these three tasks in mind as we quite literally went back to the drawing board to design our intervention. But we were disappointed to find that most of the evidence from this field, with its obvious susceptibility to randomized trials, came from observational studies, with all of their attendant difficulties. Further, much of the information came from studies of commercial vendors, as opposed to non-profits, and we considered the latter setting to be more analogous to our own. We integrated the few lessons learned in this search in our intervention.

C. Development of our Mailings

Although we found little guidance from either our efforts to contact debt collection defendants directly or our review of analogous literature, we did benefit from the fact that the present effort took place at roughly the same time as the construction of a much larger study to address the debt-related causes and effects of severe financial distress. Both of us are involved in the Financial Distress Research Project (the "FDRP"), a 1200-subject randomized trial to take place in Maine. The FDRP, both the field operation[34] and the thinking that went into the design of hundreds of pages of self-help educational materials,[35] are described elsewhere. For present purposes, it is enough to state that we and others, in the context of the FDRP and the present project, reviewed literature from psychology, economics, adult education, political science, public health, and sociology. The goal of this effort was to learn what we could about how to attract attention to written materials, to increase interest in a future event, to educate an adult reader on unfamiliar concepts, and to galvanize an adult reader to act in the face of potentially debilitating and paralyzing emotional states of reluctance, intimidation, fear, shame, or uncertainty. Because a description of these literatures and an analysis of the lessons they provide for the construction of materials addressing debt collection appear elsewhere, we focus the following discussion on the construction of the particular materials used in this study.

To reiterate, we knew that our task was to induce debt collection defendants who already received extensive dunning mailings and telephone calls to (i) open, (ii) read, and (iii) act. In terms of what action needed to be taken, our materials needed to induce a litigant to fill out three copies of an Answer form (which we would provide), mail two of those copies, receive a notice from the BMC of a scheduled court date, and appear in court on that scheduled date. This section details the iterative design process that produced the key elements of our intervention: a teaser postcard, a letter from the VLP enticing defendants to attend court, and an Answer form for defendants to complete and submit to the BMC and to plaintiff's counsel.

1. Cartoons

The most striking feature of our materials is the extensive use of customized cartoon illustrations. The adult education literature generally concludes that including illustrations

[34] A description of the FDRP's fundamental field operation appears in Dalié Jiménez, D. James Greiner, Lois R. Lupica, & Rebecca L. Sandefur, Improving the Lives of Individuals in Financial Distress Using a Randomized Control Trial: A Research and Clinical Approach, 20 Georgetown Journal on Poverty Law & Policy 449 (2013).

[35] Greiner et al., supra note 13, discusses the construction of the self-help materials for the FDRP.

increases reading comprehension, as long as the illustrations relate to the text.[36] In health education, Levie and Lintz found that combining illustrations and text can also increase the rate at which recipients of text actually read it.[37] Recipients of illustrated instructions were also significantly more likely to follow those instructions, particularly those with lower literacy.[38] We found these lessons salient to our work, as we sought to convey complex instructions and advanced concepts to a lay audience.

In addition, we sought to communicate with readers at a stressful time—concurrent with or immediately after they were informed of lawsuits against them. The adult education literature had guidance on this score as well: once again, it pointed to illustrations, particularly cartoons. For example, Moll found that cartoons succeed in communicating information in part because they helped assuage the reader's anxiety.[39] Moll suggested a "warming" effect: cartoons may cut a reader's problem down to manageable size, which may relax the reader and lead to increased recall.[40] Delp and Jones found that cartoons can make readers more likely to pay attention to text.[41]

But not all illustrations are created equal. For example, Moll found cartoon drawings the most helpful in increasing comprehension, followed by stick drawings, followed by photographs.[42] Moll speculated that custom cartoons can be tailored to emphasize the most important elements the text seeks to convey, and to minimize extraneous detail. Photographs, by contrast, capture an image with every detail intact, including those that have little to no relevance. Moll's findings resonated with us. Courthouses are not just intimidating; they are designed to be intimidating.[43] Indeed, law itself is designed to intimidate[44] or mystify[45] or persuade[46] the

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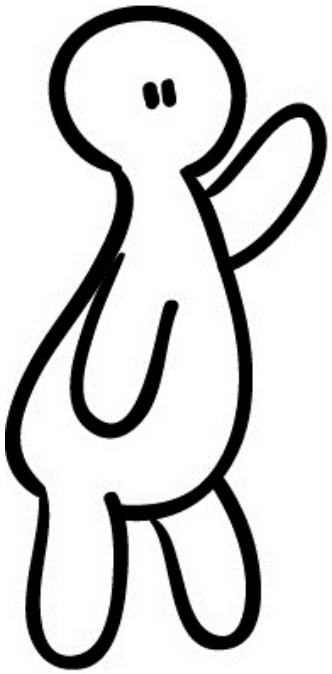
[36] W. Howard Levie & Richard Lentz, *Effects of Text Illustrations: A Review of Research,* 30 Educational Communication and Technology 195, 206 (1982) (analyzing 155 studies on the effect of illustrations on reading comprehension).
[37] Peter S. Houts et al., *The Role of Pictures in Improving Health Communication: A Review of Research on Attention, Comprehension, Recall,* and *Adherence,* 61 Patient Education Counseling 174, 175 (2006).
[38] *Id*. at 267.
[39] J.M.H. Moll, *Doctor-patient communication in rheumatology: studies of visual and verbal perception using educational booklets and other graphic material*, 45 Annals of Rheumatic Diseases 198, 207 (1986).
[40] *Id*.
[41] Chris Delp & Jeffrey Jones, *Communicating Information to Patients: The Use of Cartoon Illustrations to Improve Comprehension of Instructions,* 3 Academic Emergency Medicine 264 (1996).
[42] J.M.H. Moll, *Doctor-Patient Communication in Rheumatology: Studies of Visual and Verbal Perception Using Educational Booklets and Other Graphic Material,* 45 Annals of the Rheumatic Diseases 198, 202 (1986).
[43] Citation to courts needing to intimidate in order to induce compliance in architecture, courtroom design, black robes, etc.
[44] *Id*.
[45] Legal institutions and ritual literature
[46] Procedural justice literature.

citizenry to comply voluntarily with its directives, and at least some theories of how the state induces voluntary compliance depend on pomp and circumstance. But pomp and circumstance can distract and confuse the uninitiated. Photographs that provide realism thus run the risk of preventing a first-time litigant from focusing on what matters. Cartoons, on the other hand, can be crafted to depict only the essential elements of any situation.

For these reasons, we worked with Hallie Jay Pope, a cartoonist and then-law student, to generate custom-drawn cartoons illustrating our study letters, Answer, envelope, and teaser postcard. We found Ms. Pope's creations to be the work of genius.

We and Ms. Pope first discussed and developed a central character with whom, we hoped, the recipients of materials would identify. Viewing just under a dozen of Ms. Pope's creations forced us to identify the characteristics that we thought would induce maximum reader identification, a most edifying process. The result was "Blob."



The following characteristics of Blob are intentional:

- Blob has no hair, no mouth (until one is needed), no ears, no nose, and no shading. Blob consists almost entirely of line. All of these features render Blob essentially race-less and ethnicity-less. Subsequent interviews established that viewers did not impute a race to Blob; Blob is the color of the paper upon which she/he/it appears, not white.

- Blob has no clothes, no hair, and no chest. These features, along with those listed immediately above, render Blob essentially gender-less.

- Blob consists almost entirely of rounded curves. Blob's gut and posterior suggest that she/he could stand to lose a few pounds (which of us couldn't?), and the lack of angles make him/her appealing.

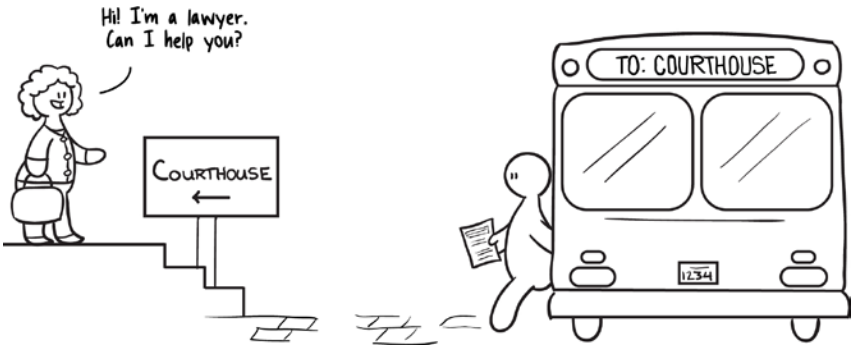
- Blob lacks hands, fingers, feet, a belly-button, shoulders, and knees (again, until needed). None of these features would likely be particularly objectionable, but each if depicted would add line, and each additional line poses the danger of distracting the viewer from the message to be conveyed.

- Blob's head is not a perfect circle, nor are her/his arms and legs rigorously symmetrical. We have seen subsequent depictions of Blob that included symmetry and geometric regularity (particularly a computer-generated circle for a head). We found these depictions distracting. We speculate that they would have cannibalized the reader's attention away from the text and the message and onto Blob.

We make no apologies for the detail provided in the preceding bullet points. Our purpose here is to demonstrate that simplicity does not mean lack of attention to detail. To the contrary, we found that one must design for simplicity. As lawyers, we find complexity comfortable and entertaining. We enjoy vocabulary, we marvel in intricately created doctrine, and we look forward to puzzles. Blob thus represents an intentional, and difficult, effort to suppress our own instincts and inclinations, a theme to which we return when we discuss the prose in our materials.

Blob alone was not enough to illustrate the concepts we sought to convey; we needed more characters. For our letter, we created "Fat Cat," representing the plaintiff (we declined to depict separately the plaintiff and the plaintiff's attorney), and "Lawyer," who would ultimately assist Blob. For these, to take advantage of gender stereotypes regarding hostility/aggressiveness versus likely empathy, to distinguish them from Blob, and to render them recognizable, we used far more identifying characteristics—glasses, clothes, and anatomical features such as hair and mouths. Fat Cat became an overweight man, Lawyer a curly-haired woman.

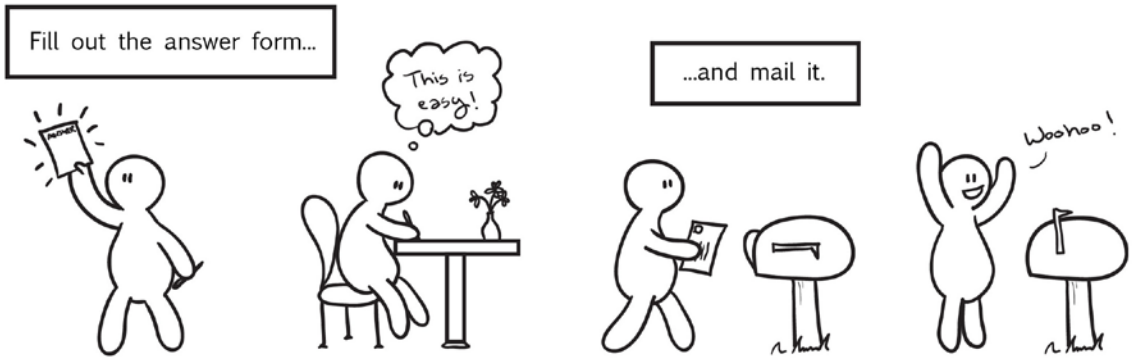
Here are Blob and Fat Cat.



Here are Blob and Lawyer.

After developing our characters, we turned to illustrating the content of the main study letter, which we drafted with language designed to induce recipients to attend court and explain that free help would be available if they attend. As noted above, in the BMC CV docket, the defendant must file an Answer to avoid default. The letter thus instructs recipients to fill out three copies of an Answer form included in the packet and to mail two of them—one to the court, and one to Plaintiff's counsel. The following panels demonstrate the iterative process that was typical of our struggle throughout the project. Again, we provide significant detail here so as to demonstrate the thought process involved in constructing something that appears simple.

To reiterate, the purpose of this particular cartoon is to persuade recipients to fill out three copies of the Answer form included in the letter and to mail two of them, one each in two provided envelopes. Here was Ms. Pope's first drawing:



Ms. Pope rendered the original cartoon in precisely the way we had requested. Upon review, Ms. Pope and we identified several issues:

- The first draft reflected specialized knowledge. Lawyers, trained in civil procedure, understand as a matter of course that any filing submitted to a court in an adversarial proceeding must also be served on opposing counsel. While lawyers may thus understand that any court filing must be created in triplicate (court, opposing counsel, self), a layperson would have no reason to make this assumption. The first panel thus reflected Ms. Pope's and our professional assumption without consideration of a layperson's point of view. The panel—and the packet included in the study mailer—had to eliminate this professional assumption and include multiple copies of the Answer form, along with the instruction that the recipient complete three of them and mail two to the correct parties.

- The first draft contained extraneous or inaccurate detail. While aesthetically pleasing, the original chair, flower vase, and table base added line without communicating helpful concepts.

- The original mailbox invoked a suburban or rural locale. But most of our recipients would live in Boston. We suspected that most would still get the point, but the incongruity with Boston's urban setting could distract.

- The illustration appeared to indicate continuous space, but the text appeared to contemplate two concrete steps: (1) fill out the forms and (2) mail them. A recipient might become confused about, or momentarily districted by, why a table and chair existed in the same plane as an outdoor mailbox.

Seeking to ameliorate these issues, Ms. Pope generated a second version.

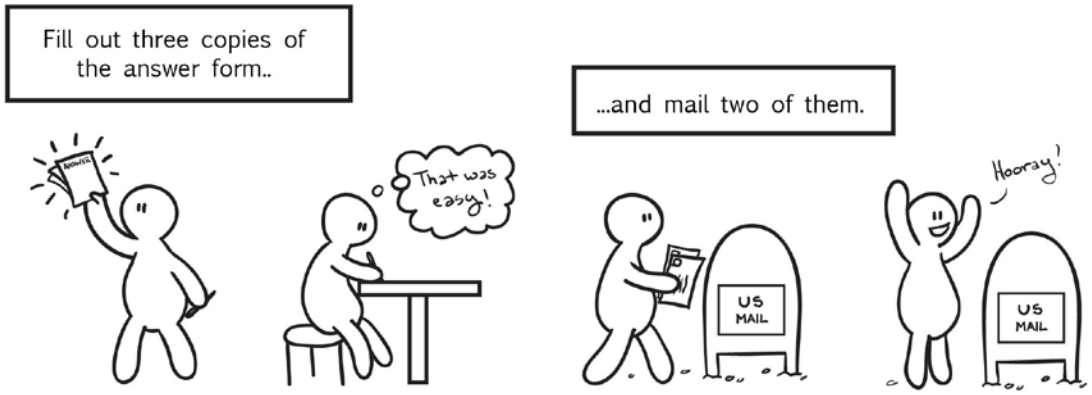
The second draft addressed many of the concerns expressed above: it reflected the fact that recipients must submit two copies of the Answer form by depicting two copies of the form and two envelopes, it more accurately depicted Boston's urban setting with a different type of mailbox, and created divisions in time and space. But we identified additional issues.

- The cartoon (and the underlying text of the letter) did not reflect a litigant's need to keep his or her own copy of the Answer form. Once again, we had failed to eliminate a lawyer's expert assumption that any paper prepared in the course of litigation would be kept in a centralized case file and retained by the litigant. The cartoon had to reflect zero knowledge about the rules and logistics of litigation. As a result, we amended the letter to include instructions regarding three copies of the Answer form: one to be sent to court, one to be sent to Plaintiff's counsel, and one to be kept by the study participant and to be brought to court. We requested a new cartoon from Ms. Pope (see below).

- The draft still contained extraneous detail. While the first panel's flowers and vase were eliminated, the second panel still featured a chair with a rounded back and extra lines at the base of the table. We debated whether these minor flourishes distracted the reader or made the entire panel more inviting to view. Ultimately, we elected to try a less-detailed, more linear depiction of the table and chair.

- The draft over-divided time and space. While the lack of boxes or lines gave the impression that Blob was acting in a vacuum, we felt the four boxes featured in the second panel impressed four steps upon the recipient, when the instructions only contemplated two.

With these issues in mind, Ms. Pope created a third draft.

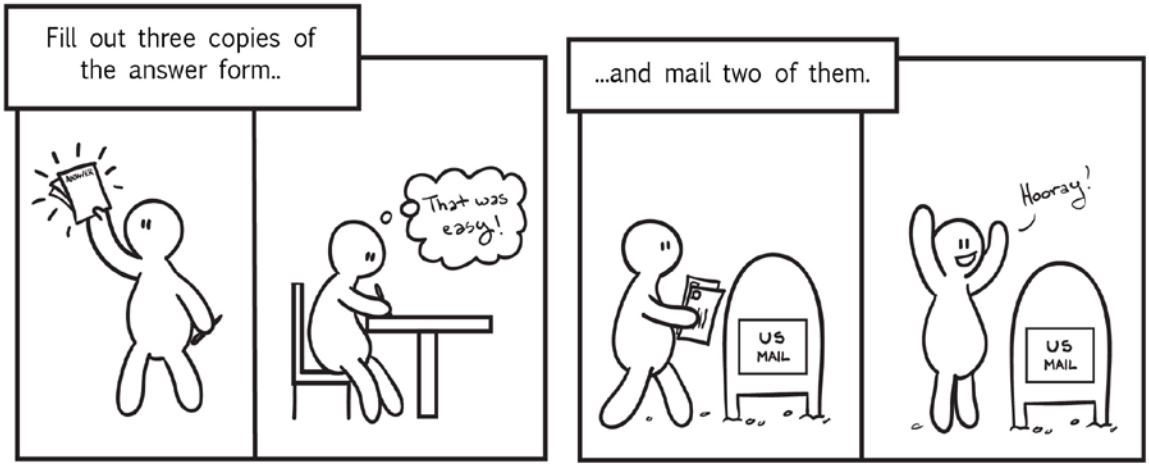


This third version resolved our issues identified above. While we speculated that this version of the panel likely to be effective in communicating the steps required of recipients, two minor issues persisted.

- The third draft, like the first, did not contain any indication of space or time division. This seeming continuity might obscure the communication of the two action steps asked of recipients.

- The table scene included less extraneous detail, but the deletion of a back from Blob's chair, combined with the gap between Blob's feet and the "floor" level, might leave the impression that Blob is childlike, or undersized compared to the rest of Blob's world. Either way, this impression might distract.

Ms. Pope's fourth version of the panel resolved each of these issues.



While this panel is only one of several included in the study materials, which also feature smaller cartoons or one-off images (such as arrows and checkboxes), the above description indicates the process undertaken for each image featured in the materials. Throughout, we

encountered the same issues: breaking down specialized knowledge and eliminating expert judgment to guide laypersons through technical processes; eliminating extraneous detail and capturing important environmental context without over-including contextual information; and reinforcing action-oriented text through the framing of space and time. While the creation of these cartoons required the exercise of subjective judgment, we were guided by the general principles set out by the literature.

We also used cartoons on the outside of the envelope containing our study letter and Answer form and on a postcard used to remind one treatment group's members to check their mailboxes. As in the letter, we hoped the cartoons would put the recipient at ease and perhaps entice them to open the envelope or keep an eye on their mailbox. One anecdote[47] suggests this may have worked on at least some people: one woman received our postcard prior to receiving the Summons and Complaint that originated her case. Thinking the study mailer did not relate to her, she put it aside. But when she received the Summons and Complaint and, later, our package, she recognized Blob on the latter and decided to open the envelope.

2. Addressing emotional state

Once text is readable, it must be written to encourage recipients to act. As outlined above, we hypothesized that feelings of fear, stress, and intimidation play a role in whether or not an individual takes an action. The available literature broadly outlines at least three recommendations for inducing individuals to take specific actions: (1) using framing tools, (2) employing reminders, and (3) including specific action instructions and goal setting strategies.

a. Using framing tools

Using framing tools that specifically appeal to an individual's emotions can help to persuade individuals to take specific action. Literature on framing tools has focused on materials using three types of devices: inducing fear, appealing to coping responses and self-efficacy, and offering financial incentives. Studies on enticing defendants to appear in criminal court have found that including information on legal and financial repercussions to not taking action, or by otherwise dramatizing consequences, is effective in reducing failures to appear.[48] Health-related research has replicated this finding, concluding that communications aimed at arousing fear in conjunction with providing instructions for specific action, changed recipients' behavior.[49]

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[47] As told via phone call to VLP attorney Emily Jarrell, who relayed the conversation to us. We attempted to contact the study participant over the phone, but were unsuccessful.

[48] Alan J. Tomkins et al., *An Experiment in the Law: Studying a Technique to Reduce Failure to Appear in Court*, 48 Court Review 96 (2012).

[49] See, e.g., Howard Leventhal et al., *Effects of Fear and Specificity of Recommendation upon Attitudes and Behavior*, 2 J. of Personality and Social Psychology 20, 27 (1965).

The literature is divided on whether a fear-inducing communication itself is sufficient to increase responsiveness, but there is some evidence suggesting that at least combining fear inducing text with specific action steps will help to motivate recipients to follow instruction. *Compare* Gordon H. Bell et al., *Experimental Design on the Front Lines of Marketing: Testing New Ideas to Increase Direct Mail Sales*, 23 Intern. J. of Research in Marketing 309, 314 (2006)

Another possible framing tool is appealing to self-efficacy and coping responses. Self-efficacy is an individual's idea that she can be successful at doing something, while coping response efficacy is the idea that succeeding in doing that thing will lead to a desired outcome. Several studies find that increasing feelings of self-efficacy and the perceived viability of a coping response increase the likelihood that a subject will take a recommended course of action.[50] And research in organizational behavior and medicine suggests that using financial incentives coupled with goal setting strategies can increase individual performance.[51] Promising financial rewards in exchange for good performance has been shown to increase good outcomes not only in the area of promised reward, but in other intermediate tasks as well.[52] Such research is related to our effort in that we could (and did) caution mailing recipients that failing to take suggested actions would likely result in a financial loss.[53]

b. Deploying reminders

One type of intervention that proved successful in compelling defendants in criminal cases to appear in court were reminder programs. Of all the interventions we surveyed, these were tested in the most analogous situation to our own. Tomkins et al. found that alleged misdemeanants who received postcard reminders appeared significantly more often than those who received no reminder.[54] Some criminal courts have employed telephone reminder programs, but at costs high enough to be infeasible for this study.[55] While the experiences of defendants in civil and criminal courts are not identical—among many differences, civil debt collection defendants are not arrested and arraigned prior to initiation of the case—criminal court efforts to reduce failure to appear aim to achieve nearly identical goals to ours. We therefore found the Tomkins study instructive.

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with Sebastian Feld et al., *The Effects of Mailing Design Characteristics on Direct Mail Campaign Performance*, 30 Int'l. J. of Research in Marketing 143 (2013).

[50] Eric B. Larson et al., *Do Postcard Reminders Improve Influenza Vaccination Compliance?: A Prospective Trial of Different Postcard "Cues"*, 20 Medical Care 639, 642 (1982); James E. Maddux & Ronald W. Rogers, *Protection Motivation and Self-Efficacy: A revised Theory of Fear Appeals and Attitude Change*, 19 J. of Experimental Social Psychology 469, 476 (1983); Eric B. Larson et al., *Do Postcard Reminders Improve Influenza Vaccination Compliance?: A Prospective Trial of Different Postcard "Cues"*, 20 Medical Care 639, 642 (1982).

[51] Robert D. Pritchard & Michael I. Curts, *The Influence of Goal Setting and Financial Incentives on Task Performance*, 10 Organizational Behavior and Human Performance 175, 182 (1973).

[52] Claire M. Zedelius et al., *Promising High Monetary Rewards for Future Task Performance Increases Immediate Task Performance*, 7 PLoS One 1 (2012).

[53] On this score, we were mildly heartened by research finding that communication about gaining a financial reward and avoiding a financial loss does not have different effects in motivating individuals to act. *See* Kevin G. Volpp et al., *Financial Incentive Based Approaches for Weight Loss: A Randomized Trial*, 300 J. of the American Medical Association 2631, 2632-2635 (2008).

[54] Alan J. Tomkins et al., *An Experiment in the Law: Studying a Technique to Reduce Failure to Appear in Court*, 48 Court Review 96, 100 (2012).

[55] *Id*. at 97.

The criminal court reminder programs were not alone. Studies in public health also showed positive effects of mail reminders on changing behavior. McMahon et al. found reminders imploring Medicare recipients to get vaccinations increased vaccination rates when compared with those who received no reminder.[56] Another study on flu vaccination also found reminders increased vaccination rates.[57]

Based on these studies, we created a reminder that we sent to study participants who submitted Answers in their cases. The Boston Municipal Court schedules a Case Management Conference (CMC) when it receives an Answer from a debt collection defendant. The study team was notified on a weekly basis when a CMC was scheduled and, therefore, that a defendant would have to appear in court for a hearing in the future. The reminder congratulated recipients on submitting an Answer form, instructed them to look out for a notification of the CMC from the court, and provided contact information for a VLP staff attorney. Consistent with the guidance we gleaned from the rest of the literature, the reminder letter employed a cartoon, used plain language, and addressed recipients' emotional state. The letter is attached as Appendix XX. Given the consensus within the literature that mail-based reminder programs work, we sent the letter to participants in both the limited and maximal groups.

c. Including instructions on specific actions and goal setting strategies

Research suggests that providing instructions on what specific actions to take in order to deal with a stressful situation can be effective. For example, one study seeking to reduce hospital admissions for asthma attacks found that providing patients with specific instructions was more effective than providing general information without an action plan.[58] Similarly, another study on vaccination rates found that including specific action instructions, including locations and times to get vaccinated, was more effective than general reminders to get vaccinated.[59] This research suggests that specificity and clear action steps are helpful in inducing recipients of mail to act.

We found no research directly compares the three framing devices. And in the present study, we deployed all three to some extent, keeping an eye on the length of materials, by highlighting the risk of financial loss should a defendant fail to answer, by sending a reminder letter 2-4 weeks before a CMC, and by providing step-by-step instructions on what to do to respond to a debt collection suit and to reach the VLP's LFTD program, instructions that required no judgment to follow.

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[56] J.W. McMahon et al., *Increasing influenza vaccination rates for Medicare beneficiaries – Montana and Wyoming*, 44 Mortality and Morbidity Weekly Report 744 (1995).
[57] Kevin D. McCaul & Rebecca J. Johnson, *The Effects of Framing and Action Instructions on Whether Older Adults Obtain Flu Shots*, 21 Health Psychology 624, 625 (2002).
[58] P.G. Gibson & H. Powell, *Written Action Plans for Asthma: An Evidence-Based Review of the Key Components*, 59 Thorax 94, 94-95 (2004).
[59] Kevin D. McCaul & Rebecca J. Johnson, *The Effects of Framing and Action Instructions on Whether Older Adults Obtain Flu Shots*, 21 Health Psychology 624, 627 (2002).

3. Identifying the sender

One study suggested that identifying the sender on the front of an envelope increased the open rate.[60] Another found that individually addressing mail sent by a non-profit would have no impact on the open rate of envelopes, it did have an effect on keeping rates, or the rate at which recipients would hold onto a piece of mail.[61]

We declined to follow these suggestions. We reasoned that our ultimate goal was not to persuade a defendant to take immediate action in response to receiving the letter (*i.e.*, to file an answer, perhaps analogous to writing a check to a non-profit), but rather to persuade a defendant to take immediate and future action (*i.e.*, to file an answer and to appear in court, more analogous to . With the goal of court appearance in mind, and recognizing that we intended to send subjects who filed answers a second letter reminding them to attend court, we decided to attempt to use Blob as a trademark or as a mnemonic device, something that study subjects would hopefully recognize and come to trust. We put Blob, not VLP's name or contact information, in the return address slot in our mailing envelopes.

4. Attention to appearance

We followed junk mail literature when constructing the appearance of our study materials. As noted above, a key first step for a successful mailer is inducing the recipient to open the envelope. Vriens et al.[62] and Feld et al.[63] find that an envelope's physical characteristics affect the likelihood a recipient will open it. These authors collectively recommend mailers that (1) contain a package that is heavier than 20 grams,[64] (2) include the use of a promotional design on the back side of the envelope,[65] (3) include a teaser in the form of a question on the envelope, and (4) use an envelope made from chlorine-free paper,[66] (5) use white rather than colored envelopes, which were found to have a negative impact on the opening rate, and (6) use a non-standard or large sized envelopes.[67] There is disagreement in the literature on the impact of

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[60] Clinton Amos & Audhesh Paswan, *Getting Past the Trash Bin: Attribution about Envelope Message, Envelope Characteristics, and Intention to Open Direct Mail*, 15 J. of Marketing Communications 247 (2009).

[61] Sebastian Feld et al., *The Effects of Mailing Design Characteristics on Direct Mail Campaign Performance*, 30 Int'l. J. of Research in Marketing 143 (2013) at 157

[62] Marco Vriens et al., *Conjoint Experiments for Direct Mail Response Optimization*, 32 European J. of Marketing 323 (1998).

[63] Sebastian Feld et al., *The Effects of Mailing Design Characteristics on Direct Mail Campaign Performance*, 30 Int'l. J. of Research in Marketing 143 (2013).

[64] Id.

[65] Unfortunately, Feld et al. does not specify the promotional designs or teaser questions found to be effective or ineffective.

[66] Vriens et al., *supra* note X; Feld et al., *supra* note Y, at 154.

[67] *Id.* at 154. Feld et al., found that design characteristics explained 13.7% of the total variance of opening rates for non-profit organizations and 24.4% of the total variance of opening rates for financial services providers. This was determined according to the statistical model used in the study, which measured the degree to which each characteristic affected opening rates.

envelope size on opening rates: three other studies found that normally sized envelopes were more likely to be opened than larger or smaller envelopes.[68] However, these studies utilized different methodologies and were conducted in fields of mailing less analogous to our own, such as business-to-business mailings.

Two other key features for increasing opening rates are personalization, discussed above, and "official" looking characteristics.[69] Envelopes with stamps rather than a prepaid postage marking, and return addresses from an individual rather than an organization, were found have significantly higher open rates.[70] In some tension with these characteristics, envelopes that had an "official" feel to them, including envelopes exhibiting notes such as "official mail," "court related mail," or a window for the address that gives a hint of the envelope's contents all increased the open rate.[71] As a cursory review of this literature reveals, generalizing mail studies from other fields, which use varying methods, involves discretion. We implemented some, but not all, of the characteristics suggested by the literature above. The envelopes generated for this study featured handwritten addresses for recipients, individual stamps, a half-page sized envelope, and as noted above, Blob in the return address slot. Simply for the sake of convenience, the half-page envelopes were manila in color.

For the letter, the literature suggested keeping text sparse, with lots of white space. In accordance with the literature, we included extra spacing between paragraphs and used 12 point font.[72] Elsewhere, we did all we could to maximize white space and keep text sparse, while conveying the information required and including cartoons at a size large enough to be comfortable. Regarding letter length, experts do not appear uniform regarding how long a letter should be. Despite a general belief in direct marketing that a two page letter is superior to a one page letter, a study by Beard et al. found no significant difference between the two lengths.[73] Ultimately, our content, and particularly our desire to use cartoons, dictated the length of the letter; cartoons meant more pages. We kept the Answer form to a front and back.

5. Simplified language

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[68] Kristof De Wulf et al., *The Opening and Reading Behavior of Business-to-Business Direct Mail*, 29 Industrial Marketing Management 133, 138 (2000); E. Lincoln James & Hairong Li, *Why Do Consumers Open Direct Mail?: Contrasting Perspectives*, 7 J. of Direct Marketing 34, 38 (1993); Vriens et al., *supra* note X.

[69] Clinton Amos & Audhesh Paswan, *Getting Past the Trash Bin: Attribution about Envelope Message, Envelope Characteristics, and Intention to Open Direct Mail*, 15 J. of Marketing Communications 247 (2009).

[70] *Id.* at 256-257.

[71] E. Lincoln James & Hairong Li, *Why Do Consumers Open Direct Mail?: Contrasting Perspectives*, 7 J. of Direct Marketing 34, 36 (1993).

[72] C. Wheildon & M. Warwick, Type and Layout: How Typography and Design Can Get Your Message Across—Or Get In the Way, Strathmoor Press (1995); Lonsdale, Maria, Dyson, Mary C. & Reynolds, Linda. Reading in examination-type situations: the effects of text layout on performance. Journal of Research in Reading 2006: 29 (4), 433-453.

[73] John D. Beard et al., *The Long versus the Short Letter: A Large Sample Study of a Direct-Mail Campaign*, 4 J. of Direct Marketing 13, 19 (1990).

In our study, once a recipient opened the envelope, the enclosed materials had to communicate to the recipient the necessity of taking four actions: (1) filling out three copies of the Answer form provided, (2) mailing two of those copies, (3) looking for a notice from the BMC of a scheduled court date, and (4) appearing in court on that scheduled date. A primary finding in the adult education literature is the necessity of plain language to communicate clear instructions. Law is a stereotypical area of expert knowledge and inaccessible language. Unsurprisingly, research suggests that responsiveness to mail increases with "readability."[74] Here, "readability" is the comprehensibility of a written document, measured by the reading skill level required for a reader to comprehend the meaning of a document.[75] The general consensus in technical communication is that the more simply something is written, the more comprehensible it is, although some have suggested that having a well-written document is at least as important as readability measures.[76] We made our materials as readable as we could.

6. Teaser postcard

Survey researches have long known that primer postcards increase response rates to subsequently mailed surveys.[77] Criminology research has found that postcard reminders significantly reduced "failure to appear" rates of misdemeanants.[78] Public health literature has identified reminders in the form of postcards as effective means of increasing compliance with suggested courses of action. In particular, Larson et al. found that patients sent a postcard obtained vaccines at higher rates than those sent nothing.[79] We saw structural similarities between the vaccine study and our own: both seek to persuade a recipient to undertake a potentially unpleasant course of action (opening and following instructions about up at court for an intimidating proceeding, or getting vaccinated) in order to receive the desired outcome (get free legal help in a debt collection proceeding, or avoid getting the flu). We created a small postcard featuring the Blob character in a friendly pose, arm outstretched, as featured above in subsection iv. We sent the postcard to one study group before its members received our packet with the initial letter and Answer forms.

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[74] David L. Williams et al., *The Readability of Direct-Mail Copy: A Test of Its Effect on Response Rates*, 5 J. of Direct Marketing 27, 28 (1991).

[75] John D. Beard & David L. Williams, *Increasing the Effectiveness of Direct Mail Copy Through the Use of Readability Measures*, 2 J. of Direct Marketing 6, 8(1988). Beard and Williams explain, "[f]or example, if 50% of those reading at a tenth grade level can demonstrate comprehension of the main points presented, the material is given a readability score of 10." *Id*. at 8.

[76] Williams et al. supra note 74, at 32.

[77] Pull some references from this, perhaps something more recent, and perhaps something from the United States. http://www.ncbi.nlm.nih.gov/pubmed/10330737

[78] Alan J. Tomkins et al., *An Experiment in the Law: Studying a Technique to Reduce Failure to Appear in Court*, 48 Court Review 96, 100 (2012).

[79] Eric B. Larson et al., *Do Postcard Reminders Improve Influenza Vaccination Compliance?: A Prospective Trial of Different Postcard "Cues"*, 20 Medical Care 639, 642, 647 (1982).

D. The RCT

The backbone of this study is an RCT, the gold standard of empirical evidence regarding causation. In an RCT, subjects are randomly allocated among study groups in which varying interventions (or the absence of an intervention) are applied. Outcomes are measured, and statistical analysis is conducted to determine whether any observed disparities in outcomes experienced by groups are unlikely to be due to chance.

In this Section, we describe the specifics of our study.

1. Identifying study eligible cases

The process of identifying study-eligible participants required collaboration between the VLP and BMC. While many cases filed in the BMC's CV docket concern debt collection cases, not all involve the types of litigants sought by this study. With an amount in controversy requirement of XXXX, BMC serves as a forum for several types of debt collectors, including individual contract holders seeking enforcement, medical contractors, educational institutions, financial institutions, and third-party debt purchasers or collectors. Of these, only three categories are likely to file lawsuits en mass: large educational institutions or holders/collectors of student loans; original issuers of credit; and debt buyers. We identified such plaintiffs by their names and by the law firms who represented them, as follows.

The BMC Clerk on a weekly basis compiled a .pdf document of the cases filed the previous week. The report included the case number, the defendant's name and address, the plaintiff's name, and the name of the plaintiff's law firm (law firm addresses are easily available). We identified cases involving student loans, original issuers, and debt buyers by the plaintiff's name and the name of the plaintiff's firm. A case was study-eligible only if the defendant was an individual with an address in Massachusetts.

After identifying potentially study-eligible cases, we compared the defendant's address in the court file with that in an address-checking system called CLEAR, a Thompson Reuters product to which VLP had access.[80] If the defendant's Summons and Complaint address did not match the most recent address identified in the CLEAR system, we excluded the casefrom the study, and we did not otherwise attempt to contact such defendants.[81] This address-checking process resulted in exclusion of approximately 25% of cases.[82]

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[80] See https://clear.thomsonreuters.com/clear_home/government.htm.

[81] This practice was added to the study protocol four weeks after the initiation of the field operation, after the first several weeks yielded disappointing results with respect to the rate of defendant submission of Answer forms.

[82] Future study should seek to identify the source of this mismatch rate, but potential hypotheses may include high mobility of financially distressed defendantsand the passage of time following the origination of the debt over which a defendant is eventually sued. We note that because the BMC accepts service by mail, a debt collection plaintiff may have little incentive (prior to obtaining a judgment) to discover a defendant's most recent addresses.

We excluded cases with mismatching defendant addresses for three reasons: first, we did not want to waste our own time and resources on mail that was unlikely to be received. Second, we worried that defendants with mismatching addresses might react differently to the lawsuit and to our outreach efforts. Third, defendants served at an improper address might want mount a defense to the lawsuit by arguing defective service, and we had little desire to send a mailing that might deprive these defendants of an improper service or lack of notice defense. To be clear, in identifying this third possibility, we are not claiming that we know that mismatching addresses indicate that the address that the plaintiff provided to the court was wrong. Our point is only that an incorrect address is a possibility.

Thus, the final group of study subjects was comprised of cases filed by known (by name of plaintiff or plaintiff's counsel) student loan collectors, original credit issuers, or debt buyers against individual defendants whose Massachusetts addresses as listed on a Summons and Complaint matched the most recent address available in the CLEAR system.

2. Randomizing

In the first two weeks of our study, we used a computer to create a group of 24 cases, eight each randomly distributed to our three treatment arms: Control, Limited, and Maximal (explained immediately below). We quickly realized, however, that plaintiffs' attorneys tended to file cases in batches, so that sequentially numbered cases often represented a batch of two to eight cases filed by the same lawyer, often on behalf of the same plaintiff,. To achieve maximum balance across treatment arms on background variables, such as plaintiff, plaintiff's attorney, and related variables, we replaced the randomized batching with a sequential scheme. That is, we created a treatment assignment column in a spreadsheet consisting of "Control, Limited, Maximal" repeated seriatim and assigned eligible cases in the order in which they were listed in the BMC Clerk's weekly email (which almost always corresponding to case number).

3. Intervening

The interventions for each group were as follows:

- Control: We took no action.

- Limited: We mailed the defendant a manila envelope containing a study letter from VLP, three copies of a check-box style Answer form, a business envelope addressed to BMC, a business envelope addressed to the plaintiff's attorney, a map to the courthouse, and a post-it note appropriate for a wall calendar saying "Go To Court Today!". Volunteer interns handwrote the address on the manila envelope. On the all three copies of the Answer form, volunteer interns handwrote as much case-specific information as they could, including the case number, the plaintiff's name, the name and address of plaintiff's attorney, and the defendant's name and address.

- Maximal: First, we mailed the defendant a handwritten postcard from VLP stating, "Dear [Recipient Name], Help is on the way. Look for me!." Next to

"me" was a hand-drawn arrow pointing to an image of Blob. The next day, we mailed the defendant the same manila envelope (with corresponding contents) that those in the "Limited" group received, except that the two business envelopes to the Court and to the Plaintiff's attorney had stamps.

The postcard, envelope design, letter, and Answer form are appended to this paper.

Each week, the BMC Clerk generated a computer report identifying which cases had received Answers. The BMC's practice, rigidly adhered to, was to schedule a Case Management Conference (a "CMC") for each case in which it received an Answer, and the BMC report identified the date of the Conference. Approximately two to four weeks before the CMC date, in each Limited and Maximal case, we sent a second, reminder letter to each defendant in the Limited and Maximal groups. The reminder letter is also appended to this paper.

4. Outcomes

We accessed the docket sheet for each study-eligible case from a dedicated computer system inside the BMC building. We tracked two primary outcomes: whether the defendant filed an Answer, which we take to be a measure of whether the defendant shows willingness to engage in the litigation process; and whether the defendant attended the first appearance date in the case (which might have been a motion) or the first scheduled CMC (even if the defendant missed a motion hearing prior to that CMC.[83]

E. Results

1. Basic results

[83] BMC court rules allow a plaintiff to file a motion, and to schedule a hearing on that motion, prior to the date of the CMC. In addition, plaintiffs sometimes filed and scheduled hearings on motions (such as to attach wages or assets) in cases in which the defendant did not answer; we speculate that some such cases may have involved suits in prior court judgments, perhaps from another state. Thus, a court hearing might occur in a case in which the defendant did not answer, and the CMC was not always the first scheduled court date. For this reason, we tracked both whether the defendant attended the first-scheduled court date (regardless of the type of the hearing) and whether the defendant attended the first-scheduled CMC. If the CMC was not the first scheduled court date, and the defendant missed that first date but attended a subsequent CMC, we anticipated that the VLP LFTD would assist the defendant in filing an appropriate motion.

To be 100% clear: in our results section, we considered a case a "success" if the defendant attended court the first scheduled CMC date (or, if the first CMC date was continued by consent of the parties, the first date upon which the court actually held a CMC), or if the defendant attended court on a first motion hearing date scheduled prior to or in the absence of a CMC date.

Our results are easily summarized.[84] With respect to whether the defendant filed an Answer, which measures the willingness of a defendant to engage in the litigation process, the following bar graph summarizes our results.

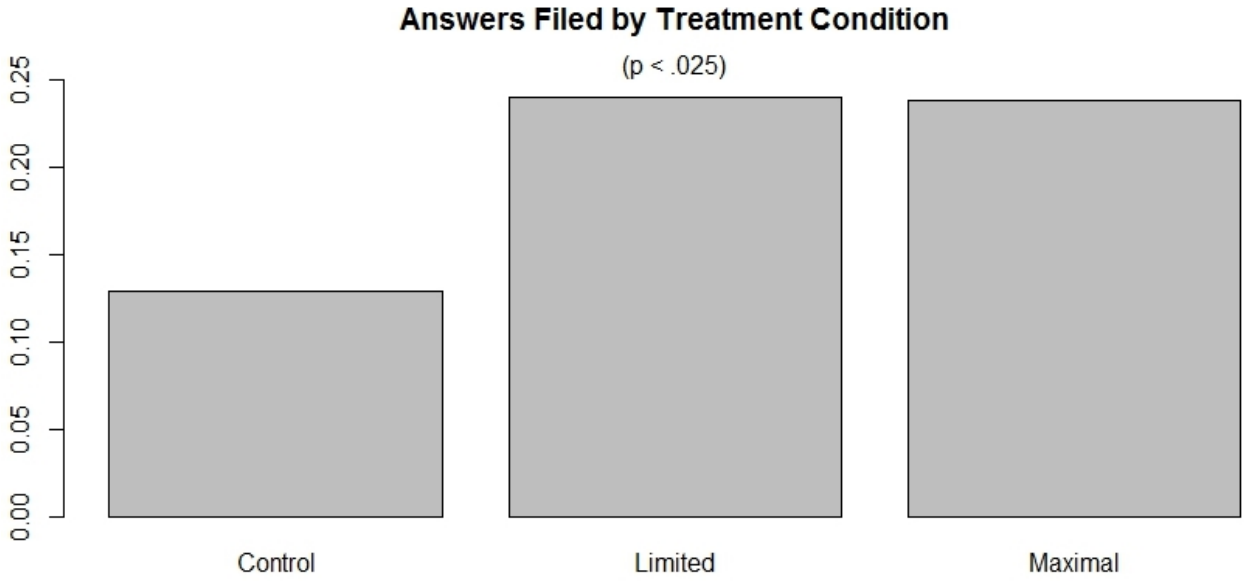

Figure 1: Answers Filed by Treatment Condition: *The Limited and Maximal conditions show approximately double the answer rates of the Control condition, and the difference is statistically significant. But the extra postcard and stamps that characterize the Maximal condition have no discernible effect vis-à-vis the Limited condition.*

A glance at Figure 1 shows that our interventions have noticeable effects on the rate at which defendants filed Answers. The Limited and Maximal groups show rates just under double those of the Control group. Interestingly, the teaser postcard and stamps show no discernible effect; indeed, the answer rate for the Limited and Maximal conditions are almost identical.

With respect to whether the defendant attended court on either the first appearance date in the case or the first CMC date, the following bar graph summarizes our results.

[84] As of the time of this writing, we have initial results for approximately 449 observations (about 150 in each treatment condition). Late-filed answers and forthcoming appearance dates will cause our results to change, but we anticipate that the final dataset will support the substantive conclusions we draw above.

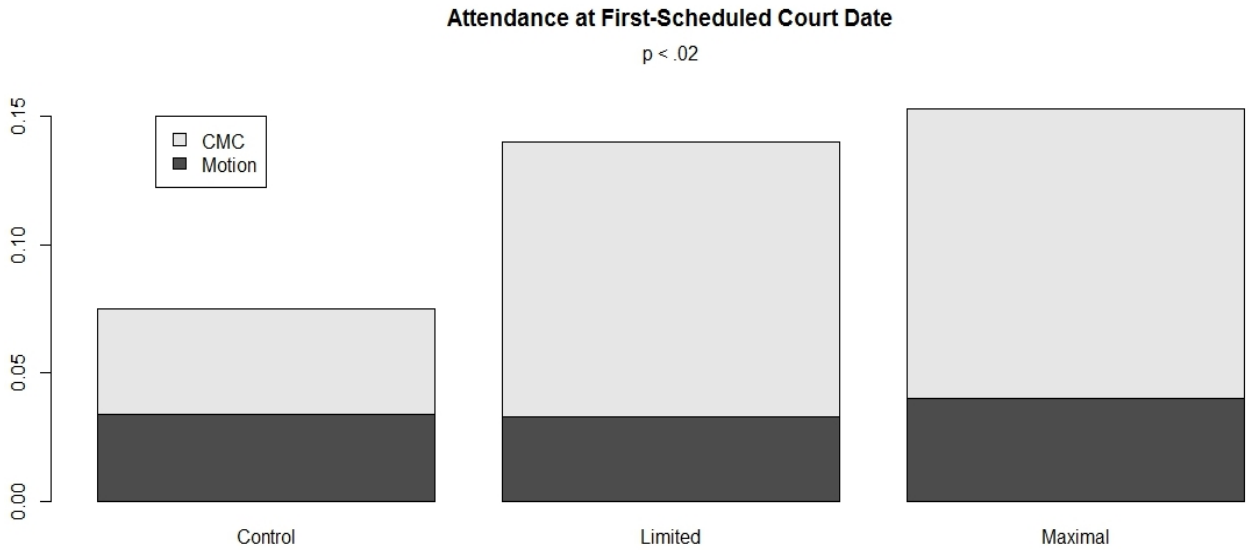

Figure 2: Attendance at First-Scheduled Court Date: *The Limited and Maximal conditions show approximately double the attendance rates of the Control condition, and the difference is statistically significant. But the extra postcard and stamps that characterize the Maximal condition have no discernible effect vis-à-vis the Limited condition.*

The story here is the same. The Limited and Maximal groups show a doubling of the attendance rates vis-à-vis the Control group, and that difference is statistically significant, but there is no discernible difference between the Limited and Maximal groups. Further, from Figure 2, one can see that the increased attendance in the Limited and Maximal groups is due entirely to increased attendance at CMCs. This is heartening. Recall that BMC schedules a CMC when a defendant answers; thus, if a defendant's first scheduled court appearance is at a motion hearing, the defendant has not answered, i.e., has defaulted in response to the lawsuit (although the VLP volunteer attorneys stood ready at their LFTD program to assist eligible defendants in filing motions to remove defaults). Accordingly, a defendant whose first appearance is a CMC is in a superior litigation position to one whose first appearance is in response to a motion.

Logistic regressions (not shown) of both the Answer and the Attends Hearing variables on defendant gender, type of plaintiff,[85] and treatment group provided no evidence that the former two variables had large associations with likelihood of responding to a lawsuit.

We mention one final item we noticed in the data, an item we find suggestive but not definitive. In the following table includes only defendants who filed Answers; it shows, of the defendants who filed Answers, which attended the resulting CMC, by treatment condition.

[85] We guessed gender by the defendant's first name. We identified the plaintiff as either a debt buyer, an original issuer of a credit card, or a student loan creditor by the name of the plaintiff.

Table 1: Appearances by Defendants Who Filed Answers

	Appearance	No Appearance
Control	5	14
Limited	16	20
Maximal	20	16

The differences by treatment condition in Table 1 are not statistically significant. Indeed, because (as Figure 1 shows) the treatment condition affects the number of defendants who file answers, and because Table 1's figures are conditional on filing answers, the comparisons in Table 1 are not statistically valid. That is, we are comparing appearance rates for defendants in a Control group who receive no letters and filed Answers anyway to defendants in Limited and Maximal groups, some of whom appeared only because they received letters. That is not an apples to apples comparison. With these caveats, we note that Figure 1 suggests (again, the differences are not statistically significant, even on an invalid comparison) that among the set of defendants who filed Answers, those in the two active treatment groups appeared at their scheduled CMCs at higher (.44 and .56 for Limited and Maximal) rates than those in the Control condition (.26). If one risks an inference from these figures, then one would probably conclude that one (or both) of two mechanisms appears to be at work: (1) the second, reminder letter we sent to the Limited and Maximal groups is important in galvanizing these group members' appearances in court, or (2) the initial letter creates momentum that extends beyond the impetus to file an Answer to a desire to attend court. Subsequent study, in which we randomize whether the second, reminder letter is sent, will clarify which mechanism is at work.

2. Spatial analysis

[Forthcoming]

IV. Discussion

This section will discuss how the results of our study contribute evidence to ongoing debates about default in debt collection, why people obey law generally, what role LSPs have in serving indigent clients, and how courts interact with lay people. Part A addresses how this study informs the discussion on combating default in the context of debt collection, including two competing narratives for why defendants default. Part B discusses the other debates our study implicates, and how it both contributes evidence and raises additional questions within those debates.

A. Why Defendants Default in Debt Collection

As noted above, two competing narratives have sought to explain the default rate in debt collection lawsuits. In the debt collector narrative, defendants fail to appear because they know

that they owe the debt sued upon, and that the amount and the plaintiff are correct. Failing to appear is some combination of delaying the inevitable, attempting to remain difficult to find, or avoiding the waste of the time and effort involved in attending court when there is nothing to be done. Under the LSP narrative, access to justice issues, such as lack of legal resources, ignorance of the court system, and paralyzing psychological feelings like fear and shame, prevent defendants from answering lawsuits. The results of our study provide limited evidence in favor the LSP narrative, but broadly speaking, could be interpreted to support either theory.

If it were true that almost all debt collection defendants defaulted because they knew that the merits of the plaintiffs' cases were uncontestable, then few would bother even to fill out and send in Answer forms, particularly if doing so involved buying stamps. Why bother? Yet, XX% of defendants in our Limited and Maximal groups answered, as compared to ZZ% in the Control group. These figures suggest that the LSP narrative is more likely to be true for at least XX-ZZ% of debt collection defendants.

Our study involved the lightest possible touch that could be used to persuade debt collection defendants to contest their cases. All we did here was mail letters. We sent no text messages;[86] we made no telephone calls;[87] we attempted no visits, much less multiple visits, to housing units;[88] we did not use Facebook, Twitter, LinkedIn, or other forms of social media;[89] we deployed no advertising or media campaign.[90] Finally, and perhaps most critically, we doubt that, in our relatively unguided attempt to construct mailings that would persuade debt collection defendants to open, read, and act, we hit upon the maximally effective strategy in our first try. And as to our mailings, for the members of our Limited and Maximal groups who did not respond to their lawsuits, we do not know if what we sent even reached them. All this calls into some question the debt collector narrative articulated above.

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[86] See Haynes et al., supra note 31.

[87] See Charles E. Ares, Anne Rankin, and Herbert Sturz, The Manhattan Bail Project: An Interim Report on the Use of Pre-Trial Parole, 38 N.Y.U. L. Rev. 67 (1963) (reporting the effects of a program that included telephone calls to released criminal defendants who missed court dates).

[88] See Sarah K. Heimel, Characteristics of the 2010 Census Nonresponse Followup Operation, available at http://www.amstat.org/sections/SRMS/Proceedings/y2011/Files/302821_69162.pdf (last visited January 11, 2015) (observing that the Census Bureau's 2010 nonresponse followup operation included six or more visits to a nonresponding housing unit).

[89] Herb Weisbaum, Debt Collectors Troll Facebook—Are They Going Too Far?, available at http://www.nbcnews.com/id/42687734/ns/business-consumer_news/t/debt-collectors-troll-facebook-are-they-going-too-far/#.VLLe3snzN2A (last visited January 10, 2015) (reporting complaints received by the FTC that debt collectors impersonate Facebook friends).

[90] See Burton Reist, Acting Chief, Decennial Management Division, "2010 Census Integrated Communications Program Earned Media Public Relations Assessment Report, 2010 Census Planning Memoranda Series No. 229 (August 16, 2010), available at http://www.census.gov/2010census/pdf/2010_Census_ICP_Earned_Media_PR_Assessment.pdf (last visited January 10, 2015) (reporting on the Census Bureau's media campaign leading up to the 2010 Decennial Census).

All that said, Maximal Group default rate for study-eligible cases at the Boston Municipal Court remained XX%, with a failure-to-answer rate of XX%. For this group of people, we cannot say that the debt collectors' explanation is incorrect. Assuming (which we do not know) that all of our letters reached their intended recipients and were opened and read, then with everything that we did to make the process of answering the lawsuit occupy no more than 15-20 minutes, the ratio of non-answer to answer in our Maximal Group was still XX%. The group of people affected by our intervention is small relative to the unaffected group.

In short, even after our study, much depends on perspective, as the following two bar graphs show quite literally.

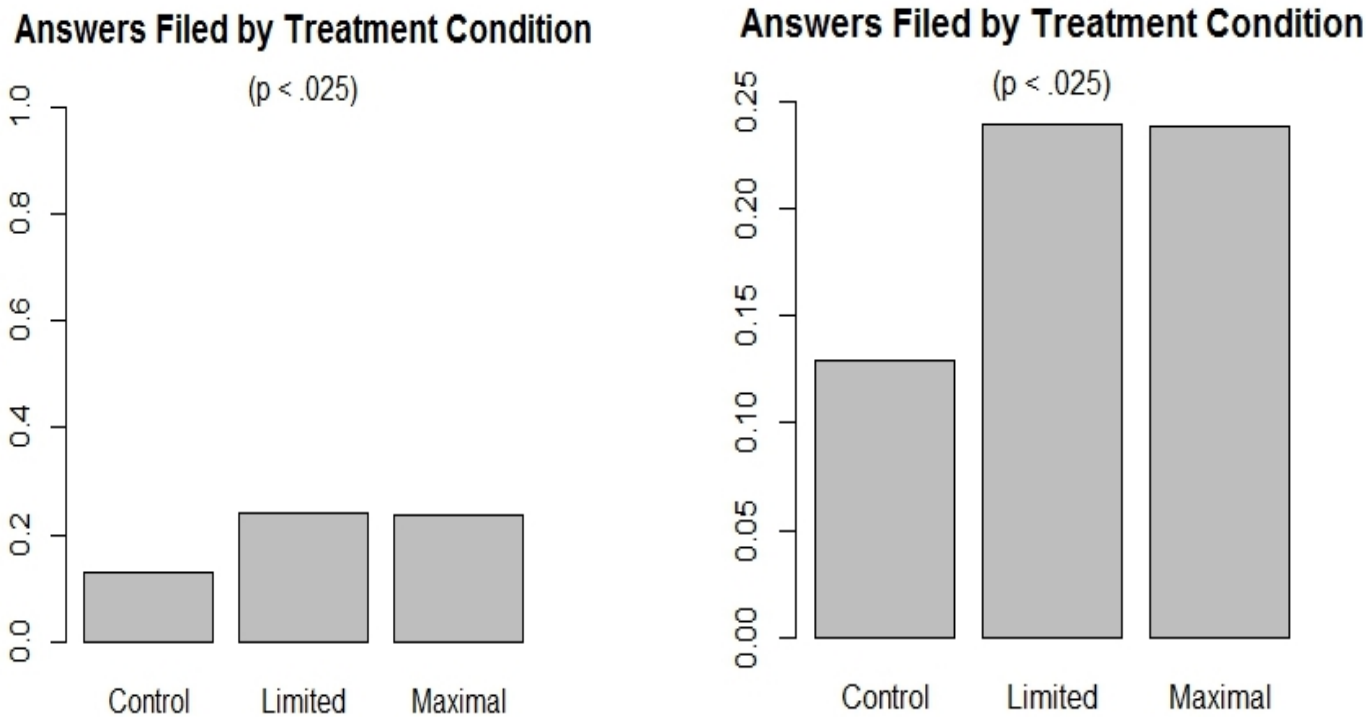

Figure 3: Answer Rates, Two Scales: *These graphs show our results two ways. On the left, Answer rates are shown against a y-axis of 100% attendance. On this scale, we see that though improved, the Answer rates of study subjects receiving the intervention are still low. Debt collectors may point to this graph and argue that the remaining 76%% of unresponsive defendants know that they have no defense. On the right, Answer rates are shown against a y-axis of only 20%. On this scale, the increase in Answer rates by recipients of the intervention is dramatic. LSPs and others may point to this graph as evidence that access to justice issues are responsible for high default rates, and a more forceful intervention would result in a more significant decrease in default rates. We cannot conclude that either of these narratives is entirely correct without further research.*

B. Contributing Evidence to Several Debates

The results of this study contribute evidence relevant to several other debates. First, they inform discussion on why people obey the law and engage in official proceedings. Scholars have

advanced several hypotheses, including individual-level cost-benefit analyses as well as explanations centering on perceptions that laws and governmental processes are just. Our results suggest, without proving, an alternative view. Second, our results add to the discussion of the role of civil LSPs and the types of services they provide. Such findings are important at a time when LSPs are beginning to broaden the scope of their activities from lawyer-centric services to tactics aimed at closing gaps in access to justice. Third, our results add value to discourse on how courts present themselves to and interact with laypersons, including the level of complication of the communications and procedures instituted by court systems. This section will discuss each in turn.

1. Why people obey the law

Several scholars have hypothesized why people obey the law and participate in legal processes. Economic thinkers have put forward the hypothesis that individuals engage in cost-benefit analysis before undertaking any activity,[91] suggesting that educating defendants on the significant costs imposed by defaulting on a lawsuit may motivate them to appear and contest (if, in fact, such an appearance would maximize their utilities). By contrast, procedural justice theorists like Tom R. Tyler theorize that individuals participate in court processes when they believe those courts to be legitimate, and perceptions of legitimacy derive from feeling that courts are procedurally just.[92] On this theory, communications persuading defendants that the court's system is fair may result in decreasing the default rate. Of course, the efficacy of communicating messages consistent with either of these theories through a mailer is a subject for investigation. However, we assume subscribers to each theory believe it is possible to implement each of them through communications with defendants in the service of convincing them to attend court.

We hypothesized something of an alternative theory: that the most important message to communicate to pro se defendants was not a cost-benefit analysis or a procedural justice plea, but rather something more "gut level" or emotionally evocative. The motivational issue involves a defendant's negative feelings toward the process of litigation, which may stem from a lack of belief in the legitimacy of the court, a conditioned fear or trepidation response to the unfamiliar (here, court proceedings), or more general pressures associated with a life in financial distress. We perceived, through interviews with defendants, sparse literature on civil legal services, and our own court experiences, a psychological state of helplessness and lack of self-agency that our intervention sought to combat, and thus galvanize the defendant into action. This was the motivating concept behind much of our content, including images of Blob looking calm and happy; an image of Blob thinking "that was easy!"; images of Blob exclaiming "Hooray!"; and statements like "Help is on the way!" and "You can do this!".

Our letter contained brief mentions of formal and direct references to cost-benefit analysis and procedural justice. However, the first page of our letter and the cartoons were

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[91] For an exhaustive, if somewhat dated, review of the literature and discussion of this view, see Louis Kaplow & Steven Shavell, Economic Analysis of Law (February, 1999), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=150860 (last visited January 10, 2015).

[92] See, e.g., Tom R. Tyler, Why People Obey the Law (2d ed. 2006)

geared toward different messages, such as "Don't get tricked" and "You can do this!". The letter gave primacy to emotional appeals over both procedural justice and cost benefit approaches. Some may characterize our focus on cognitive and emotional matters as itself belonging in the cost-benefit or procedural justice camps, but we are more comfortable placing our interventions within the realm of psychology or its recent progeny, behavioral economics and behavioral law and economics.[93]

But we cannot say for sure. In an effort to find something, anything, that would reduce default rates in BMC debt collection cases, we included cost-benefit, procedural justice, and cognitive-behavioral approaches in our letter. We discuss directions future research might take below. To the extent that our self-agency theory was the chief message of our study materials, however, we have established a baseline against which results from future studies showcasing alternative theories may be compared.

2. Allocation of civil legal resources

Civil LSPs are perpetually operating with limited supply in an environment of overwhelming demand. We join calls for increased resources dedicated to addressing the civil legal needs of financially distressed and indigent people. That said, the results of this study speak not to the level of resources LSPs need, but rather to the allocation of what resources are available.

Randomized studies have shown that attorneys can, under some circumstances, make a different in the well-being of their clients by providing effective legal representation in civil settings.[94] However, assuming the goal of legal aid is to improve the lives of indigent people vis-à-vis their legal circumstances, our study suggests that at least some resources should be dedicated to persuading defendants to show up to court *in addition to* defending them once they appear.

More generally, LSPs should focus on how people get to the services they offer, and in some settings, facilitating this process. As suggested above, this message may resonate oddly with LSPs, who frequently face demand outstripping supply to such an extent that the only thing they can offer to the lucky few who receive any help at all is some kind of limited assistance representation (*i.e.*, something short of an attorney-client relationship). Why increase demand when demand already exceeds supply? The answer lies, or may lie, in what kind of people are

[93] For a review of then-current literature, see Christine Jolls, Cass R. Sunstein, & Richard Thaler, A Behavioral Approach to Law and Economics, 50 Stanford L. Rev. 1472 (1998).

[94] In addition to the literature summarized in Greiner & Pattanayak, supra note XX, see D. James Greiner, Cassandra Wolos Pattanayak, and Jonathan Hennessy, *The Limits of Unbundled Legal Assistance: a Randomized Study In A Massachusetts District Court and Prospects for the Future*, 126 HARV. L. REV. (2013), and D. James Greiner, Cassandra Wolos Pattanayak, and Jonathan Hennessy, How Effective Are Limited Legal Assistance Programs? A Randomized Experiment in a Massachusetts Housing Court, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1880078.

access services given different amounts of outreach. As one of us has discussed elsewhere,[95] when an LSP's intake system is "passive" in the sense that that potential clients/users must make the first contact, it is possible that only those clients/users who are particularly motivated, particularly able to negotiate information systems, particularly possessing of social capital will take advantage of the LSP's services. Depending on the level of stamina and toughness needed to persevere through a civil legal proceeding, even if represented, the culling that a passive intake system achieves may be a good thing; scarce resources are expended only on those otherwise strong enough to benefit from them, and the "weak" who will not succeed anyway never appear to tempt LSPs to fruitless efforts. In other settings, however, it is possible that passive intake may cull such that the LSP sees only potential clients/users who would succeed are their own, or if not succeed, then fair better than others on their own.

Meanwhile, one of our key principles in designing our intervention was keeping it low cost. And the marginal out-of-pocket cost of our "Limited" intervention, found to be statistically identical to our "Maximal" intervention, is low-ish: the point estimate is less than $10 per defendant appearance, with over 50% of the cost coming from our decision to use physical stamps instead of bulk postage.[96]

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[95] See, Greiner & Pattanayak, supra note XX; Greiner et al, supra note XX.

[96] Our calculation is as follows:

- 1 6" x 9" envelope: $.09 (see http://www.quill.com/catalog-envelopes-6x9-gummed-closure-standard-layout/cbs/187565.html?effort_code=901&promoCode=403023029&find_number=11054Q)
- 6 pages of standard white printer paper: $.01/sheet → $.06
- 2 size 9 business envelopes: $.023/envelope → $.05 (http://www.envelopesuperstore.com/envelopes/business/standard-mailing/envelope-1009.html)
- 1 small, square post-it note: $.0035 (http://www.bulkofficesupply.com/Products/Sparco-Pop-up-Adhesive-Fanfold-Note-Pad__SPR70403.aspx)

Postage: $1.21

Total: $1.4135/mailing.

Each mailing results in XX appearances, so the out-of-pocket marginal cost per appearance is $1.4135/XX = $XX. (As of January 10, 2015, the marginal cost per appearance was $9.42.)

Over 85% of the out-of-pocket marginal cost comes from postage. We deliberately used a physical stamp in our study. Bulk mailing might reduce the marginal out-of-pocket cost by 50% or more, see http://savepostage.com/bulkmail101/rates.html. Further experimentation is needed to discern what effect, if any, the use of bulk postage would have on the appearance rate.

There are, of course, non-monetary costs and fixed costs. The primary non-monetary cost was the time of our volunteers, who hand-wrote thousands of items on envelopes, letters, and forms. The fixed costs included the time involved in designing the intervention as well as printers and copiers.

In a court system in which the default rate is ZZ%, and in which a default guarantees a judgment against the defendant, we argue that implementation of a low-cost intervention that doubles the defendant appearance rate does good for indigent clients. Quantifying "good" in the context of civil legal services is difficult; winning a case, empowering an individual regardless of outcome, buying time before an adverse judgment, avoiding a default judgment, all could be seen as "good" outcomes. Ranking or otherwise quantifying their goodness is difficult, particularly given the multifaceted obstacles faced by indigent people.

Nonetheless, we believe that quadrupling the response rate of debt collection defendants is a good thing. It increases the likelihood of an adversarial proceeding, which is the very type of event courts are designed to facilitate. It decreases the percentage of defendants who are guaranteed to suffer a default judgment without any hearing on the facts. It increases the likelihood that more people will be heard by a judge with respect to a case or controversy that might have significant effects on their financial and overall well-being. Each of these effects is good for the integrity of our judicial system, and insofar as it helps defendants avoid default judgments, each is good for indigent people. Civil LSPs should consider the efficacy of devoting resources to getting defendants to come to court in addition to representing them there.

3. Communication and conduct of courts

Our results contribute to knowledge of how laypeople are able to understand the workings of the specialized, formal system of courts. Some access to justice issues appear simple and logistical: every person who seeks to appear in court must first know where the courthouse is. But even these details can be difficult to communicate. At the time of this study, the summons and complaint forms issued by the Boston Municipal Court did not list the courthouse address. Thus, a defendant served with a summons alerting her to the existence of a civil case against him or her had to find an independent source of information to learn where to appear.

Other access to justice issues are more complex and involve conveying what may be thought of as specialized knowledge. For example, a layperson is unlikely to know that a defendant at the Boston Municipal Court must file an Answer in order to meaningfully contest the lawsuit. By contrast, an attorney would be assumed to know that an Answer was likely required (or at least a very good idea), that the Answer would have to be filed within a specific number of days, and that the Answer would have to be sent in duplicate, to the court and opposing counsel. Instructing a layperson to take these actions requires the synthesis and transfer of a significant amount of specialized knowledge, and may require simplification or omission of some (or all) of the reasoning behind the process that a professional is assumed to know. Communicating with ordinary people about why and how they should respond to lawsuits requires far more information than what is contained on most current summons and complaints. Perhaps current summons and complaints deserve revision, given that it would appear that more defendants would come to court if they knew how.

We do not know what share of the defendants who came to court did so because the motivational language was included, because access to justice issues were addressed, or because of a combination of both. At present, all we can conclude is that a combination of motivational and access to justice messaging was effective in decreasing the default rate among debt

collection defendants. The next subsection will discuss what lessons we may draw from the results of this study, and what questions remain for future research.

C. The Diagnosis by Treatment Model and Future Research

While Answer rates have increased and default rates have declined, these interventions did not eliminate the problem of default. In other words, not every recipient of the study materials succeeded in filing an Answer and appearing at the first scheduled court hearing. There is almost certainly an inherent limit to the effectiveness of a mailing campaign. However, this study did not test alternative mailings. Given the amount of discretion exercised in the creation of this study's materials and our general approach of "throwing everything at the wall," including somewhat contradictory strategies, it is highly likely that more effective materials can be constructed. Future testing is necessary to determine which characteristics work and which do not in mobilizing pro se defendants to respond to lawsuits. We intend to engage in such testing, thus the "Part I" in the title to this article.

The "diagnosis by treatment" model requires multiple experiments and an iterative research agenda. The model assumes that researchers cannot diagnose the underlying causes for a bad symptom at the outset of the research. Applied here, we do not know why people fail to respond to debt collection lawsuits. We assume there may be a variety of reasons, and hypothesize that not all of them have to do with simply wanting to avoid paying a debt by refusing to engage with the system. We theorize that some defendants would reply but for a lack of information about how to respond to the lawsuits. We theorize that others would reply but for emotional and motivational obstacles like fear, shame, and depression. In the beginning of a research project, we cannot comfortably assume more than that. The diagnosis by treatment model help us fill gaps in our knowledge by identifying a problem, experimenting with a method of treatment, and reasoning backward from the results. The model is inside out, bottom up, backwards, and to some extent, in tension with an insistence on theory-driven research. The model is hardly revolutionary or new: viewed properly, it is merely an aggressive application of the scientific method. But neither the scientific method nor its diagnosis-by-treatment offshoot has found much favor in the legal academy, the practice of law, adjudicative institutions, or law more generally. We do not contend that diagnosis by treatment should be used for all legal or social problems. Nor do we intend to argue against the central role that theory must occupy in the design and testing of interventions. We do suggest, however, that like everything else, an insistence that all field research be "theory driven" can be overdone.

1. Characteristics of the mailer

As we discussed earlier, this study marks the first instance we are aware of in which researchers sought to test mail-based materials that persuade people to contest debt collection lawsuits. We developed this study's mail-based materials with almost no guidance on what types of mailers succeed in enticing defendants to appear in civil courts. The literature we did synthesize often addressed analogous issues in other contexts, such as public health, criminal law, and civic engagement. But no prior study was close to on point. As a result, we exercised significant discretion, meaning guesswork, in implementing or modifying suggestions from other bodies of literature. Further, we incorporated a variety of strategies that were duplicative in

addressing the same problem multiple ways, or which may have even worked against one another to cancel out particularized effects.

As noted above, for example, our letter incorporated multiple methods of persuading defendants to attend court through appeals to their world view, engaging in both a "procedural justice" reasoning and a cost benefit analysis. In the same letter, we referenced the courts as fair and impartial, and noted that a defendant who does not respond to a debt collection suit may have to pay a significant sum of money to the plaintiff. These two arguments are not logically exclusive, but they are both aimed at addressing a defendant's view of the court system and its utility, and they may have worked against each other. More likely, the implementation of each message was too short to have made any difference. We subordinated these messages to our overall effort to implement the psychology literature's focus on debilitating emotional states and the adult education literature's emphasis on brevity of material when seeking to grab and hold a reader's attention. The brevity of the cost-benefit and procedural justice messages may have nullified their effects.

The trade-offs apparent in our letter provide opportunities for future research. Subsequent materials may seek to test the efficacy of a procedural justice focus versus a cost-benefit analysis to determine if readers are more likely to be motivated by threats to their financial health or assurances that the justice system is fair. Subsequent materials may also test whether brevity is more effective in communicating with readers than relatively more detailed letters that may include greater nuance in their substance. Further, subsequent studies may seek to gain insight into how much cartoons actually contribute to the communication and comprehension of information when compared with text. These three major characteristics of our letter: engaging in ideological or emotional motivation, making the materials "reader friendly," and including illustrations, were all included to provide a foundation or baseline for future research. This study reveals the effectiveness of throwing all three major traits into the same letter. Future studies should peel back the layers of the letter and experiment with which aspect of each theme generates the greatest response.

Several other issues merit investigation. Because this study was localized to the Boston Municipal Court, we do not know the extent to which our results may generalize in geographic terms. The illustrations and text of the letter needed to account for only one geographic area and one court. LSPs often serve more than one small geographic area, at times covering counties or entire states. Our study offers no guidance on how communications to defendants spread over larger geographic and jurisdictional areas should differ from those in this study.

Further, because of the limited information we were able to gather on defendants prior to sending the mailers, our materials do not account for cultural diversity or language barriers. Boston is a diverse city that is home to a broad range of cultures and ethnic populations. Nonetheless, our letter was provided only in English, and made no concentrated effort to address diverse cultures and populations. Our use of cartoons constrained our ability to be responsive to cultural and ethnic diversity in two ways: by adding length to our materials, and by making customization to different cultures relatively more difficult than text-only communication.

First, our use of cartoons introduced great length to our letter. In adding them, we were cognizant of the tradeoff and sensitive to both the literature emphasizing the effectiveness of cartoons and the literature promoting brevity of written communication. As a result, we included the cartoons, but felt including multiple versions or messages in different languages (as is sometimes done on government forms) would introduce too much length.

Second, the central cartoon character embodied in the materials, Blob, was deliberately designed to have no discernable ethnicity. With only defendants' names and addresses, we did not feel comfortable seeking to deduce the language, culture, or ethnicity of study subjects. Future research may explore how culturally or ethnically-sensitive materials affect response rates. Such research would likely have to account for these characteristics of defendants prior to the application of the intervention, which we concluded was not feasible given the logistical constraints of this study. However, the purpose of cartoons is at least in part to relax the reader and demystify content—two effects that we believe occur at least in part because of the role cartoons play in United States culture. The literature on cartoons that we have consists of studies done in the United States on subjects that were not noted as being members of ethnic populations. We do not know whether the debilitating emotional states we believe the cartoons can combat exist in non-distinctively-U.S. culture. Nor do we know if our cartoons have the relaxing or demystifying effects that we believe they have in dominant US culture for anyone else. Were it the case that the majority of study-eligible defendants were Central American, or Asian, we have no hypothesis on whether our cartoons should remain the same, whether they should be re-designed by a Central American cartoonist, or whether they should be replaced entirely with some other kind of image. Modification of cartoons; making them culturally sensitive, changing their function, or doing away with them entirely, are all ways in which future research can experiment with making materials responsive to ethnic and cultural diversity.

2. System-level changes

a. "Crashing" the current system

This study also poses the possibility, one we find intriguing, of using commodification of legal interventions in favor of one-shotters as a means of overall system reform. The fundamental idea is easy to state. Decades ago, Marc Galanter noted that repeat players in legal processes can further their ends by (i) molding legal processes in their interests, and (ii) achieving economies of scale by commoditizing lawsuits or legal actions.[97] And the market for legal services has long included efforts to transform the production of legal goods into an assembly-line process.[98] Galanter theorized that LSPs might become repeat players, and thereby attempt to mold legal systems to the benefit of the less well off. We hypothesize that in some settings, LSPs can turn the tables on repeat players through commoditization as well. Our mailings provide an example of how.

[97] Galanter, supra note XX.

[98] See, e.g., Jerry Van Hoy, Selling and Processing Law: Legal Work at Franchise Law Firms, 29 Law & Society Reveiew 703 (1995)

At this point, one must think about system effects. Suppose, for example, we were able to optimize our mailings, rendering them such that 30% or more of debt collection defendants contested their lawsuits, and that the mailings were deployed in every court with high default rates. What would this do to debt collection litigation as it presently exists? We wonder whether the present system could survive such a change, and if not, whether its demise would be a good thing.

There are mounting allegations of mistakes and/or abuses within the debt collection industry, and an apparent need for an investigation to determine the truth of these allegations. In short, the narrative of how mistakes and/or abuses allegedly occur in this industry is as follows (we emphasize at the outset that we do not know how much, if any, of this narrative is true): When accounts go delinquent, many credit issuers (e.g., credit card companies) sell the rights to collect on these accounts for fractions of their face values to debt buyers or place them on a contingent basis with debt collection agencies. These transactions often fail to include a formal transfer from seller to buyer of documentation necessary to prove fundamentally important account information. These account features include applicable interest rates, charges and fees, dates of delinquency, etc. Moreover, what little information is transferred is done in bulk data, which may introduce errors to the information associated with individual accounts.

In many cases, after attempting but failing to collect directly from the consumer, debt collection agencies and debt buyers hire specialized law firms who file lawsuits in bulk, using form complaints and affidavits, frequently in courts primarily designed for self-represented litigants (e.g., small claims courts). Prior to filing the complaint, the firm does little to no review of individual cases for sufficiency of evidence, statutes of limitations, or the accuracy of the allegation. Estimates vary, but according to some sources, as many as 80% or more of the consumers sued fail to appear in court and consequently have default judgments entered against them. Some consumers who appear find that the attorneys for the debt buyer or collection agency, upon realizing that defendants have shown up at court, request continuances because they are not prepared to litigate the case, causing the consumer to have to come to court multiple times (with a risk of a default judgment associated with a failure to appear on any of these court dates).

As this narrative goes, the business model of debt buyers and collection agencies appears to depend on these high default rates, because these plaintiffs lack the evidence that would be necessary to prove that the accounts are delinquent or the corresponding amounts (or because obtaining this evidence would require additional work given the contractual agreements between the original creditors who possess it and buyers). With the judgments against consumers in hand, the debt buyers or collection agencies through their attorneys use compulsory collection processes enforced by overburdened courts, such as garnishment of wages, and seizures of bank accounts, to collect. The whole process has multiple opportunities for error. Because (at least in the default judgment scenario) the evidence of the underlying debt typically remains unexamined, the consumer sued may not be the actual debtor (as a result of identity theft or incorrect identification); the amounts sought by the debt buyer or debt collection agency may not reflect payments made by the consumer (perhaps to previous owners of the debt); the consumer may be charged an incorrect interest rate; or the consumer may have other, unasserted defenses or remedies to the action. Because the post-judgment compulsory processes are administered by overburdened courts and consumers are frequently unaware of their rights, income streams

statutorily exempt from garnishment (e.g., social security benefits) and/or assets exempt from attachment may be subject to seizure. We emphasize, again, that we do not know what, if any, portion of this narrative is correct. The point is that the rumblings of this narrative are large enough to suggest a need for a systematic investigation.

If the narrative questioning the business model of debt buyers is to be believed, the debt collection industry has utilized commoditization of legal forms in order to reduce costs and increase revenue. While LSPs may have similarly commoditized responses like form Answers, these instruments are moot if defendants can't be prompted to respond. This is where we believe more can be done to utilize commoditized documents—like mass correspondence with defendants—in order to respond to the current structure of the debt collection industry. What follows on a systems level would be uncertain. On the one hand, an onslaught of responsive defendants may increase the burden on already-strained courts, and with few resources to serve them. On the other hand, they may crash the system of debt collection litigation. Even if they remain unrepresented, defendants who appear in court require far more time and attention from plaintiffs' counsel than those who do not. This may suggest a secondary effect on the part of the intervention. Compelling increased attorney time to each case increases the cost of each case in terms of attorney time and, likely, billings. It also increases the court's allocation of resources per case; Answer forms are added to files and dockets, case management conferences are scheduled, and hearings are more likely to be conducted before a judge. All of these effects increase the resources allocated to each debt collection case, and therefore increases the cost of each case for a debt collector. This change in the economics of debt collection cases, if brought to a large enough scale, may prompt a shift in the business models of debt collectors and debt buyers. In effect, facilitating defendant opposition to debt collection claims may crash the current system of debt collection litigation.[99]

T

his study has brought trends to our attention that we intend to explore in a subsequent paper. What we call the "commoditization" of legal practice has been documented in various parts of the legal profession: use of legal documents intended to boil down the essentials of legal practices to forms accessible by lay-people, fragmentation of legal services among lawyers and lay-person assistants like paralegals, and the routinization of litigation through mass-filing of claims using automated information population of pre-made form complaints. These practices have become reasonably well known in different areas of litigation, including but not limited to debt collection. Commoditization of professions has occurred in other contexts, notably in medicine. We can see examples of these effects in managed health care, in insurance companies' capacity to influence medical services, and the use of randomized control trials in drug and other medical testing. The medical profession initially resisted these changes, perhaps because

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[99] This idea is not unprecedented in the sphere of indigent legal proceedings. Some in the field of criminal justice have proposed an increase in takeup of adversarial proceedings—*i.e.*, going to trial—as a method of disrupting the current administration of the criminal justice system in the United States, which currently experiences an extremely high rate of plea bargaining. The analogy between plea bargaining and default judgment is imperfect, but both are obviously less resource intensive than going to trial. *See* Michelle Alexander, *Go to Trial: Crash the Justice System*, NEW YORK TIMES, March 10, 2012, *available at* http://www.nytimes.com/2012/03/11/opinion/sunday/go-to-trial-crash-the-justice-system.html.

commoditization is inimical to the identity of a profession—the concept that one is an expert possessing unique skills and knowledge that allow one to make irreducibly complex judgments in fact situations so complex as to defy reduction to simple "if-then" statements. The legal profession has also resisted attempts at commoditization. In both fields, the cry "this isn't why I became a doctor/lawyer!" may be seen as evidence that breaking down and instrumentalizing specialized knowledge can rankle the profession.

Recognizing all this, we believe nonetheless that commoditization can sometimes be a good thing. At present, relatively more wealthy and powerful forces in consumer debt collection command the movement toward commoditization But commoditization can be harnessed in the service of relatively-less-well-off parties. LSPs and courts have already created legal forms intended to be accessed and used by pro se people.[100] Others, like the VLP, have created limited assistance programs designed to deploy lawyers at the time their skills—and credentials—are most needed. We will continue to explore how commoditized legal services can serve one-shotters and poorer litigants, and we hope this study is a first step in that process.

b. Possible response by plaintiffs' counsel

Another issue is whether this intervention and others may galvanize system-level changes to the pursuit of debt collection claims, particularly in the part of plaintiff's counsel. Experimenting in a court system involves interacting with the adversarial system—while this intervention was targeted toward defendants in debt collection lawsuits, it may have had the effect of altering plaintiffs' behavior as well. Such reactions, if they occurred, may have mediated the first-order effects of the intervention. Absent the intervention, defendants failed to file an Answer in XX% of cases. No matter the specific case, a defendant who fails to file an Answer is in a worse position than a defendant who does. Plaintiffs' counsel are aware of this as practicing attorneys. Consequently, a debt collection lawyer who knows he is litigating a case with no Answer knows he is in a better position for it. Plaintiffs' counsel are likely to expect either default or weak opposition in the event that a defendant fails to file an Answer in a case. However, in the presence of an Answer or court appearance from the defendant, plaintiffs' counsel have several response options that differ in levels of aggressiveness.

One is for plaintiffs' counsel to engage in aggressive negotiation tactics with defendants who do appear despite failing to file an Answer. Or, the attorney can appear at the court-scheduled case management conference scheduled after a defendant submits an Answer, and either argue the case before a judge or seek to settle with the defendant in the hallway. "Hallway negotiation" has been framed as a high-pressure exchange in which plaintiff's counsel often has the upper hand against an unrepresented layperson.[101] Whether this is the case at the Boston Municipal Court falls outside the scope of this study, though we note that the existence of the Lawyer for the Day table at Boston Municipal Court on Wednesdays, when most case

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[100] *See, e.g.*, eviction litigation forms in Massachusetts, including this form Answer, *available at* http://www.masslegalhelp.org/housing/legaltactics1/answer-how-to-defend-your-eviction-case.pdf.

[101] *See* Erica Fox, *Alone in the Hallway: Challenges to Effective Self-Representation in Negotiation*. 1 HARVARD NEGOTIATION L. REV. 85 (1996).

management conferences are supposed to be scheduled, should in theory play some role in empowering pro se defendants. In these cases, it is possible for plaintiffs' counsel to pressure the defendant into a settlement, especially when the time for the defendant to assert affirmative defenses or counterclaims is past.

Aside from allowing the court to proceed with its normal practice of scheduling a case management conference, under BMC practice explained above, plaintiffs' counsel may file motions that could be scheduled months prior to the case management conference (ordinarily scheduled at least two months after the date upon which the Answer was filed). One option is for plaintiffs to file a Motion for Attachment of Wages and expect the motion to go uncontested prior to being granted. Another example is a motion for summary judgment, which may allege that the content of the defendant's Answer admits the essential elements of the plaintiff's lawsuit and that the plaintiff should recover as a result of the defendant's admissions. While the Answer created for this study was written and reviewed with the intention of eliminating this response, plaintiffs' counsel may vary in the exercise of their legal judgment, and defendants may write text into the margins of the form that were not sanctioned by its creators. It is possible that intervening motions filed by plaintiffs' counsel, of which a motion for summary judgment is only an example, may disrupt a defendant's ability to respond.

This study does not address whether plaintiffs are indeed changing their behavior in response to a defendant's Answer, and if so, how a mailing campaign can anticipate these actions and account for them. Future research may experiment with altering materials to include the possibility of this contingency in its primary materials—one example might be modifying the first letter received by defendants to include a short explanation on a plaintiff's options and the suggested responses for a defendant. Future experiments may also attempt to respond to a plaintiff's actions in real time by sending research team members to monitor case docket sheets and send supplemental materials via mail to defendants who have become the subject of motions for summary judgment or other activities. As this study's materials did, such future letters may simply seek to encourage the defendant to attend court rather than seeking to provide substantive legal counsel. Other options for addressing a plaintiff's intervening action can and should be explored by researchers in the future. This study is limited to acknowledging the possibility that plaintiffs' counsel changed their behavior as a result of receiving the Answer form from study participants, and noting that we are ignorant of any effects the study letter's general language, which encouraged defendants to respond to *any* communication from the court or plaintiff's counsel with respect to the case, may have had on defendants' responsiveness to intervening action by a plaintiff.

No matter what the attorney's response, increasing the rate of defendant appearance and Answer submissions almost inevitably compels some additional action on the part of debt collection attorneys when compared with cases in which defendants only default.

4. Beyond mail campaigns

This study tested a mailing intervention for practical and theoretical reasons. Practically, the volunteer Lawyers Project and the court system were interested in testing a low-cost strategy for enticing defendants to attend court. In a landscape of limited funding for civil LSPs, keeping

new initiatives low cost is an important goal. Further, lower-cost interventions are more easily replicated. Theoretically, we are interested in determining how great an impact the "lightest touch" can have in encouraging people to attend court. The success or failure of this low-cost, low-involvement intervention may suggest some lessons about the reasons for low defendant turnout. Indeed, for a small portion of defendants, part of the problem may have been a lack of logistical information like the court's address or the necessity of answering a lawsuit, or a lack of motivation weak enough to be overpowered by a series of letters in the mail rather than in-person persuasion or contact via telephone. However, that default rates remain around 80% raises more questions. Further, the success or failure of a mailing campaign tells us something about the utility of mailing campaigns more generally; we know that some significant subsection of people still open, read, and respond to letters, even in an age of massive dunning campaigns that disincentivize responsiveness to mail and the rise of technology-based information provision via email, telephone, and social media.

It seems likely that a mailing campaign alone—even one that has been honed through rigorous and replicated testing—may not accomplish the appearance of every person who would choose to contest a debt collection suit if given perfect information. Future testing should also seek to determine what additional measures are effective in eliminating information asymmetry and empowering debt collection defendants to overcome the shame, depression, and/or fear that prevents them from responding. Interactive information provision may be an important improvement; interactivity may be provided through a variety of mediums, including online for a, telephone exchanges, or in-person meetings. This study offers no insight into whether and how interactive contact can increase information comprehension and motivation. Future research is needed to determine if interactive contact is a more efficient and cost-effective means of increasing defendant turnout in debt collection lawsuits.

5. Our research agenda

We call this study "The Problem of Default Part I" because we intend to conduct future experiments aimed at answering many of the questions outlined above. To determine which types of ideologies motivate defendants to answer or not; to determine whether cartoons are effective in communicating information in this setting; to determine what makes communications "reader friendly," we will conduct a series of experiments over several states and involving several courts. We will call this second wave of experiments The Problem of Default Part II. These future experiments will allow us to peel back the various characteristics crammed into the letters developed for this experiment and to isolate them for evaluation. By varying specific characteristics and holding others constant, these future experiments will allow us to determine exactly how much of an effect the specific characteristics have.

We already know that mailers can have a statistically significant effect on how many defendants show up to court. Future experimentation is necessary to answer the next set of questions: what is the optimal letter composition? Why do people decline to attend court? Do letters more effectively motivate some people than others? Ultimately, the results of these experiments may guide discussion on the availability of information about civil lawsuits, the accessibility of legal help, and laypersons' understanding of the civil justice system. Finally, we hope these experiments will contribute to discussion on the limits of the current practices of

courts in the way that they conduct the legal process: in an arena of professional services and specialized knowledge, we believe there are actions courts and LSPs can take to simplify the process of a lawsuit, make specialized information more accessible, and increase access to justice.